JUDGMENT OF THE COURT (Sixth Chamber)
30 September 1997 *

In Case C-36/96,

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

Faik Günaydin,

Hatice Günaydin,

Günes Günaydin,

Seda Günaydin

and

Freistaat Bayern

on the interpretation of Article 6(1) of Decision No 1/80 of 19 September 1980 on the development of the Association, adopted by the Association Council established by the Association Agreement 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, J. L. Murray, P. J. G. Kapteyn, H. Ragnemalm and R. Schintgen (Rapporteur), Judges,

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

after considering the written observations submitted on behalf of:

— Mr and Mrs Günaydin, by F. Auer, of the Regensburg Bar,

— Freistaat Bayern, by W. Rzepka, Generallandesanwalt at the Landesanwaltschaft Bayern, acting as Agent,

— the German Government, by E. Röder, Ministerialrat in the Federal Ministry of Economic Affairs, acting as Agent,

— the Greek Government, by A. Samoni-Rantou, special assistant legal adviser in the Community Legal Affairs Department of the Ministry of Foreign Affairs, acting as Agent, assisted by L. Pnevmatikou, specialist technical adviser in that department,

— the French Government, by C. de Salins and A. de Bourgoing, Deputy Director and Special Adviser respectively in the Legal Affairs Directorate at the Ministry of Foreign Affairs, acting as Agents,

— the Commission of the European Communities, by J. Sack, Legal Adviser, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of Mr and Mrs Günaydin, the German, Greek and French Governments and the Commission at the hearing on 6 March 1997,

after hearing the Opinion of the Advocate General at the sitting on 29 April 1997,

gives the following

Judgment

1 By order of 24 November 1995, received at the Court on 12 February 1996, 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 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).

2 The questions were raised in the course of a dispute between Mr Günaydin, together with his wife and their two minor children, all Turkish nationals, and Freistaat Bayern concerning the refusal to extend Mr Günaydin's permit to reside in Germany.

3 According to the file on the case in the main proceedings, Mr Günaydin was permitted to enter Germany in April 1976.

4 In that Member State he first successfully completed German language courses and then undertook a course of study at the end of which in 1986 he received a diploma in engineering.

5 During his studies he was granted residence permits with restrictions as to time and place, paid employment not being permitted.

6 In 1982, Mr Günaydin married a Turkish national. The couple had two children, born in 1984 and 1988 respectively.

7 In November 1986, Mr Günaydin was taken on by Siemens with a view to pursuing at the factory in Amberg (Germany) a training course of several years' duration at the end of which he was to be transferred to Turkey in order to manage there a subsidiary of that company. That purpose is apparent from the correspondence between Siemens and the German authorities and from the two statements made by Mr Günaydin. Thus, on 17 February 1987, the latter took note of the fact that the employment and residence permits for Germany were granted to him solely for the purpose of preparing there to take up a post in a Siemens subsidiary in Turkey. Moreover, Mr Günaydin pointed out on 9 August 1989 that he intended to return with his family to that country in the latter half of 1990.

8 On 12 January 1987, the German authorities granted Mr Günaydin a temporary residence permit which was extended several times, on the last occasion to 5 July 1990. The permit bore the remark that it would lapse upon his ceasing to be employed by Siemens in Amberg and that it had been granted exclusively for the purpose of introducing its holder to the commercial and working methods of the company in question.

9 At the same time, several temporary work permits, restricted to employment at the Siemens factory in Amberg were issued in turn to Mr Günaydin. The last of those permits lapsed on 30 June 1990.

10 On 15 February 1990, Mr Günaydin applied for a permanent residence permit on the ground that as a result of his career development in Germany that country had become his home, that he would now feel like a stranger in Turkey and that his two minor children, born in Germany and attending German schools, would experience the greatest difficulty in integrating into his country of origin.

11 Despite the efforts deployed by Siemens to be permitted to extend the employment of Mr Günaydin who, according to Siemens, was a particularly valued member of staff whom it would be impossible to replace by an equally qualified person and who was very important for the Amberg factory's contacts with its Turkish subsidiary, the application for an extension of the residence permit was refused, so that Mr Günaydin had to cease work with Siemens on 30 June 1990. That decision was not varied subsequently, despite the fact that Siemens' Turkish subsidiary had informed its parent company in January 1991 that the situation in Turkey did not make it possible for the time being to employ Mr Günaydin and that the German employment authorities had already agreed to extend Mr Günaydin's work permit.

