JUDGMENT OF THE COURT (First Chamber)

8 December 2011 *

In Case C-371/08,

REFERENCE for a preliminary ruling under Article 234 EC from the Verwaltungsgerichtshof Baden-Württemberg (Germany), made by decision of 22 July 2008, received at the Court on 14 August 2008, in the proceedings

Nural Ziebell

v

Land Baden-Württemberg,

THE COURT (First Chamber),

composed of A. Tizzano, President of the Chamber, A. Borg Barthet, M. Ilešič, J.-J. Kasel (Rapporteur) and M. Berger, Judges,

* Language of the case: German.

Advocate General: Y. Bot,
Registrar: K. Malacek, Administrator,

having regard to the written procedure and further to the hearing on 3 March 2011,

after considering the observations submitted on behalf of:

— Mr Ziebell, by B. Fresenius and R. Gutmann, Rechtsanwälte,

— the Land Baden-Württemberg, by M. Schenk, acting as Agent,

— the German Government, by M. Lumma and N. Graf Vitzthum, acting as Agents,

— the Danish Government, by J. Bering Liisberg and R. Holdgaard, acting as Agents,

— the Estonian Government, by M. Linntam, acting as Agent,

— the Greek Government, by G. Karipsiadis and T. Papadopoulou, acting as Agents,

— the United Kingdom Government, by I. Rao and C. Murrell, acting as Agents, assisted by T. Eicke, Barrister,

— the European Commission, by G. Rozet and V. Kreuschitz, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 14 April 2011,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 14(1) 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 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, of the one part, and by the Member States of the EEC and the Community, of the other part, and 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' and 'the EEC-Turkey Association' respectively). This reference for a preliminary ruling also concerns the interpretation of Article 28(3)(a) of 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 (EEC) 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, and corrigenda OJ 2004 L 229, p. 35, and OJ 2005 L 197, p. 34).

2 The reference was made in the context of a dispute between Mr Ziebell, a Turkish national who went under the name 'Örnek' prior to his marriage with a German national, and the Land Baden-Württemberg (district of Baden-Württemberg), concerning proceedings to expel him from German territory.

Legal context

European Union law

The EEC-Turkey Association

— The Association Agreement

3 According to 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 Contracting Parties which includes, in relation to the workforce, the progressive securing of freedom of movement for workers (Article 12 of the Association Agreement), and the abolition of restrictions on freedom of establishment

(Article 13 of the agreement) and on freedom to provide services (Article 14 of the agreement), with a view to improving the standard of living of the Turkish people and facilitating the accession of Turkey to the Community at a later date (fourth recital in the preamble to and Article 28 of the agreement).

4 To that end, the Association Agreement involves a preparatory stage, enabling the Republic of Turkey to strengthen its economy with aid from the Community (Article 3 of the agreement), a transitional stage covering the progressive establishment of a customs union and the alignment of economic policies (Article 4 of the agreement) and a final stage based on the customs union and entailing closer coordination of the economic policies of the Contracting Parties (Article 5 of the agreement).

5 Article 6 of the Association Agreement is worded as follows:

'To ensure the implementation and progressive development of the Association, the Contracting Parties shall meet in a Council of Association which shall act within the powers conferred on it by [the Association] Agreement.'

6 Article 8 of the Association Agreement, under Title II headed 'Implementation of the transitional stage', provides:

'In order to attain the objectives set out in Article 4, the Council of Association shall, before the beginning of the transitional stage and in accordance with the procedure laid down in Article 1 of the provisional Protocol, determine the conditions, rules and timetables for the implementation of the provisions relating to the fields covered

by the [EC Treaty] which must be considered; this shall apply in particular to such of those fields as are mentioned under this Title and to any protective clause which may prove appropriate.'

7 Article 12 of the Association Agreement, which also appears in Chapter 3 of Title II, entitled 'Other economic provisions', provides:

'The Contracting Parties agree to be guided by Articles [39 EC], [40 EC] and [41 EC] for the purpose of progressively securing freedom of movement for workers between them.'

8 Under Article 22(1) of the Association Agreement:

'In order to attain the objectives of [the Association Agreement] the Council of Association shall have the power to take decisions in the cases provided for therein. Each of the Parties shall take the measures necessary to implement the decisions taken. …'

— The Additional Protocol

9 The Additional Protocol, signed on 23 November 1970 at Brussels and concluded, approved and confirmed on behalf of the Community by Council Regulation (EEC) No 2760/72 of 19 December 1972 (OJ 1977 L 361, p. 60) ('the Additional Protocol')

which, according to Article 62 thereof, forms an integral part of the Association Agreement, lays down, in Article 1, the conditions, arrangements and timetables for implementing the transitional stage referred to in Article 4 of that agreement.

10 The Additional Protocol includes Title II, headed 'Movement of persons and services', Chapter I of which concerns '[w]orkers' and Chapter II of which concerns '[r]ight of establishment, services and transport'.

