OPINION OF ADVOCATE GENERAL DARMON

delivered on 12 July 1994 *

Mr President,
Members of the Court,

1. The two questions referred for a preliminary ruling by the Verwaltungsgericht (Administrative Court) Karlsruhe, which follow on from the *Sevince* [1] and *Kus* [2] judgments, concern the interpretation of Decision No 1/80 of 19 September 1980 of the Association Council established by the agreement creating an association between the European Economic Community and Turkey, signed at Ankara on 12 September 1963 [3] (hereafter 'the Association Agreement'). [4]

2. One of the objectives of that agreement is 'progressively securing freedom of movement for workers' between the contracting parties, [5] guided by Articles 48, 49 and 50 of the EEC Treaty. Article 36 of the additional protocol lays down the time-limits for the progressive attainment of such freedom of movement, the detailed rules of which are determined by the Association Council.

3. Articles 6 and 7 of Decision No 1/80 on the development of the Association (hereafter 'the Decision') provide as follows:

'*Article 6*

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

* Original language: French.

1 — Case C-192/89 *Sevince* v *Staatssecretaris van Justitie* [1990] ECR I-3461.

2 — Case C-237/91 *Kus* v *Landeshaupstadt Wiesbaden* [1992] ECR I-6781.

3 — An agreement concluded in the name of the Community by Council Decision 64/732/EEC of 23 December 1963 (published in English in OJ 1973 C 113, p. 2) and supplemented by an additional protocol of 23 November 1970, which entered into force on 1 January 1973 (OJ 1972 L 293, p. 1).

4 — With regard to that agreement, see my Opinion in *Kus*, paragraphs 2 to 5.

5 — Article 12.

choice, made undernormal 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.

Article 7

The members of the family of a Turkish worker duly registered as belonging to the labour force of a Member State, who have been authorized 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 that 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.'

4. Those provisions are central to this case.

5. Let me, at the outset, make two comments.

6. First, in accordance with its settled case-law, [6] the Court has jurisdiction '... to give rulings on the interpretation of the decisions adopted by the authority established by an association agreement and entrusted with responsibility for its implementation ...'. [7] I would refer, on this point, to my Opinions in *Sevince* [8] and *Kus*. [9]

6 — See *Sevince*, cited above, paragraphs 7 to 12, and *Kus*, cited above, paragraph 9.

7 — *Kus*, paragraph 9.

8 — Paragraphs 4 to 8.

9 — Paragraphs 10 to 21.

7. Secondly, the scope of Articles 6 and 7 of the decision must be clearly defined. It is necessary to determine the legal status of a Turkish national who *already* possesses, under domestic law, a work permit and a right of residence, if required, since he is duly registered as belonging to the labour force. [10] The conditions under which the person concerned acquired the right to enter and stay in the host Member State in question are a matter for domestic law alone.

8. The context in which the national court seeks an interpretation from the Court is as follows.

9. Mr Eroglu has lived and worked without interruption in the Federal Republic of Germany since 1976. His daughter, Hayriye Eroglu, the plaintiff in the main proceedings, who was born in 1960, joined him in April 1980. She took an economics course at the university of Hamburg where she obtained a diploma in further studies in 1987. In October 1989, she moved to the district of Neckar-Odenwald. From 1 March 1990 to 15 April 1991 she worked for company B in Hardheim on a hotel project. Then she undertook practical training with that company. As from 15 April 1991, until 18 May 1992, she worked as a trainee (marketing assistant) with company F in Tauberbischofsheim.

10 — See my Opinion in *Kus*, paragraph 49.

10. As regards the *right of residence*, Hayriye Eroglu was issued only with permits of limited duration allowing her first to continue her studies and secondly to work for company B and then company F.

11. With regard to the *work permit*, she was authorized from 6 February 1990 to 14 January 1991 and from 25 April 1991 to 1 March 1992 to carry on a specified occupational activity: as a commercial management assistant or as a marketing assistant. From 15 January 1991 to 14 April 1991 her work permit was limited to working as a trainee.

12. On 24 February 1992 Hayriye Eroglu applied for residence authorization in order to allow her to continue her activity with her last employer, which was refused by the Landratsamt (Rural District Central Administrative Office) on 27 July 1992.

13. On 22 April 1993 her complaint against the refusal was rejected by the Regierungspräsidium Karlsruhe (Chief Executive's Office of Karlsruhe District) on the ground that Hayriye Eroglu could not rely on a right of residence under the first indent of Article 6(1) of the Decision: she was not

authorized to take up paid employment, she was not duly registered as belonging to the labour force and she had not recently held legal employment within the meaning of that provision.

