JUDGMENT OF THE COURT (Sixth Chamber)
23 January 1997 *

In Case C-171/95,

REFERENCE to the Court under Article 177 of the EC Treaty by the Bundesverwaltungsgericht (Germany) for a preliminary ruling in the proceedings pending before that court between

Recep Tetik

and

Land Berlin

joined party: the **Oberbundesanwalt beim Bundesverwaltungsgericht** (Federal Attorney attached to the Federal Administrative Court),

on the interpretation of the third indent of Article 6(1) of Decision No 1/80 of the Council of Association of 19 September 1980 on the development of the Association between the European Economic Community and Turkey,

* Language of the case: German.

THE COURT (Sixth Chamber),

composed of: G. F. Mancini, President of the Chamber (Rapporteur), J. L. Murray, C. N. Kakouris, P. J. G. Kapteyn and H. Ragnemalm, Judges,

Advocate General: M. B. Elmer,
Registrar: H. A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of:

— Mr Tetik, by C. Rosenkranz, Rechtsanwalt, Berlin;

— Land Berlin, by M. Arndt, Rechtsanwältin, Berlin;

— the German Government, by E. Röder and B. Kloke, respectively Ministerialrat and Oberregierungsrat in the Federal Ministry of Economic Affairs, acting as Agents;

— the French Government, by C. de Salins and C. Chavance, respectively Assistant Director and Secretary for Foreign Affairs in the Legal Affairs Directorate of the Ministry of Foreign Affairs, acting as Agents;

— the United Kingdom Government, by J. E. Collins, Assistant Treasury Solicitor, acting as Agent, and E. Sharpston, Barrister;

— the Commission of the European Communities, by P. van Nuffel, of its Legal Service, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of the German Government, represented by E. Röder; the French Government, represented by C. Chavance; and the Commission, represented by U. Wölker, of its Legal Service, acting as Agent, at the hearing on 3 October 1996,

after hearing the Opinion of the Advocate General at the sitting on 14 November 1996,

gives the following

Judgment

1 By order of 11 April 1995, received at the Court on 7 June 1995, the Bundesverwaltungsgericht (Federal Administrative Court) referred to the Court for a preliminary ruling under Article 177 of the EC Treaty two questions on the interpretation of the third indent of Article 6(1) of Decision No 1/80 of the Council of Association of 19 September 1980 on the development of the Association (hereinafter 'Decision No 1/80'). The Council of Association 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, 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, hereinafter 'the Agreement').

2 Those questions have arisen in a dispute between Mr Tetik, a Turkish national, and the *Land* Berlin concerning the rejection of an application for the grant of an unlimited residence permit for Germany.

3 It appears from the documents in the main proceedings that Mr Tetik was legally employed, from September 1980 to 20 July 1988, as a seaman on various German sea-going vessels.

4 For the purpose of that activity, he obtained from the German authorities successive residence permits, on each occasion for a specified period and limited to employment in shipping. Mr Tetik's last residence permit was valid until 4 August 1988 and stated that it would expire upon cessation of his employment in German sea-going shipping.

5 On 20 July 1988, Mr Tetik voluntarily terminated his employment as a seaman.

6 On 1 August 1988, he moved to Berlin, where, on the same day, he applied for an unlimited residence permit for the purpose of engaging in gainful employment on land, stating that he intended to reside in Germany until about 2020.

7 That application was refused by the competent authorities of the *Land* Berlin on 19 January 1989. The legality of that decision was confirmed by the Verwaltungsgericht (Administrative Court) on 10 December 1991 and by the Oberverwaltungsgericht (Higher Administrative Court) Berlin on 24 March 1992.

8 The registration certificate which the German authorities issued to Mr Tetik following his application for an unlimited residence permit was endorsed with the words 'not authorized to engage in gainful employment'.

9 Mr Tetik, who has been unemployed since his voluntary termination of employment in German shipping, appealed to the Bundesverwaltungsgericht.