11 Article 36 of the Additional Protocol, which is included in Chapter I, provides that freedom of movement for workers between Member States of the Community and 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 and that the Council of Association is to decide on the rules necessary to that end.

— Decision No 1/80

12 Decision No 1/80 was adopted by the Association Council, which was set up by the Association Agreement and consists, on the one hand, of members of the Governments of the Member States, of the Council of the European Union and of the Commission of the European Communities and, on the other hand, of members of the Turkish Government.

13 The third recital in the preamble to that decision states that it is aimed at improving the social treatment accorded to Turkish workers and members of their families in relation to the arrangements laid down in Decision No 2/76 on the implementation of Article 12 of the Association Agreement, adopted on 20 December 1976 by the Association Council.

14 Article 7 of Decision No 1/80, which is in Chapter II, 'Social provisions', Section 1, concerning 'Questions relating to employment and the free movement of workers', provides in the first paragraph:

'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.'

15 Article 14 of Decision No 1/80, which is also included in Section 1, is worded as follows:

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

2. They shall not prejudice the rights and obligations arising from national legislation or bilateral agreements between Turkey and the Member States of the Community where such legislation or agreements provide for more favourable treatment for their nationals.'

Directive 2003/109/EC

16 According to recitals 1 and 2 in the preamble to Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents (OJ 2004 L 16, p. 44):

'(1) With a view to the progressive establishment of an area of freedom, security and justice, the Treaty establishing the European Community provides both for the adoption of measures aimed at ensuring the free movement of persons, in conjunction with flanking measures relating to external border controls, asylum and immigration, and for the adoption of measures relating to asylum, immigration and safeguarding the rights of third-country nationals.

(2) The European Council, at its special meeting in Tampere on 15 and 16 October 1999, stated 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 European Union.'

17 Recital 6 in the preamble to that directive states:

'The main criterion for acquiring the status of long-term resident should be the duration of residence in the territory of a Member State. Residence should be both legal and continuous in order to show that the person has put down roots in the country.'

18 Recitals 8 and 16 in the preamble to that directive state:

'(8) Moreover, third-country nationals who wish to acquire and maintain long-term resident status should not constitute a threat to public policy or public security. The notion of public policy may cover a conviction for committing a serious crime.

(16) Long-term residents should enjoy reinforced protection against expulsion. This protection is based on the criteria determined by the decisions of the European Court of Human Rights.'

19 Article 2 of Directive 2003/109 provides:

'For the purposes of this Directive:

(a) "third-country national" means any person who is not a citizen of the Union within the meaning of Article 17(1) of the Treaty;

(b) "long-term resident" means any third-country national who has long-term resident status as provided for under Articles 4 to 7;

...'

20 Under Article 3(1), that directive 'applies to third-country nationals residing legally in the territory of a Member State'.

21 Article 3(3) provides that:

'This Directive shall apply without prejudice to more favourable provisions of:

(a) bilateral and multilateral agreements between the Community or the Community and its Member States, on the one hand, and third countries, on the other;

…'

22 Under Article 4(1) of Directive 2003/109, Member States are to grant long-term resident status to third-country nationals who have resided legally and continuously within their territory for five years.

23 Article 12 of that directive, entitled 'Protection against expulsion', is worded as follows:

'1. Member States may take a decision to expel a long-term resident solely where he/she constitutes an actual and sufficiently serious threat to public policy or public security.

2. The decision referred to in paragraph 1 shall not be founded on economic considerations.

3. Before taking a decision to expel a long-term resident, Member States shall have regard to the following factors:

(a) the duration of residence in their territory;

(b) the age of the person concerned;

(c) the consequences for the person concerned and family members;

(d) links with the country of residence or the absence of links with the country of origin.

…'

Directive 2004/38

24 Recital 3 in the preamble to Directive 2004/38 states:

'Union citizenship should be the fundamental status of nationals of the Member States when they exercise their right of free movement and residence. It is therefore necessary to codify and review the existing Community instruments dealing separately with workers, self-employed persons, as well as students and other inactive persons in order to simplify and strengthen the right of free movement and residence of all Union citizens.'

25 According to recital 22 in the preamble to that directive:

'The Treaty allows restrictions to be placed on the right of free movement and residence on grounds of public policy, public security or public health. In order to ensure a tighter definition of the circumstances and procedural safeguards subject to which Union citizens and their family members may be denied leave to enter or may be expelled, this Directive should replace Council Directive 64/221/EEC of 25 February 1964 … on the coordination of special measures concerning the movement and residence of foreign nationals, which are justified on grounds of public policy, public security or public health [(OJ, English Special Edition 1963-1964, p. 117), as amended by Council Directive 75/35/EEC of 17 December 1974 (OJ 1975 L 14, p. 14) ("Directive 64/221")].'