14. Before the Verwaltungsgericht Karlsruhe, Hayriye Eroglu relied on the first indent of Article 6(1) and the second paragraph of Article 7 of the Decision to claim that, as the child of a Turkish worker legally employed in Germany since 1976, she had the right to respond to any offer of employment.

15. In its first question, the national court asks whether a Turkish national in the same position as the plaintiff in the main proceedings satisfies the conditions of the first indent of Article 6(1) for obtaining the renewal of his work permit.

16. Secondly, the national court asks whether a Turkish national who satisfies the conditions of the second paragraph of Article 7 may, by the same token, obtain the extension of his residence permit.

The application of the first indent of Article 6(1)

17. Is the first indent of Article 6(1) applicable to a Turkish national whose situation is characterized as follows:

— she is a graduate of a German university;

— she holds a two-year conditional residence authorization;

— she has obtained work permits allowing her to deepen her knowledge by pursuing occupational activity or a period of specialized practical training;

— she has worked for one year for one employer, ten months for another and she has been offered work again by her first employer?

18. In its judgment in *Sevince*, the Court held that Article 6 had direct effect in the Member States of the Community. [11]

— *a* —

21. Is a Turkish national in Hayriye Eroglu's position a 'worker' within the meaning of the Association Agreement and the Decision?

19. A Turkish national may rely on it only if he satisfies the following three conditions:

22. We know that, in the words of Article 12 of the Agreement appearing in Title II on the *transitional* stage of the association, 'the Contracting Parties agree to be guided by Articles 48, 49 and 50 of the Treaty establishing the Community for the purpose of progressively securing freedom of movement for workers between them'.

(a) He is a 'worker' within the meaning of the Agreement.

(b) He is duly registered as belonging to the labour force of the host Member State.

23. As I demonstrated in my Opinion in *Kus*, [12] Turkish workers are no longer in the same position as nationals of other non-member countries. In comparison with the latter, they enjoy priority as regards recruitment by virtue of Article 8(1) of the decision; the host Member State may not refuse to renew a work permit except in the circumstances determined by the decision, and so forth.

(c) He has a job and is seeking the renewal of his permit to work for the same employer.

20. Let me examine those three conditions in turn.

24. They do not, however, fall to be treated in just the same way as Community workers (or, now, as nationals of a member country

11 — Paragraph 26 of the grounds, paragraph 2 of the operative part and points 9 to 50 of my Opinion in the case.

12 — Points 64 and 65.

of the European Economic Area): the conditions governing their entry into a Member State are determined by national law alone, which is not affected by the Decision. Their right of residence is limited to the Member State in which they work. The right to renewal of their work permits and to free access to any paid employment is strictly subject to a number of conditions, in particular concerning periods of time.

25. It cannot therefore be maintained, without further analysis, that a worker within the meaning of the Association Agreement is, by simple analogy, a person who meets the *Community definition* of that term.

26. Nevertheless, there is a tendency for his status to be drawn closer to that definition.

27. In its judgments in *Kziber* [13] and *Yousfi* [14] with regard to the EEC-Morocco Cooperation Agreement, the Court analysed the concept of a worker in the light of the provisions of the agreement and of the objective they pursued.

28. Moreover, while under the Decision free access to the labour market for Turkish nationals is made subject to conditions as to length of first employment, period of residence or priority in recruitment, it is not limited by a *restrictive definition* of the concept of worker to exclude workers undergoing theoretical or practical training.

29. Finally, as regards legislation 'guided by Article 48' and intended to '... *improve* ... the treatment accorded workers and members of their families in relation to the arrangements introduced by Decision No 2/76 of the Association Council' [15] and to encourage 'the exchange of young workers', [16] it appears that the agreement in question extends progressively to Turkish nationals the ambit of one of the fundamental freedoms of the Community, namely access to the labour market. It therefore pursues the same aim as that pursued by the EEC Treaty in respect of Community nationals.

30. Consequently — in the absence of anything to indicate a restrictive interpretation — the concept of worker as it appears in the agreement cannot be interpreted very differently from the Community meaning of

13 — Case C-18/90 *Onem* v *Kziber* [1991] ECR I-199, paragraph 27.

14 — Case C-58/93 *Yousfi* v *Belgian State* [1994] ECR I-1353, paragraphs 21 to 23.

15 — The decision of 20 December 1976 concerns the implementation of Article 12 of the Agreement.