10 While it found that the refusal to renew the residence permit was in accordance with German law, that court was unsure whether a solution more favourable to Mr Tetik might not follow from Article 6 of Decision No 1/80.

11 Article 6 of Decision No 1/80 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.

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.

3. The procedures for applying paragraphs 1 and 2 shall be those established under national rules.'

12 Since it took the view that the resolution of the dispute required an interpretation of Article 6, the Bundesverwaltungsgericht, by order of 11 April 1995, referred the following two questions to the Court for a preliminary ruling:

'1. Is a Turkish seaman, who was employed from 1980 to 1988 on maritime vessels of a Member State, a member of the labour force of that Member State and legally employed there within the meaning of Article 6(1) of Decision No 1/80 of the EEC/Turkey Council of Association on the development of the Association where his employment relationship was governed by national law and he paid income tax and was affiliated to the social security system in that Member State, but the residence permit issued to him was limited to working in shipping and did not authorize him to take up residence on shore?

Is it relevant in that connection that under German law that activity is not subject to the requirement of a work permit and that, to some extent, special statutory arrangements apply to seamen from the point of view of employment law and social security law?

2. If Question 1 is answered in the affirmative:

Does a Turkish seaman lose his right to be granted a residence permit if he terminates his employment relationship voluntarily, and not, for example, on health grounds, and 11 days later, after the expiry of his residence permit, applies for a residence permit for work on shore and after the refusal to grant the permit is unemployed?'

13 According to an order made by the Bundesverwaltungsgericht on 30 August 1995 and received at the Court on 25 September 1995, the national court considers that the first question submitted has been adequately settled by the judgment in Case C-434/93 *Bozkurt* v *Staatssecretaris van Justitie* [1995] ECR I-1475. However, the Bundesverwaltungsgericht continues to have doubts as to whether Mr Tetik was entitled to receive a residence permit under the third indent of Article 6(1) of Decision No 1/80 in view of the fact that he had voluntarily terminated his employment as a seaman.

14 In those circumstances, the Bundesverwaltungsgericht, in its order of 30 August 1995, expressed the view that it was no longer necessary to reply to the first question and requested the Court to rule only on the second question set out in the order of 11 April 1995.

15 In order to answer that question, it must first be recalled at the outset that, according to Article 12 of the Agreement, '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'.

16 Article 6 of the Agreement further provides that 'to ensure the implementation and the progressive development of the Association, the Contracting Parties shall meet in a Council of Association which shall act within the powers conferred upon it by this Agreement', while Article 22(1) states that 'in order to attain the objectives of this Agreement the Council of Association shall have the power to take decisions in the cases provided for therein. ...'.

17 Article 36 of the Additional Protocol, signed on 23 November 1970, annexed to the Agreement and concluded by Council Regulation (EEC) No 2760/72 of 19 December 1972 (OJ 1973 C 113, p. 17, hereinafter 'the Additional Protocol') provides for progressive stages in securing freedom of movement for workers between Member States of the Community and Turkey and states that 'the Council of Association shall decide on the rules necessary to that end'.

18 Pursuant to Article 12 of the Agreement and Article 36 of the Additional Protocol, the Council of Association first adopted, on 20 December 1976, Decision No 2/76, which is described, in Article 1, as constituting a first stage in securing freedom of movement for workers between the Community and Turkey.

19 According to the third recital in its preamble, Decision No 1/80 on the development of the Association, which the Council of Association subsequently adopted on 19 September 1980, seeks to improve, in the social field, the treatment accorded to workers and members of their families in relation to the arrangements introduced by Decision No 2/76.

20 The provisions of Section 1 ('Questions relating to employment and the free movement of workers') of Chapter II ('Social provisions') of Decision No 1/80, of which Article 6 forms part, thus constitute a further stage in securing freedom of movement for workers on the basis of Articles 48, 49 and 50 of the Treaty (see paragraphs 14 and 19 of *Bozkurt*, cited above). The Court accordingly considered it essential to transpose, so far as possible, the principles enshrined in those Treaty articles to Turkish workers who enjoy the rights conferred by Decision No 1/80 (see *Bozkurt*, paragraph 20).