26 According to recitals 23 and 24 in the preamble to Directive 2004/38:

'(23) Expulsion of Union citizens and their family members on grounds of public policy or public security is a measure that can seriously harm persons who, having availed themselves of the rights and freedoms conferred on them by

the Treaty, have become genuinely integrated into the host Member State. The scope for such measures should therefore be limited in accordance with the principle of proportionality to take account of the degree of integration of the persons concerned, the length of their residence in the host Member State, their age, state of health, family and economic situation and the links with their country of origin.

(24) Accordingly, the greater the degree of integration of Union citizens and their family members in the host Member State, the greater the degree of protection against expulsion should be. Only in exceptional circumstances, where there are imperative grounds of public security, should an expulsion measure be taken against Union citizens who have resided for many years in the territory of the host Member State, in particular when they were born and have resided there throughout their life. In addition, such exceptional circumstances should also apply to an expulsion measure taken against minors, in order to protect their links with their family, in accordance with the United Nations Convention on the Rights of the Child, of 20 November 1989.'

27 Article 16(1) of that directive provides:

'Union citizens who have resided legally for a continuous period of five years in the host Member State shall have the right of permanent residence there. …'

28 Article 27(1) and (2) of that directive provide:

‘1. Subject to the provisions of this Chapter, Member States may restrict the freedom of movement and residence of Union citizens and their family members, irrespective of nationality, on grounds of public policy, public security or public health. These grounds shall not be invoked to serve economic ends.

2. Measures taken on grounds of public policy or public security shall comply with the principle of proportionality and shall be based exclusively on the personal conduct of the individual concerned. Previous criminal convictions shall not in themselves constitute grounds for taking such measures.

The personal conduct of the individual concerned must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. Justifications that are isolated from the particulars of the case or that rely on considerations of general prevention shall not be accepted.’

29 Under Article 28 of the directive, entitled ‘Protection against expulsion’:

‘1. Before taking an expulsion decision on grounds of public policy or public security, the host Member State shall take account of considerations such as how long the individual concerned has resided on its territory, his/her age, state of health, family and economic situation, social and cultural integration into the host Member State and the extent of his/her links with the country of origin.

2. The host Member State may not take an expulsion decision against Union citizens or their family members, irrespective of nationality, who have the right of permanent residence on its territory, except on serious grounds of public policy or public security.

3. An expulsion decision may not be taken against Union citizens, except if the decision is based on imperative grounds of public security, as defined by Member States, if they:

(a) have resided in the host Member State for the previous 10 years; or

(b) are a minor, except if the expulsion is necessary for the best interests of the child, as provided for in the United Nations Convention on the Rights of the Child of 20 November 1989.'

National legislation

30 As indicated in the order for reference, the Law on the residence, employment and integration of foreign nationals in the Federal territory (Gesetz über den Aufenthalt, die Erwerbstätigkeit und die Integration von Ausländern im Bundesgebiet

– Aufenthaltsgesetz) of 30 July 2004 (BGBI. 2004 I, p. 1950), in the version applicable at the time of the facts in the main proceedings, contains the following provisions:

'*Paragraph 53*

– Mandatory expulsion

A foreign national shall be expelled:

1. where, after being convicted of one or more intentional offences, he has been definitively sentenced to at least three years' imprisonment or youth custody or where, after being convicted of a number of intentional offences within a period of five years, he has been definitively sentenced to a number of terms of imprisonment or youth custody amounting to at least three years or where, on the occasion of the most recent definitive conviction, a term of preventive detention was ordered.

…

Paragraph 55

– Discretionary expulsion

1. A foreign national may be expelled where his presence endangers public security, public order or other important interests of the Federal Republic of Germany.

…

Paragraph 56

– Special protection against expulsion

(1) A foreign national who

1. holds a permanent residence permit and has been lawfully resident in the Federal territory for at least five years

…

shall enjoy special protection against expulsion. He may be expelled only on serious grounds of public security or public policy. Serious grounds of public security or public policy generally exist in the cases covered by Paragraphs 53 and 54(5), (5a) and (7). Where the conditions laid down in Paragraph 53 are satisfied, the foreign national shall, as a rule, be expelled. Where the conditions laid down in Paragraph 54 are satisfied, the decision as to his expulsion shall be a discretionary matter.

…'

31 The Law on general freedom of movement for Union citizens (Gesetz über die allgemeine Freizügigkeit von Unionsbürgern –Freizügigkeitsgesetz/EU) of 30 July 2004

(BGBl. 2004 I, p. 1950), in the version applicable at the time of the facts in the main proceedings, provides inter alia:

'*Paragraph 1*

– Scope

This Law shall govern the entry and residence of nationals of other Member States of the European Union (Union citizens) and their family members.