12 The refusal to extend the residence permit was based on the fact that he could not rely on either an entitlement to an unrestricted residence permit or the principle of the protection of legitimate expectations; moreover, it was claimed that to extend his residence would be contrary to German development aid policy which was intended to encourage foreigners trained in that Member State to work in their country of origin.

13 The action which Mr Günaydin, his spouse and their two minor children brought against that decision was dismissed both at first instance and on appeal on the ground that, because his work was limited to participation in a training

programme in a particular undertaking with a view to taking up a post in one of its subsidiaries in Turkey, Mr Günaydin had not been available on the general labour market in Germany and that, consequently, he had not been duly registered as belonging to the labour force of a Member State, within the meaning of Article 6(1) of Decision No 1/80. The court hearing the appeal added that, in view of those facts, Mr Günaydin's situation as a member of the German labour force was not secure.

14 Hearing an appeal on a point of law, the Bundesverwaltungsgericht found that the contested decision complied with German law. None the less, it raised the question whether a solution more favourable to Mr Günaydin might not be derived from Article 6(1) of Decision No 1/80.

15 Article 6(1), which appears in Chapter II (Social provisions), Section 1 (Questions relating to employment and the free movement of workers), is worded 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.'

16 The Bundesverwaltungsgericht pointed out that Mr Günaydin had been legally employed in Germany for over three-and-a-half years, but expressed doubt as to whether he was duly registered as belonging to the labour force of a Member State, within the meaning of that provision, because he had been permitted to pursue gainful employment in that Member State only temporarily.

17 The court was also in doubt as to whether he had abused his rights because he had accepted the restriction on his residence in Germany and had made clear his intention to return to Turkey in the autumn of 1990.

18 Taking the view that a decision on the case accordingly required an interpretation of the abovementioned provisions, the Bundesverwaltungsgericht stayed proceedings and referred the following two questions to the Court of Justice for a preliminary ruling:

'(1) Is a Turkish worker duly registered as belonging to the labour force of a Member State within the meaning of Article 6(1) of Decision No 1/80 of the EEC-Turkey Association Council on the development of the Association ("Decision No 1/80") and is he legally employed there if he has been authorized to pursue paid employment with an employer in the Member State only temporarily and only for the purpose of preparing for work with a subsidiary company of his employer in Turkey?

(2) If the answer to Question 1 is yes:

Can a claim under Article 6(1) of Decision No 1/80 be opposed as an abuse of law if the Turkish worker has expressly declared his intention of returning to Turkey after preparation for the work there and the competent authority has authorized him to reside in the country temporarily only in view of that declaration?'

The first question

19 By its first question, the national court seeks essentially to ascertain whether Article 6(1) of Decision No 1/80 is to be interpreted as meaning that a Turkish national is duly registered as belonging to the labour force of a Member State and is legally employed, within the meaning of that provision, and may therefore seek to renew his permit to reside in the host Member State, even though he was permitted to pursue gainful employment there only temporarily for a specific employer for the purpose of becoming acquainted with and preparing for work in one of its subsidiaries in Turkey, and had obtained work and residence permits for that purpose only.

20 It should be observed, *in limine*, that according to the third recital in its preamble, Decision No 1/80 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 which the Council of Association set up by the Agreement establishing an Association between the European Economic Community and Turkey adopted on 20 December 1976.

21 The provisions of Section 1 of Chapter II 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. The Court has accordingly considered it essential to extend, 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 the judgments in Case C-434/93 *Bozkurt* v *Staatssecretaris van Justitie* [1995] ECR I-1475, paragraphs 14, 19 and 20, and Case C-171/95 *Tetik* v *Land Berlin* [1997] ECR I-329, paragraph 20).

22 As the law now stands, however, Turkish nationals are not entitled to move freely within the Community but merely enjoy 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 (*Tetik*, cited above, paragraph 29).

23 Likewise, the Court has consistently held (see, in particular, Case C-237/91 *Kus* v *Landeshauptstadt Wiesbaden* [1992] ECR I-6781, paragraph 25) that 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, in Article 6, the situation of Turkish workers already integrated into the labour force of the host Member State.