21 It must first be noted in this regard that, as the Court has consistently held (see, in particular, Case C-237/91 *Kus* v *Landeshauptstadt Wiesbaden* [1992] ECR I-6781, paragraph 25), Decision No 1/80 does not encroach upon the competence retained by the Member States to regulate both the entry into their territories of Turkish nationals and the conditions under which they may take up their first employment, but merely regulates, particularly in Article 6, the situation of Turkish workers already integrated into the labour force of a Member State.

22 Second, it must be pointed out that, since its judgment in Case C-192/89 *Sevince* v *Staatssecretaris van Justitie* [1990] ECR I-3461, the Court has consistently held that Article 6(1) of Decision No 1/80 has direct effect in the Member States and

that Turkish nationals who satisfy its conditions may therefore rely directly on the rights given them by the various indents of that provision (Case C-355/93 *Eroglu* v *Land Baden-Württemberg* [1994] ECR I-5113, paragraph 11).

23 As is clear from the three indents of Article 6(1), those rights themselves vary and are subject to conditions which differ according to the duration of legal employment in the relevant Member State (*Eroglu*, paragraph 12).

24 Third, it should also be borne in mind that the Court has consistently held that the rights which the three indents of Article 6(1) confer on a Turkish worker in regard to employment necessarily imply the existence of a right of residence for the person concerned, since otherwise the right of access to the labour market and the right to work as an employed person would be deprived of all effect (*Sevince*, paragraph 29, *Kus*, paragraphs 29 and 30, and *Bozkurt*, paragraph 28).

25 With particular regard to the question submitted for a preliminary ruling, it plainly relates to the situation of a Turkish worker who, by reason of the fact that he was legally employed for almost eight years in a Member State, enjoyed, pursuant to the third indent of Article 6(1) of Decision No 1/80, 'free access ... to any paid employment of his choice' in that Member State.

26 In that regard, it is first of all evident from the express terms of Article 6(1) that, in contrast to the first two indents, which merely set out the arrangements under which a Turkish national who has lawfully entered the territory of a Member State and has been authorized there to engage in employment may work in the host Member State, by continuing to work for the same employer after one year's legal employment (first indent) or by responding, after three years of legal employment and subject to the priority to be given to workers from the Member States, to an offer of employment made by another employer for the same occupation (second indent), the third indent confers on a Turkish worker not only the right to respond

to a prior offer of employment but also the unconditional right to seek and take up any employment freely chosen by the person concerned, without any possibility of this being subject to priority for workers from the Member States.

27 Next, the Court has already held, with regard to the free movement of workers who are nationals of Member States, that Article 48 of the Treaty entails the right for the latter to reside in another Member State for the purpose of seeking employment there and that, while the duration of the stay of a person seeking employment in the Member State concerned may be limited under the relevant national legislation, to give full effect to Article 48 none the less requires that the person concerned be given a reasonable time in which to apprise himself, in the territory of the Member State which he has entered, of offers of employment corresponding to his occupational qualifications and to take, where appropriate, the necessary steps in order to be engaged (see, in this connection, Case C-292/89 *Antonissen* [1991] ECR I-745, paragraphs 13, 15 and 16).

28 As pointed out in paragraph 20 of this judgment, the principles enshrined in Articles 48, 49 and 50 of the Treaty must, so far as possible, inform the treatment of Turkish workers who enjoy the rights conferred by Decision No 1/80.

29 In contrast to nationals of Member States, Turkish workers are, admittedly, not entitled to move freely within the Community but benefit only from certain rights in the host Member State whose territory they have lawfully entered and where they have been in legal employment for a specified period.

30 Nevertheless, a Turkish worker such as the appellant in the main proceedings must be able, for a reasonable period, to seek effectively new employment in the host Member State and must have a corresponding right of residence during that period, notwithstanding the fact that he himself terminated his previous contract of employment without entering immediately into a new employment relationship.