Paragraph 6

– Forfeiture of the right to enter and reside

(1) … only on grounds of public policy, public security or public health (Articles 39(3) EC and 46(1) EC) may the right laid down in Paragraph 2(1) be declared forfeit, a document attesting to a right of residence or permanent residence under Community law be withdrawn, or a residence permit or permanent residence permit be revoked.

…

(5) In the case of Union citizens and their family members who have resided in the Federal territory for the previous 10 years, and in the case of minors, a declaration under paragraph (1) may be made only on imperative grounds of public security. This shall not apply to minors where the forfeiture of the right of residence is necessary for the good of the child. Imperative grounds of public security may exist only where

the person concerned, after being convicted of one or more intentional offences, has been definitively sentenced to at least five years' imprisonment or youth custody or where, on the occasion of the most recent definitive conviction, a term of preventive detention was ordered, where the security of the Federal Republic of Germany is concerned or where the person concerned poses a terrorist threat.

…'

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

32 Mr Ziebell was born in Germany on 18 December 1973, where he grew up with his parents.

33 His father, a Turkish national, was lawfully resident in the Federal Republic as a worker. After his father's death in 1991, the applicant's mother was admitted to a nursing home. To this date, Mr Ziebell does not seem to have lived with any family members, as his siblings live in separate households.

34 Mr Ziebell left school without having obtained a school-leaving qualification; he subsequently quit a construction painting apprenticeship. He occasionally took temporary jobs which were always interrupted by periods of unemployment and imprisonment. He was not in any gainful employment between July 2000 and the date of the expulsion decision.

35 Since 28 January 1991 Mr Ziebell has held an unlimited residence permit in Germany, which has continued to be valid since 1 January 2005 as an unlimited permanent residence permit. An application for naturalisation submitted between those dates was rejected on account of the offences which he had committed.

36 In 1991 Mr Ziebell began smoking marijuana. As from 1998 he regularly took heroin and cocaine. A methadone programme which he underwent in 2001 and in-patient drug therapy which he completed in 2003 were unsuccessful.

37 Since 1993 Mr Ziebell has been convicted on several occasions and sentenced as follows:

— on 15 April 1993 to two years' and six months' youth custody on 24 counts of gang-related robbery;

— on 17 October 1994 to two years' and seven months' youth custody, which took account of the sentence referred to in the preceding indent, for grievous bodily harm;

— on 9 January 1997 to payment of a fine for exercising actual control over a prohibited object;

— on 9 April 1998 to a term of imprisonment of a total of two years on three counts of theft;

— on 7 March 2002 to a term of imprisonment of two years and six months for money counterfeiting, on four counts of aggravated theft, and for attempted aggravated theft;

— on 28 July 2006 to a term of imprisonment totalling three years and three months on eight counts of aggravated theft.

38 Mr Ziebell was in prison serving sentences from January 1993 to December 1994, August 1997 to October 1998, July to October 2000, September 2001 to May 2002, and November 2005 to October 2008.

39 On 28 October 2008, Mr Ziebell began a new course of therapeutic treatment in a specialised institution. According to the information provided to the Court at the hearing, his drug-related problems appear to be resolved now and he has not committed any further offences since then. By judgment of 16 June 2009, the remainder of his sentence pronounced on 28 July 2006 was commuted to probation. He married on 30 December 2009, has become a father and is gainfully employed.

40 On 28 October 1996 Mr Ziebell received from the Ausländerbehörde (Aliens Department) a warning under the law relating to aliens in connection with the offences that he had committed at that time.

41 By decision of 6 March 2007 the Regierungspräsidium Stuttgart (Stuttgart Regional Administration) issued an order for the applicant's expulsion and ordered its immediate enforcement. The order relating to immediate enforcement has in the interim been suspended.

42 The Regierungspräsidium Stuttgart gave as reasons for the expulsion the fact that Mr Ziebell's conduct constitutes a serious disturbance of the social order and there is a specific and high risk that Mr Ziebell will engage in serious re-offending.

43 By judgment of 3 July 2007, the Verwaltungsgericht Stuttgart (Administrative Court, Stuttgart) dismissed the action brought by Mr Ziebell against that expulsion decision.

44 Mr Ziebell appealed against that judgment before the Verwaltungsgerichtshof Baden-Württemberg (Higher Administrative Court, Baden-Württemberg), seeking to have that judgment set aside and the expulsion decision annulled. He states in support of his appeal that Directive 2004/38 has curtailed the Member States' powers to adopt expulsion measures against Union citizens. In his submission, in the light of, first, the Court's settled case-law applying the guarantees of free movement to Turkish nationals with rights under the EEC-Turkey Association and, second, the fact that he has resided lawfully in the host Member State for over 10 consecutive years, the protection against expulsion that he enjoys is henceforth governed by Article 28(3)(a) of that directive. The relevant condition thereunder, namely that imperative grounds of public security justify expulsion, is, he argues, not satisfied in his case.