24 The first point to be noted in that regard is that since the 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).

25 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 the legal employment in the relevant Member State (*Eroglu*, paragraph 12).

26 Second, it should be borne in mind that the Court has consistently held that the rights which the three indents of Article 6(1) confer on Turkish workers 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).

27 The first question raised by the Bundesverwaltungsgericht must be considered in the light of those principles.

28 In this regard, it should be noted first that Mr Günaydin, a Turkish migrant worker, was permitted to enter the territory of the Member State concerned and was there lawfully employed under the requisite national permits and without interruption for over three years, in this case as a graduate engineer, by the same employer.

29 In order to ascertain whether such a worker is duly registered as belonging to the labour force of a Member State for the purposes of Article 6(1) of Decision No 1/80 it must be determined first of all, in accordance with settled case-law (*Bozkurt*, cited above, paragraphs 22 and 23), whether the legal relationship of employment of the person concerned can be located within the territory of a Member State or retains a sufficiently close link with that territory, taking account in particular of the place where the Turkish national was hired, the territory on or from which the paid employment is pursued and the applicable national legislation in the field of employment and social security law.

30 In a situation such as that of the plaintiff in the main proceedings, that condition is undeniably satisfied.

31 Next, it should next be ascertained whether the worker is bound by an employment relationship covering a genuine and effective economic activity pursued for the benefit and under the direction of another person for remuneration (Case C-98/96 *Ertanir* v *Land Hessen* [1997] ECR I-5197, paragraph 43).

32 There is nothing to prevent a Member State from permitting Turkish nationals to enter and reside there only in order to enable them to follow within its territory specific vocational training, in particular in the context of a contract of apprenticeship.

33 Nevertheless, in a case such as that at issue in the main proceedings, a Turkish worker who, at the end of his vocational training, is in paid employment with the sole purpose of becoming acquainted with and preparing for work in a managerial capacity in one of the subsidiaries of the undertaking which employs him must be considered to be bound by a normal employment relationship where, in genuinely and effectively pursuing an economic activity for the benefit and under the direction of his employer, he is entitled to the same conditions of work and pay as those which may be claimed by workers who pursue within the undertaking in question identical or similar activities, so that his situation is not objectively different from that of those other workers.

34 In this connection, it is for the national court to determine whether that condition is satisfied and, in particular, whether the worker has been employed on the basis of national legislation derogating from Community law and intended specifically to integrate him into the labour force and whether he receives in return for his services remuneration at the level which is usually paid, by the employer concerned or in the sector in question, to persons pursuing identical or comparable activities and which is not preponderantly financed from the public purse in the context of a specific programme for the integration of the person concerned into the workforce.

35 That interpretation is not affected by the fact that, in a situation such as that at issue in the main proceedings, the worker obtained in the host Member State only residence and/or work permits restricted to temporary paid employment by a specific employer and prohibiting that person from changing his employer within the Member State concerned.

36 Admittedly, as the law stands at present, Decision No 1/80 does not encroach upon the competence of the Member States to refuse Turkish nationals the right of entry into their territories and to take up first employment, nor does it preclude those Member States, in principle, from regulating the conditions under which they work for up to one year as provided for in the first indent of Article 6(1) of that decision.

37 None the less, Article 6(1) cannot be construed as permitting a Member State to modify unilaterally the scope of the system of gradual integration of Turkish workers in the host State's labour force, by denying a worker who has been permitted to enter its territory and who has lawfully pursued a genuine and effective economic activity for more than three-and-a-half years the rights which the three indents of that provision confer on him progressively according to the duration of his employment.

38 The effect of such an interpretation would be to render Decision No 1/80 meaningless and deprive it of any practical effect.

39 Accordingly, the Member States have no power to make conditional or restrict the application of the precise and unconditional rights which Decision No 1/80 grants to Turkish nationals who satisfy its conditions (*Sevince*, paragraph 22 and *Kus*, paragraph 31, cited above).

40 Moreover, the wording of Article 6(1) is general and unconditional: it does not permit the Member States to restrict the rights which that provision confers directly on Turkish workers.