31 As the Commission has convincingly argued, to give full effect to the third indent of Article 6(1) of Decision No 1/80 a Turkish worker must, after at least four years of legal employment in a Member State, be entitled to leave his employment on personal grounds and, for a reasonable period, seek new employment in the same Member State, since his right of free access to any paid employment of his choice within the meaning of that provision would otherwise be deprived of its substance.

32 With regard to the reasonable period which the host Member State is thus required to allow for the purpose of seeking other employment, it is for the national authorities concerned to determine how long that period should be, in accordance with Article 6(3) of Decision No 1/80. That period must, however, be sufficient not to deprive of its substance the right accorded by the third indent of Article 6(1) by jeopardizing in fact the Turkish worker's prospects of finding new employment.

33 In a case such as that at issue in the main proceedings, where the national legislation concerned has not laid down such a period, it is for the national court to determine it in the light of the circumstances put before it.

34 However, a period of a few days, such as that which was in fact available to a Turkish worker such as Mr Tetik between the termination of his employment contract and the expiry of his residence permit, is in any event inadequate to allow him effectively to seek new employment.

35 That interpretation is not invalidated by the arguments of the German and United Kingdom Governments that, in guaranteeing that rights acquired as a result of the preceding period of employment are safeguarded only in the case of involuntary unemployment on the part of the Turkish worker, the second sentence of Article 6(2) of Decision No 1/80 must mean conversely that no acquired right can be relied on where, as in the main proceedings, the worker voluntarily relinquished

his employment and definitively left the labour force of the Member State concerned, by reason of the fact that he was unable immediately to enter into a new employment relationship.

36 In that connection, it must first be pointed out that Article 6(2) provides, for the purpose of calculating the periods of legal employment referred to in the three indents of Article 6(1), preferential rules in favour of a Turkish worker who temporarily ceases work, distinguishing those periods of inactivity according to their type and duration.

37 The first sentence of Article 6(2) concerns those periods, in principle of short duration, during which he does not in fact pursue his work (annual holidays, maternity leave, absences because of accidents at work or sickness involving only a brief cessation of work). These absences of the worker from his place of work are, consequently, treated as periods of legal employment for the purposes of Article 6(1).

38 The second sentence of Article 6(2) relates to periods of inactivity due to long-term sickness or involuntary unemployment, that is to say, where the failure to work is not attributable to any misbehaviour on the part of the worker (as also follows from the use of the adjective 'unverschuldet' in the German version). It provides that, although periods of inactivity of this type cannot be treated as periods of legal employment, they do not affect rights which the worker has acquired as the result of preceding periods of legal employment.

39 The sole purpose of this latter provision is therefore to prevent a Turkish worker who recommences employment after having been forced to stop working because of long-term illness or unemployment through no fault of his own from being

required, in the same way as a Turkish national who has never previously been in paid employment in the Member State in question, to recommence the periods of legal employment envisaged by the three indents of Article 6(1).

40 In circumstances where, as in the main proceedings, a Turkish worker who has already been legally employed for more than four years in the host Member State voluntarily leaves his work to seek other employment in that Member State, that worker cannot automatically be treated as having definitively left the labour force of that State, provided, however, that he continues to be duly registered as belonging to the labour force of the Member State in question, within the meaning of the first phrase of Article 6(1).

41 Where a Turkish worker was unable to enter into a new employment relationship immediately after having abandoned his previous employment, as in the main proceedings, that condition continues, in principle, to be satisfied only in so far as the person who finds himself without employment satisfies all the formalities that may be required in the Member State in question, for instance by registering as a person seeking employment and remaining available to the employment authorities of that State for the requisite period.

42 That requirement also makes it possible to ensure that during the reasonable period which he must be granted in order to allow him to enter into a new employment relationship the Turkish national does not abuse his right of residence in the Member State concerned but does in fact seek new employment.

43 However, in a case such as that of the appellant in the main proceedings, it is for the national court, which alone has jurisdiction to determine and evaluate the facts of the dispute brought before it, to decide whether the Turkish national concerned

was obliged to take the steps which might be required in the Member State concerned to make himself available to the employment authorities, bearing in mind the fact that, following his application for an extension of his residence permit, he was forbidden to engage in any gainful employment (see paragraph 8 of this judgment).