45 The Land Baden-Württemberg contends, on the contrary, that Article 28(3)(a) of Directive 2004/38 is not applicable by analogy to Turkish nationals with a right of residence in a Member State under Decision No 1/80. Unlike that provision, Article 14(1) of that decision, applicable to the dispute in the main proceedings, mentions as a barrier not only grounds of public security but also grounds of public policy and public health. The EEC-Turkey Association does not imply a complete equation of Turkish

nationals having rights under that association with Union citizens but merely serves gradually to establish their freedom of movement.

46 Having observed that the determination of European Union law as a reference framework for the requirements of applying Article 14(1) of Decision No 1/80 to the dispute in the main proceedings is not clear in that, first, there is not yet case-law from the Court ruling on the applicability by analogy of Directive 2004/38 in the context of the EEC-Turkey Association and, second, Directive 64/221 was repealed by Directive 2004/38, the Verwaltungsgerichtshof Baden-Württemberg decided to stay the proceedings and refer to the Court the following question for a preliminary ruling:

'Is the protection against expulsion provided for in Article 14(1) of Decision No 1/80 … and enjoyed by a Turkish national, whose legal status derives from the second indent of the first paragraph of Article 7 of [that decision] and who has resided for the previous 10 years in the Member State in respect of which this legal status applies, to be determined in accordance with Article 28(3)(a) of Directive 2004/38, as implemented by the relevant Member State, with the result that expulsion is permitted only on imperative grounds of public security, as defined by Member States?'

The question referred for a preliminary ruling

47 It should be observed, as a preliminary point, that the reference for a preliminary ruling concerns the situation of a Turkish national who satisfied all the conditions required legally to enjoy the legal status provided for in the second indent of the first paragraph of Article 7 of Decision No 1/80 before the expulsion decision at issue in the main proceedings was adopted.

48 As the Court has held on numerous occasions, first, the first paragraph of Article 7 has direct effect in the Member States and, second, the employment-related rights that that provision confers on Turkish nationals necessarily mean that a concomitant right of residence in the host Member State must be acknowledged to exist (see, inter alia, Case C-303/08 *Bozkurt* [2010] ECR I-13445, paragraphs 31, 35 and 36, and also Case C-484/07 *Pehlivan* [2011] ECR I-5203, paragraphs 39 and 43).

49 According to equally consistent case-law, members of a Turkish worker's family who fulfil the conditions laid down in the first paragraph of Article 7 of Decision No 1/80 can lose the rights conferred on them by that provision only in two cases, that is to say, either where the presence of the Turkish migrant in the host Member State constitutes, by reason of his personal conduct, a genuine and serious threat to public policy, public security or public health, within the terms of Article 14(1) of that decision, or where the person concerned has left the territory of that State for a significant length of time without legitimate reason (see, inter alia, *Bozkurt*, paragraph 42 and the case-law cited, and *Pehlivan*, paragraph 62).

50 The reference for a preliminary ruling in the present case concerns the first of those two cases leading to the loss of rights which the first paragraph of Article 7 of Decision No 1/80 confers on Turkish nationals and, more specifically, the determination of the exact scope of the right of residence based on reasons of public policy as laid down in Article 14(1) of that decision, in a situation such as that in the main proceedings.

51 It is indisputable that a Turkish national such as Mr Ziebell, who holds a right of residence in the host Member State under Decision No 1/80, may validly rely on Article 14(1) before the courts of that Member State in order to block the application of a national measure which is contrary to that provision.

52 After summarising the Court's consistent case-law to the effect that both the very concept of public policy within the meaning of that provision and the relevant criteria in that regard and the guarantees on which the person concerned may rely in that context must be interpreted by analogy with the principles recognised for Union nationals in connection with Article 48(3) of the EEC Treaty (which became Article 48(3) EC, now Article 39(3) EC), as implemented and given specific expression in Directive 64/221 (see, inter alia, Case C-340/97 *Nazli* [2000] ECR I-957, paragraphs 55, 56 and 63; Case C-136/03 *Dörr and Ünal* [2005] ECR I-4759, paragraphs 62 and 63 and the case-law cited; and *Bozkurt*, paragraph 55 and the case-law cited), the Verwaltungsgerichtshof Baden-Württemberg asks the Court whether the rules laid down in that directive should be applied by analogy to Turkish nationals, as that directive has been repealed by Directive 2004/38 and the time-limit for transposition of the latter directive has expired.

53 As regards the situation of a Turkish national such as Mr Ziebell, who has resided lawfully and continuously in the host Member State for over 10 years, it is necessary to ascertain more specifically whether the protection against expulsion which the person concerned enjoys under Article 14(1) of Decision No 1/80 is governed by the same rules as those which protect Union citizens under Article 28(3)(a) of Directive 2004/38.