16 — Third recital in the preamble to Decision 1/80, emphasis added.

worker as expounded in the judgment of the Court in *Le Manoir*: [17]

'... the concept of worker, within the meaning of Article 48 of the Treaty ... has a Community meaning .... Any person who pursues an activity which is effective and genuine, to the exclusion of activities on such a small scale as to be regarded as purely marginal and ancillary, is to be treated as a worker. The essential characteristic of the employment relationship is that for a certain period of time a person performs services for and under the direction of another person in return for which he receives remuneration ...'. [18]

31. On that basis the Court stated that: 'the fact that a person performs those services under a traineeship contract does not prevent him from being regarded as a worker, if he pursues an activity which is effective and genuine and if the essential characteristics of the employment relationship are fulfilled ...'. [19]

32. I consider, therefore, that the Decision precludes an interpretation of the concept of worker which excludes a trainee.

— *b* —

33. What does 'duly registered as belonging to the labour force' mean for the purposes of that decision?

34. That expression appears several times in Decisions Nos 2/76 and 1/80.

35. In *Sevince* the Court defined it in negative terms, considering that it did not cover '... the situation of a Turkish worker authorized to engage in employment for such time as the effect of a decision refusing him a right of residence, against which he has lodged an appeal which has been dismissed, is suspended'. [20]

36. In *Kus*, with respect to a factual situation closely resembling that which gave rise to the judgment in *Sevince*, the Court held that:

'A Turkish worker does not satisfy the condition requiring four years of legal employ-

17 — Case C-27/91 *Le Manoir* [1991] ECR I-5531.
18 — Paragraph 7.
19 — Paragraph 8.
20 — Paragraph 3 of the operative part.

ment prescribed by the third indent of Article 6(1) of Decision No 1/80, where during his employment his residence authorization was issued to him only through the operation of national legislation permitting him to reside in the host country pending the procedure for the issue of a residence permit, even though the judgment of a court giving a ruling at first instance, against which an appeal has been brought, has confirmed that he had a valid right of residence'. [21]

37. It is clear that a Turkish worker must not be able to acquire rights during a period in which he is granted only a *revocable* right of residence, while awaiting the outcome of the action which is to settle whether or not he is entitled to such a right, '... if a judicial decision once and for all denying him that right is not to be deprived of all effect ...'. [22]

38. To be duly registered as belonging to the labour force, it is therefore necessary, first, to have an undisputed right of residence.

39. If that is the case, the temporal scope or even the substantive scope of that right may be limited to certain posts.

21 — Paragraph 1 of the operative part.

22 — *Kus*, paragraph 16.

40. That is, moreover, the rule as regards workers of non-member countries authorized to stay in the Member States of the Community. 'A stable and secure' situation 'on the labour market' does not exclude temporary or provisional employment so long as it is legal.

41. What matters, therefore, is that the worker's position should be 'in order' as regards the laws of the host Member State.

42. The national court cannot fail to note that the applicant in the main proceedings was issued with a non-renewable residence authorization valid until 1 March 1992 in order to pursue activity as a trainee with company F, and that she held a general work permit of indefinite duration.

— *c* —

43. Does this case relate to an application for the renewal of a permit to work for the same employer?

44. As the German Government pointed out, 'the aim of the first indent of Article 6(1) is to ensure that there is no interference with *continuity of employment* caused by the non-renewal of the work permit for reasons connected with the labour market'. [23]

45. The *extension of employment* contemplated by that provision is subject to the least restrictive conditions: it is enough to have worked for the same employer for at least one year.

46. By contrast, *change of employment* is made subject to stricter conditions: three years of legal employment in the same occupation, and subject to the priority to be given to workers of the Member States of the Community. [24]

47. It is not disputed that the plaintiff in the main proceedings is not seeking the renewal of her permit to work 'for the same employer' but the issue of a permit to go back to work for her previous employer.

48. That situation is not covered by the first indent of Article 6(1).

49. To maintain the contrary would amount to depriving the workers of the Member States of the priority in recruitment which they enjoy under the second indent of Article 6(1), on the ground that the Turkish worker formerly worked for the employer in question.

The application of the second paragraph of Article 7

50. The national court's premiss is that the plaintiff satisfies the conditions for the application of the second paragraph of Article 7: she is the child of a Turkish worker, she has completed a course of vocational training in the host country and one of her parents has been legally employed in that State for at least three years. [25]

51. Article 7 confers on such persons the right to respond to any offer of employment in the host State, irrespective of the length of time they have been resident there. Can a person possessing that right to employment demand the extension of his residence permit?