41 As regards the question whether a worker such as the appellant in the main proceedings has been legally employed in the host Member State within the meaning of Article 6(1) of Decision 1/80, it is settled case-law (*Sevince*, paragraph 30, *Kus*, paragraphs 12 and 22, and *Bozkurt*, paragraph 26) that legal employment presupposes a stable and secure situation as a member of the labour force of a Member State and, by virtue of this, implies the existence of an undisputed right of residence.

42 Thus, in paragraph 31 of the *Sevince* judgment, cited above, the Court stated that a Turkish worker was not in a stable and secure situation as a member of the labour force of a Member State during the period in which he benefited from the suspensory effect of an appeal he had lodged against a decision refusing him a residence permit and had obtained provisional authorization, pending the outcome of the dispute, to reside and be employed in the Member State in question.

43 Similarly, in *Kus*, cited above, the Court held that a worker did not fulfil that requirement where a right of residence was conferred on him only by the operation of national legislation permitting residence in the host country pending completion of the procedure for the grant of a residence permit, on the ground that he had been given the right to remain and work in that country only on a provisional basis pending a final decision on his right of residence (paragraph 13).

44 The Court considered that it was not possible to regard as legal, within the meaning of Article 6(1) of Decision No 1/80, periods in which the worker was employed so long as it was not definitively established that during that period the worker had a legal right of residence, since otherwise a judicial decision finally refusing him that right would be rendered nugatory, and he would thus have been enabled to acquire the rights provided for in Article 6(1) during a period in which he did not fulfil the conditions laid down in that provision (*Kus*, cited above, paragraph 16).

45 Finally, in Case C-285/95 *Kol* v *Land Berlin* [1997] ECR I-3069, paragraph 27, the Court held that the periods in which a Turkish national was employed under a residence permit which was issued to him only as a result of fraudulent conduct which led to his conviction were not based on a stable situation, and that such employment could not be regarded as having been secure in view of the fact that, during the periods in question, the person concerned was not legally entitled to a residence permit.

46 By contrast, as regards the case at issue in the main proceedings, the Turkish worker's right to reside in the host Member State was not disputed and his situation was not insecure and thus likely to be called in question at any time, since he had been authorized in November 1986 to pursue genuine and effective paid employment in that State until 30 June 1990 without interruption and therefore his legal situation was secure throughout that period.

47 A worker employed in such circumstances in a Member State must accordingly be considered to have been legally employed there within the meaning of Article 6(1) of Decision No 1/80 and, provided he satisfies its conditions, may therefore rely directly on the rights conferred by the various indents of that provision.

48 In that regard, it cannot be argued that the worker's residence and/or work permits in the host Member State were merely provisional and conditional.

49 First, it is settled case-law that the rights conferred on Turkish workers by Article 6(1) are accorded irrespective of whether or not the authorities of the host Member State have issued a specific administrative document, such as a work permit or residence permit (see, to this effect, the judgment in *Bozkurt*, cited above, paragraphs 29 and 30).

50 Second, if conditions or restrictions applied by a Member State to residence and/or work permits for Turkish nationals could result in their lawful employment there being regarded as not legal, Member States would be able wrongly to deprive Turkish migrant workers whom they permitted to enter their territory and who have been legally employed there for an uninterrupted period of more than three years of rights on which they are entitled to rely directly under Article 6(1) (see paragraphs 37 to 40 of this judgment).

51 Moreover, the fact that, in a case such as that at issue in the main proceedings, the work and residence permits were issued to the worker for a specific purpose, in order to allow him to carry out further vocational training in an undertaking in a Member State with a view to taking up a post subsequently in one of its subsidiaries in Turkey, does not affect that interpretation.

52 Article 6(1) does not make the recognition of the rights it confers on Turkish workers subject to any condition connected with the reason the right to enter, work or reside was initially granted (*Kus*, paragraphs 21 to 23 and, by analogy, *Eroglu*, paragraph 22).

53 The fact that such permits were granted to the person concerned for a specific purpose which the genuine and effective paid employment in question sought to achieve is not, therefore, capable of depriving a worker who satisfies the conditions laid down in Article 6(1) of the progressive rights which that provision confers upon him.

54 In the circumstances, the worker cannot be prevented from relying on rights acquired under Decision No 1/80 on the ground that he allegedly stated that he wished to pursue his professional career in his country of origin after being employed for several years in the host Member State with a view to perfecting his vocational skills and that he initially accepted the restriction placed upon his permit to reside in that State.