54 Mr Ziebell states in that regard that the provisions providing for protection against expulsion laid down in Article 28(3)(a) of Directive 2004/38 should be applied by analogy to a situation coming under Article 14(1) of Decision No 1/80.

55 The grounds put forward by Mr Ziebell in support of his interpretation are based, first, on the fact that one of the principle objectives of the Association Agreement is the implementation of the free movement of workers, which is one of the essential aspects of the EC Treaty; second, the fact that the Court's consistent case-law, referred to in paragraph 52 of this judgment, made applicable to Turkish nationals enjoying

rights under the provisions of that association agreement the principles applicable in that regard to nationals of the Member States; and, third, the fact that Articles 27 and 28 of Directive 2004/38 have, under European Union law as it currently stands, been substituted for the rules provided for in Directive 64/221. That analogy is all the more justified by the fact that Directive 2004/38 merely clarifies the protection against expulsion conferred by European Union law, as interpreted by the Court, by codifying, although not extending in its entirety, the substance of the individual rights relating to free movement and residence, as interpreted by the case-law before the latter directive became applicable.

56 Consequently, according to Mr Ziebell, a decision to expel him from German territory may be taken only on 'serious grounds of public security' within the meaning of Article 28(3)(a) of Directive 2004/38. Criminal offences committed by him clearly do not constitute such serious grounds and therefore his expulsion would be contrary to European Union law.

57 That interpretation of European Union law put forward by Mr Ziebell cannot succeed, however.

58 It is true that, according to the Court's consistent case-law referred to in paragraph 52 of this judgment, the principles enshrined in the Treaty articles relating to freedom of movement for workers must be extended, as far as possible, to Turkish nationals who enjoy rights under the EEC-Turkey Association. As the Court has held, such an interpretation by analogy must hold true not only for those Treaty articles themselves, but also for secondary legislation adopted on the basis of those articles which is intended to implement and give expression to them (see, regarding Directive 64/221, inter alia, *Dörr and Ünal*).

59 In determining the scope of the public policy exception provided for in Article 14(1) of Decision No 1/80, the Court has referred to its interpretation of that exception in relation to the free movement of nationals of Member States as provided for in Article 48(3) of the Treaty and in Directive 64/221 (see, inter alia, *Nazli*).

60 Nevertheless, as the Advocate General observed in point 42 et seq of his Opinion, it is not possible to extend the scheme of protection against expulsion enjoyed by Union citizens, as provided for in Article 28(3)(a) of Directive 2004/38, to the guarantees against expulsion for Turkish nationals for the purposes of application of Article 14(1) of Decision No 1/80.

61 It is settled case-law that an international treaty is to be interpreted not solely by reference to the terms in which it is worded but also in the light of its objectives (see, inter alia, Opinion 1/91 [1991] ECR I-6079, paragraph 14, and Case C-416/96 *Eddline El-Yassini* [1999] ECR I-1209, paragraph 47).

62 In deciding whether a provision of European Union law lends itself to application by analogy under the EEC-Turkey Association, a comparison must be made between the objective pursued by the Association Agreement and the context of which it forms a part, on the one hand, and those of the European Union law instrument in question, on the other.

63 As regards, first, the EEC-Turkey Association, it must be borne in mind that according to 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 Contracting Parties, which includes the freedom of movement for workers.

64 As observed by the Advocate General in points 45 and 46 of his Opinion, the EEC-Turkey Association pursues a solely economic purpose.

65 Moreover, according to Article 12 of the Association Agreement, '[t]he Contracting Parties agree to be guided by Articles [39 EC], [40 EC] and [41 EC] for the purpose of progressively securing freedom of movement for workers between them'. Article 36 of the Additional Protocol lays down the schedule for gradual implementation of free movement for workers between the Member States and the Republic of Turkey and provides that 'the Council of Association is to decide on the rules necessary to that end'. Lastly, the third recital in the preamble to Decision No 1/80 states that it is aimed at improving the social treatment accorded to Turkish workers and members of their families.

66 It is precisely the wording of those provisions and the object pursued by them that has led consistent case-law since Case C-434/93 *Bozkurt*[1995] ECR I-1475, paragraphs 19 and 20, to hold that the principles enshrined in Articles 39 EC and 41 EC must be extended, as far as possible, to Turkish nationals who enjoy rights under the EEC-Turkey Association (see paragraph 58 of this judgment).

67 As regards, more specifically, the scope of the public policy exception provided for in Article 14(1) of Decision No 1/80, the Court has accordingly held that reference should be made to the interpretation given to that exception in the field of freedom of movement for workers who are nationals of a Member State. The Court has further held that such an approach is all the more justified because Article 14(1) is formulated in almost identical terms to Article 39(3) EC (see, inter alia, Case C-349/06 *Polat* [2007] ECR I-8167, paragraph 30 and the case-law cited).