23 — Paragraph 19 of the observations of the German Government.

24 — Second indent of Article 6(1).

25 — Order for reference

52. I shall examine three points in turn:

(a) Does the second paragraph of Article 7 have direct effect?

(b) Is its application conditional on a residence authorization originally having been issued with a view to family reunification?

(c) May a right to residence be inferred from a right to work?

— *a* —

53. In its judgment in *Demirel*, [26] the Court held that:

'A provision in an agreement concluded by the Community with non-member countries must be regarded as being directly applicable when, regard being had to its wording and the purpose and nature of the agreement itself, the provision contains a clear and precise obligation which is not subject, in its implementation or effects, to the adoption of any subsequent measure.' [27]

54. The Court quoted that passage in *Sevince*, and added:

'The same criteria apply in determining whether the provisions of a decision of the Council of Association can have direct effect.' [28]

55. In my Opinion in *Sevince*, [29] I observed that it follows from the Court's judgment in *Demirel*, where it was stated that the Council of Association had 'exclusive powers to lay down rules for the progressive attainment of freedom of movement for workers', [30] that the decisions of the Council of Association 'to some extent have the *function* of laying down precise rules in that regard.'

26 — Case 12/86 *Demirel* v *Stadt Schwabisch Gmund* [1987] ECR 3719.

27 — Paragraph 14. For an instance of a provision in the EEC-Morocco Cooperation Agreement being recognized as having direct effect, see *Yousfi*, cited in footnote 14, paragraphs 16, 17 and 19.

28 — Paragraph 15.

29 — Point 31.

30 — Paragraph 21.

56. In recognizing in *Sevince* that the first indent of Article 6(1) of the Decision has direct effect, the Court examined the purpose and nature of the Decision and noted that:

— the fact that Article 12 of the Agreement and Article 36 of the Additional Protocol essentially serve to set out a programme [31] 'does not prevent the decisions of the Council of Association which give effect in specific respects to the programmes envisaged in the Agreement from having direct effect'; [32]

— whilst the Member States have the power to take administrative measures for the implementation of the decisions of the Council of Association, they may not 'make conditional or restrict the application of the precise and unconditional right which those decisions ... grant to Turkish workers'; [33]

— non-publication of those decisions cannot deprive an individual of the power '... to invoke, in dealings with a public authority, the rights which those decisions confer on him'. [34]

31 — Finding of the Court in *Demirel*, paragraph 23.
32 — Paragraph 21.
33 — Paragraph 22.
34 — Paragraph 24.

57. The Court found also that the first indent of Article 6(1) of the decision 'upholds in clear, precise and unambiguous terms, the right of a Turkish worker, after a number of years' legal employment in a Member State, to enjoy free access to any paid employment of his choice.' [35]

58. To support the transposition of that assessment to Article 7 as well, I would observe that that provision grants to a Turkish worker's family certain rights which are just as clear and precise as those granted under Article 6 and which are applicable unconditionally and do not require any implementing measure. It follows that persons concerned may rely on them directly before the national courts.

— *b* —

59. Article 7 governs access to the labour market for members of a Turkish worker's family 'who have been authorized to join him'. Does that condition presuppose authorization for the purpose of reuniting the family? If so, may that condition be relied on against the *children* of a Turkish worker whose position is governed by the second paragraph of that article?

35 — Paragraph 17.

60. Let me consider the scheme of Article 7.

61. In conferring on the members of a Turkish worker's family rights in the field of employment, the first paragraph lays down two conditions:

— the Turkish worker must be duly registered as belonging to the labour force;

— the family member must have been authorized to join him.

62. Those rights are dependent upon the length of time the member of the family has resided in the host country:

— three years' residence allows him to respond to any offer of employment, subject to the priority to be given workers who are nationals of Member States of the Community;

— five years' residence gives him free access to any paid activity of his choice, without priority for Community workers.

63. In their capacity as 'members of the family', the children of a Turkish worker may certainly rely on that provision. [36]

64. The second paragraph gives them another opportunity of responding to any offer of employment (without priority for Community workers) on two conditions:

— that one of their parents has been legally employed in the host country for at least three years;

— that the child should have completed a course of vocational training in the host country (there is no longer a requirement of three years' residence).

65. There is no additional condition as to the age of the child or the grounds on which he was authorized to enter the host Member State: in particular, there is no requirement

36 — See, to that effect, paragraph 24 of the Commission's observations.

that the child should, as in the first paragraph, have been 'authorized to join' his parents.