44 The German and French Governments have also argued that a Turkish national's right of residence in a Member State is no more than the corollary to the right to employment and that, if it follows from the judgment in *Bozkurt* that a Turkish national is not entitled to remain on the territory of the host Member State after he has suffered an accident at work resulting in permanent incapacity for work, this must *a fortiori* be the case where the worker has deliberately left the labour force of the Member State concerned by abandoning his employment.

45 It must be noted in that connection that, in *Bozkurt*, at paragraphs 38 and 39, the Court held that, in the absence of any express provision to that end, the Turkish national was not entitled to remain in the host Member State after suffering an accident at work which prevents him from engaging in subsequent employment. In such a case the worker is regarded as having definitively ceased to belong to the labour force of that Member State and the right of residence which he seeks has therefore no connection with paid employment, even in the future.

46 On the other hand, in a case such as that at issue in the main proceedings, it follows from paragraphs 40 to 42 of the present judgment that, provided that the Turkish national is genuinely seeking new employment, complying where appropriate with the requirements of the legislation in force in the host Member State, he must be regarded as continuing to be duly registered as belonging to the labour force of that State for the period reasonably necessary for him to find new employment. The argument put forward by the German and French Governments cannot therefore be accepted.

47 Finally, with regard to the German Government's argument that a worker such as Mr Tetik could have taken the steps necessary to seek new employment during the holiday periods to which he was entitled, it must be pointed out that annual holidays serve a purpose different from that of the period which the host Member State is required to grant a Turkish national in order to allow him to seek new employment. Furthermore, the person concerned may already have used up all of his leave for the year in question when he decides to terminate his contract of employment on personal grounds.

48 In view of all those considerations, the answer to the second question referred must be that the third indent of Article 6(1) of Decision No 1/80 must be interpreted as meaning that a Turkish worker who has been legally employed for more than four years in a Member State, who decides voluntarily to leave his employment in order to seek new work in the same Member State and is unable immediately to enter into a new employment relationship, enjoys in that State, for a reasonable period, a right of residence for the purpose of seeking new paid employment there, provided that he continues to be duly registered as belonging to the labour force of the Member State concerned, complying where appropriate with the requirements of the legislation in force in that State, for instance by registering as a person seeking employment and making himself available to the employment authorities. It is for the Member State concerned and, in the absence of legislation to that end, for the national court before which the matter has been brought to fix such a reasonable period, which must, however, be sufficient not to jeopardize in fact the prospects of his finding new employment.

Costs

49 The costs incurred by the German, French and United Kingdom Governments and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. 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.

On those grounds,

THE COURT (Sixth Chamber),

in answer to the question referred to it by the Bundesverwaltungsgericht, by order of 11 April 1995, as amended by order of 30 August 1995, hereby rules:

The third indent of Article 6(1) of Decision No 1/80 of the Council of Association of 19 September 1980 on the development of the Association between the European Economic Community and Turkey must be interpreted as meaning that a Turkish worker who has been legally employed for more than four years in a Member State, who decides voluntarily to leave his employment in order to seek new work in the same Member State and is unable immediately to enter into a new employment relationship, enjoys in that State, for a reasonable period, a right of residence for the purpose of seeking new paid employment there, provided that he continues to be duly registered as belonging to the labour force of the Member State concerned, complying where appropriate with the requirements of the legislation in force in that State, for instance by registering as a person seeking employment and making himself available to the employment authorities. It is for the Member State concerned and, in the absence of legislation to that end, for the national court before which the matter has been brought to fix such a reasonable period, which must, however, be sufficient not to jeopardize in fact the prospects of his finding new employment.

Mancini Murray Kakouris

Kapteyn Ragnemalm

Delivered in open court in Luxembourg on 23 January 1997.

R. Grass G. F. Mancini

Registrar President of the Sixth Chamber