

Case C-351/95

Selma Kadiman

v

Freistaat Bayern

(Reference for a preliminary ruling
from the Bayerisches Verwaltungsgericht München)

(EEC-Turkey Association Agreement — Decision of the Association Council —
Free movement of workers — Member of a worker's family — Extension of
residence permit — Conditions — Family unity — Legal residence
for three years — Calculation in the event of interruptions)

Opinion of Advocate General Elmer delivered on 16 January 1997	I - 2136
Judgment of the Court (Sixth Chamber), 17 April 1997	I - 2144

Summary of the Judgment

- 1. International agreements — EEC-Turkey Association Agreement — Association Council established by the EEC-Turkey Association Agreement — Decision concerning freedom of movement for workers — Family living together — Right of residence of members of the family of a Turkish worker duly registered as belonging to the labour force in a Member State — Requirement that they actually live with the migrant worker — Permissible (Council Decision 1/80 of the EEC-Turkey Association Council, Art. 7, first para.)*

2. *International agreements — EEC-Turkey Association Agreement — Association Council established by the EEC-Turkey Association Agreement — Decision concerning freedom of movement for workers — Family living together — Right of members of the family of a Turkish worker duly registered as belonging to the labour force in a Member State to respond to any offer of employment in that Member State — Condition — Actual residence with the migrant worker for an uninterrupted period of three years — Periods to be taken into account for calculation of that period — Absences of limited duration not intended to detract from residence together — Periods not covered by a residence permit but not regarded by the national authorities as unlawful residence — Included*
 (Council Decision 1/80 of the EEC-Turkey Association Council, Art. 7, first para.)

1. The first paragraph of Article 7 of Decision No 1/80 of the EEC-Turkey Association Council does not in principle preclude the competent authorities of a Member State from requiring that the family members of a Turkish worker referred to by that provision live with him for the period of three years prescribed by the first indent of that provision in order to be entitled to reside in that Member State.

That provision, although drafted in such a way that it creates, for the periods to which it refers, a directly exercisable right of residence for members of the family of a Turkish worker who himself enjoys a right of residence in a Member State, who have been authorized to join him, does not affect the right of the Member States to authorize or withhold authorization for entry to their territory by such members of his family and to subject the latter's right of residence to conditions of such a kind as to ensure that their presence is in conformity with its spirit and purpose; in other words, they must be there in pursuit of family unity conducive

to lasting integration of the Turkish migrant worker's family into the host Member State.

Accordingly, in order to avoid the risk that Turkish nationals might, in reliance on sham marriages, evade the stricter requirements of Article 6 of that decision where they are admitted as immigrants on the basis that they are workers, a Member State is entitled to require, for the family members to be able to claim the rights conferred on them by the first paragraph of Article 7, that the unity of the family, in pursuit of which they entered the territory of the Member State concerned, should be evidenced by actual cohabitation in a household with the worker.

Objective circumstances, such as distance from the place where members of the family work or are undergoing training, may however justify the member of the family concerned living separately from the Turkish migrant worker.

2. The first indent of the first paragraph of Article 7 of Decision No 1/80 of the EEC-Turkey Association Council must be interpreted as meaning that the family member of a Turkish worker who has joined the latter in a Member State in pursuit of family unity must in principle, in order to claim the right to respond to any offer of employment in that State, have resided there without interruption under the same roof as the worker for a period of three years.

However, short interruptions of cohabitation, not intended to detract from residence together in the host Member State, must be assimilated to periods in which the family member concerned has actually lived with the Turkish worker. That will apply to holidays or visits to the family of the person concerned in his

country of origin or an involuntary stay of less than six months in that country.

Similarly, in view of the fact that the rights conferred by the first paragraph of Article 7 are granted by that provision to the persons concerned regardless of the issue by the authorities of the host Member State of a specific administrative document, account must be taken, for the purpose of calculating that period of three years, of any period during which the person concerned was not in possession of a valid residence permit, where the competent authorities of the host Member State did not claim on that ground that the person concerned was not legally resident within national territory, but on the contrary issued a new residence permit to him.