66. In this instance, Hayriye Eroglu obtained a residence permit in 1980, not with a view to re-uniting the family but for the purposes of study, and thus of completing the vocational training which is precisely the condition laid down in the second paragraph of Article 7 for access to employment.

67. Article 7 does not prescribe specific conditions for entry into a Member State or issue of a residence permit. The phrase 'who have been authorized to join him' in the first paragraph does not apply equally to the second paragraph. The second paragraph does not preclude the issue of a permit for the purpose of following a university course.

68. Any other interpretation would serve to limit the ambit of the second paragraph of Article 7, if not to deprive it of all practical effect. A child joining his parents in a Member State for the purpose, not of family reunification but of studying at university, would be unable to rely on that article, even though he did in fact satisfy its other conditions.

69. Furthermore, a requirement that the child should enter the Member State with a view to family reunification would in effect render the provision inapplicable to children over the age of 18 who, at least in certain Member States, no longer have the right to enter for that purpose. [37]

70. Finally, the Court has held that Article 6(1) of the Decision does not make the right to renewal of a work permit dependent on '*the circumstances in which the rights to enter and remain were obtained*'. [38]

71. Similarly, the second paragraph of Article 7 (unlike the first paragraph), *does not lay down any condition with regard to the right to enter and remain* and the first indent of Article 6(1) applies, whatever the *reason* for which the person concerned entered the host Member State.

72. It follows that, in order to satisfy the conditions of the second paragraph of Article 7, the child of a Turkish worker is not required to enter the Member State under a residence authorization granted with a view to family reunification.

37 — See paragraph 32 of the German Government's observations.

38 — *Kus*, cited above, at paragraph 21, emphasis added.

— *c* —

effect — the existence, at least at that time, of a right of residence for the person concerned ...' [40]

73. In *Kus*, the Court held:

and that:

'A Turkish worker who satisfies the conditions of the first or third indent of Article 6(1) of Decision No 1/80 may rely directly on those provisions to obtain the extension of his residence permit in addition to that of his work permit'. [39]

'A right of residence is essential for access to and performance of paid employment'. [41]

74. With respect to the third indent of Article 6(1), the Court cited *Sevince* and observed that:

75. That argument can undoubtedly be applied to the second indent of the first paragraph of Article 7 which, like the third indent of Article 6(1), provides for free access to any paid employment.

'Even though that provision merely governs the circumstances of the Turkish worker as regards employment and not as regards his right of residence, those two aspects of the personal situation of a Turkish worker are closely linked and ... by granting to such a worker, after a specified period of legal employment in the Member State, access to any paid employment of his choice, the provisions in question necessarily imply — since otherwise the right granted by them to the Turkish worker would be deprived of any

76. Can it likewise be applied to the situation of the child of a Turkish worker who does not have the right to 'free access to any paid employment of his choice' (third indent of Article 6(1)) but who may 'respond to any offer of employment' in the host Member State?

39 — Paragraph 3 of the operative part.

40 — Paragraph 29.

41 — Paragraph 33.

77. As we have seen, in holding that a right of residence is indissolubly linked to the right to work, the Court relied on the concept of *'practical effect'*: what is the value of a right to work if it is not accompanied by the corresponding residence permit?

78. Similarly, what is the value of a right to respond to offers of employment if it is not coupled with a right of residence?

79. The principle of practical effect is not one of variable scope and must apply here as it does in the context of Article 6. [42]

80. Accordingly, I consider that the second paragraph of Article 7 of the Decision must be interpreted as meaning that the child of a Turkish worker who satisfies the requirements of that provision may rely on it directly in order to obtain the extension of his residence permit.

81. I therefore propose that the Court rule as follow:

1. The first indent of Article 6(1) of Decision No 1/80 of the EEC/Turkey Association Council of 19 September 1980 on the development of the Association does not apply to a Turkish worker who was legally employed for one year by one employer and then worked for another employer and is now seeking the renewal of his permit to take up paid employment with the first employer.

2. The second paragraph of Article 7 of that Decision must be interpreted as meaning that the child of a Turkish worker who satisfies the requirements of that provision may rely on it directly in order to obtain the extension of his residence permit.

42 — See, to this effect, B. Huber: 'Das Sevince-Urteil des EuGH: Ein neues EG-Aufenthaltsrecht für türkische Arbeitnehmer', *NVwZ*, 1991, p. 242-243.