68 It follows that, according to the Court's case-law, such a transposition of the principles underlying the freedom of movement under European Union law may be justified only by the objective of progressively securing freedom of movement for Turkish workers pursued by the EEC-Turkey Association, as laid down in Article 12 of the Association Agreement (see, inter alia, *Dörr and Ünal*, paragraph 66). Yet Article 12, in referring to the Treaty articles relating to the free movement of workers, confirms that the purpose underpinning that association is solely economic in nature.

69 As regards, second, the European Union law at issue, it should be observed from the outset that Directive 2004/38 is based on Articles 12 EC, 18 EC, 40 EC, 44 EC and 52 EC. That directive, far from pursuing a purely economic objective, aims to facilitate the exercise of the primary and individual right to move and reside freely within the territory of the Member States that is conferred directly on Union citizens by the Treaty, and it aims in particular to strengthen that right (see Case C-145/09 *Tsakouridis* [2010] ECR I-11979, paragraph 23).

70 Thus, that directive establishes a considerably strengthened system of protection against expulsion measures, which provides for greater guarantees where the degree of integration of Union citizens in the host Member State is high (*Tsakouridis*, paragraphs 25 to 28 and 40 and 41).

71 Moreover, the very concept of 'imperative grounds' of public security as set out in Article 28(3)(a) of Directive 2004/38, which is intended to cover a threat to public security presenting a particularly high degree of seriousness and allows for the adoption of an expulsion measure only in exceptional circumstances, has no equivalent in Article 14(1) of Decision No 1/80 (*Tsakouridis*, paragraphs 40 and 41).

72 It follows from that comparison that, unlike European Union law as it results from Directive 2004/38, the EEC-Turkey Association pursues solely a purely economic objective and is restricted to the gradual achievement of the free movement of workers.

73 By contrast, the very concept of citizenship, as it results from the mere fact that a person holds the nationality of a Member State and not from the fact that that person has the status of a worker, and which, according to the Court's settled case-law, is intended to be the fundamental status of nationals of the Member States (see, inter alia, Case C-413/99 *Baumbast and R* [2002] ECR I-7091, paragraph 82, and Case C-34/09 *Ruiz Zambrano* [2011] ECR I-1177, paragraph 41), as described in Articles 17 EC to 21 EC, is a feature of European Union law at its current stage of development and justifies the recognition, for Union citizens alone, of guarantees which are considerably strengthened in respect of expulsion, such as those provided for in Article 28(3)(a) of Directive 2004/38.

74 It thus follows from the substantial differences to be found not only in their wording but also in their object and purpose between the rules relating to the EEC-Turkey Association and European Union law concerning citizenship that the two legal schemes in question cannot be considered equivalent, with the result that the scheme providing for protection against expulsion enjoyed by Union citizens under Article 28(3)(a) of Directive 2004/38 cannot be applied mutatis mutandis for the purpose of determining the meaning and scope of Article 14(1) of Decision No 1/80.

75 That being said, in order to provide an answer which will be of use to the national court, some guidance on interpretation should be provided as to the specific scope of Article 14(1) of Decision No 1/80 in the context of a dispute such as that currently before it.

76 As stated above in paragraphs 52, 58 and 59 of this judgment, in order to determine the meaning and scope of Article 14(1) of Decision No 1/80, the Court has traditionally referred to the principles laid down in Directive 64/221.

77 That directive was, however, repealed by Directive 2004/38, Article 38(3) of which provides that references made to repealed directives are to be construed as being made to Directive 2004/38.

78 However, in a scenario such as that at issue in the main proceedings, in which the relevant provision of Directive 2004/38 is not applicable by analogy (see paragraph 74 of this judgment), it is appropriate to determine another reference framework under European Union law for the purposes of applying Article 14(1) of Decision No 1/80.

79 That framework, in the case of a foreign national such as Mr Ziebell, who has been residing lawfully and continuously in the host Member State for more than 10 years, consists of Article 12 of Directive 2003/109, which, in the absence of more favourable rules in the law under the EEC-Turkey Association, is a rule of minimum protection against expulsion for any national of a non-member State who holds the status of long-term lawful resident in the territory of a Member State.

80 It is apparent from that provision, first, that the long-term resident concerned can be expelled solely where he/she constitutes a genuine and sufficiently serious threat to public policy or public security. Next, the expulsion decision cannot be founded on economic considerations. Lastly, before adopting such a decision, the competent authorities of the host Member State are required to take account of the duration of residence in their territory, the age of the person concerned, the consequences of expulsion for the person concerned and family members, links with the country of residence or the absence of links with the country of origin.

81 It is, moreover, settled case-law that the public policy exception in the area of free movement of workers who are nationals of Member States of the European Union, as provided for by the Treaty and applicable by analogy under the EEC-Turkey Association, is a derogation from that fundamental freedom, which must be interpreted strictly, and that its scope cannot be determined unilaterally by the Member States (see, inter alia, Case C-303/08 *Bozkurt*, paragraph 56 and the case-law cited).

82 Furthermore, measures on grounds of public policy or public security may be taken only following a case-by-case assessment by the competent national authorities showing that the personal conduct of the individual concerned constitutes at present a genuine and sufficiently serious threat to a fundamental interest of society. In that assessment, those authorities are also required to observe both the principle of proportionality and the fundamental rights of the person concerned, in particular, the right to privacy and family life (see, to that effect, Case C-303/08 *Bozkurt*, paragraphs 57 to 60 and the case-law cited).

83 Accordingly such measures cannot be ordered automatically on general preventive grounds following a criminal conviction or as a means of deterring other foreign nationals from committing offences (see Case C-303/08 *Bozkurt*, paragraph 58 and the case-law cited). Although in that regard, the existence of several previous criminal convictions is, in itself, irrelevant for justifying an expulsion depriving a Turkish national of rights he derives directly from Decision No 1/80 (see *Polat*, paragraph 36), the same must hold all the more true for a justification relating to the duration of any prison terms to which the individual concerned was sentenced.

84 As regards the date to be used in determining whether the specific threat to public policy or security is present, it must also be borne in mind that national courts must take into consideration, in reviewing the lawfulness of the expulsion of a Turkish

national, factual matters which occurred after the final decision of the competent authorities which may point to the cessation or the substantial diminution of the present threat which the conduct of the person concerned constitutes to the requirements of the fundamental interest in question (see, inter alia, Case C-467/02 *Cetinkaya* [2004] ECR I-10895, paragraph 47).

85 As observed by the Advocate General in points 62 to 65 of his Opinion, it is accordingly in the light of Mr Ziebell's current situation that it will be for the referring court to weigh up, on the one hand, the need for the planned interference with his right of residence in order to safeguard the legitimate interest pursued by the host Member State and, on the other, the actual integration factors enabling the individual concerned to reintegrate into society in the host Member State. More specifically, that court will have to determine whether the conduct of the Turkish national constitutes at present a sufficiently serious threat to a fundamental interest of society, taking due account of all the specific circumstances characterising his situation, which include not only the factors put forward at the hearing before the Court (see paragraph 39 of this judgment), but also the particularly close links which the foreign national has forged with society in the Federal Republic of Germany, on whose territory he was born, has lived lawfully and continuously for more than 35 years, has married a German national and is gainfully employed.

86 In the light of all the foregoing considerations, the answer to the question referred is that Article 14(1) of Decision No 1/80 must be interpreted as meaning that:

— protection against expulsion conferred by that provision on Turkish nationals does not have the same scope as that conferred on citizens of the Union under Article 28(3)(a) of Directive 2004/38, with the result that the scheme of protection

against expulsion enjoyed by the latter cannot be applied mutatis mutandis to Turkish nationals for the purpose of determining the meaning and scope of Article 14(1) of Decision No 1/80;

— that provision of Decision No 1/80 does not preclude an expulsion measure based on grounds of public policy from being taken against a Turkish national whose legal status derives from the second indent of the first paragraph of Article 7 of that decision, in so far as the personal conduct of the individual concerned constitutes at present a genuine and sufficiently serious threat affecting a fundamental interest of the society of the host Member State and that measure is indispensable in order to safeguard that interest. It is for the national court to determine, in the light of all the relevant factors relating to the situation of the Turkish national concerned, whether such a measure is lawfully justified in the main proceedings.

Costs

87 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 (First Chamber) hereby rules:

Article 14(1) of Decision No 1/80 of the Association Council of 19 September 1980 on the development of the Association, adopted by the Association Council 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, of the one part, and by the Member States of the EEC and the Community, of the other part, and concluded, approved and confirmed on behalf of the Community by Council Decision 64/732/EEC of 23 December 1963, must be interpreted as meaning that:

— **protection against expulsion conferred by that provision on Turkish nationals does not have the same scope as that conferred on citizens of the Union under Article 28(3)(a) of 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 (EEC) 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, with the result that the scheme of protection against expulsion enjoyed by the latter cannot be applied mutatis mutandis to Turkish nationals for the purpose of determining the meaning and scope of Article 14(1) of Decision No 1/80;**

— **that provision of Decision No 1/80 does not preclude an expulsion measure based on grounds of public policy from being taken against a Turkish national whose legal status derives from the second indent of the first paragraph of Article 7 of that decision, in so far as the personal conduct of the individual concerned constitutes at present a genuine and sufficiently serious threat affecting a fundamental interest of the society of the host Member State and that measure is indispensable in order to safeguard that interest. It is for the national court to determine, in the light of all the relevant factors relating to the situation of the Turkish national concerned, whether such a measure is lawfully justified in the main proceedings.**

[Signatures]