55 In view of all the foregoing considerations, the answer to the first question must be that Article 6(1) of Decision No 1/80 is to be interpreted as meaning that a Turkish national who has been lawfully employed in a Member State for an uninterrupted period of more than three years in a genuine and effective economic activity for the same employer and whose employment status is not objectively different to that of other employees employed by the same employer or in the sector concerned and exercising identical or comparable duties, is duly registered as

belonging to the labour force of that State and is legally employed within the meaning of that provision. A Turkish national in that situation may therefore seek the renewal of his permit to reside in the host Member State notwithstanding the fact that he was permitted to take up paid employment there only temporarily with a specific employer for the purpose of acquainting himself with and preparing for employment in one of its subsidiaries in Turkey, and obtained work and residence permits for that purpose only.

The second question

56 It is apparent from the grounds of the order for reference that, by this question, the Bundesverwaltungsgericht is asking essentially whether the fact that a Turkish worker wishes to extend his stay in the host Member State, although he expressly accepted its restriction and declared his intention of returning to Turkey after having been employed in the Member State concerned for the purpose of perfecting his vocational skills, is such as to deprive the person concerned of the rights deriving from Article 6(1) of Decision No 1/80.

57 In order to give a reply to that question, it must be stated, first of all, that a Turkish worker such as Mr Günaydin cannot be deprived of the rights acquired under Decision No 1/80 on the sole ground that he is placing reliance in the host Member State on the provisions of Article 6(1) of that decision, whereas he had initially agreed to the restriction of his permit to reside in that Member State (see paragraph 54 of this judgment and the judgment in *Ertanir*, cited above, paragraphs 58 to 61).

58 Second, an application based on Article 6(1) cannot, in principle, be considered improper because the worker previously expressed his intention to leave the terri-

tory of the host Member State upon completion of his preparation for the post which he intended to take up in his country of origin.

59 As the Commission observed, it is quite possible that Mr Günaydin first had the firm intention of returning to Turkey after being employed for several years in Germany, but that new and reasonable considerations prompted him to change his mind. Mr Günaydin pointed out, first, that his employer's subsidiary in Turkey had informed the parent company in January 1991 that the situation at that time in that country did not make it possible to employ him and, secondly, that the Siemens factory in Amberg strongly wished to keep him as a particularly valued member of staff, *a fortiori* since the competent German authorities had already agreed to extend his work permit.

60 In such circumstances, it is only if the national court establishes that the Turkish worker made the statement that he wished to leave the host Member State after a specified period with the sole intention of inducing the competent authorities to issue the requisite permits on false premisses that he can be deprived of the rights flowing from Article 6(1) of Decision No 1/80.

61 In view of the foregoing considerations, the answer to the second question is that the fact that a Turkish worker wishes to extend his stay in the host Member State, although he expressly accepted its restriction, does not constitute an abuse of rights. The fact that he declared his intention of returning to Turkey after having been employed in the Member State for the purpose of perfecting his vocational skills is not such as to deprive him of the rights deriving from Article 6(1) of Decision No 1/80 unless it is established by the national court that that declaration was made with the sole intention of improperly obtaining work and residence permits for the host Member State.

Costs

62 The costs incurred by the German, Greek and French Governments and by 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 proceedings 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 questions referred to it by the Bundesverwaltungsgericht by judgment of 24 November 1995, hereby rules:

1. Article 6(1) of Decision No 1/80 of 19 September 1980 on the development of the Association, adopted by the Association Council established by the Association Agreement between the European Economic Community and Turkey, is to be interpreted as meaning that a Turkish national who has been lawfully employed in a Member State for an uninterrupted period of more than three years in a genuine and effective economic activity for the same employer and whose employment status is not objectively different to that of other employees employed by the same employer or in the sector concerned and exercising identical or comparable duties, is duly registered as

belonging to the labour force of that State and is legally employed within the meaning of that provision. A Turkish national in that situation may therefore seek the renewal of his permit to reside in the host Member State notwithstanding the fact that he was permitted to take up paid employment there only temporarily with a specific employer for the purpose of acquainting himself with and preparing for employment in one of its subsidiaries in Turkey, and obtained work and residence permits for that purpose only.

2. **The fact that a Turkish worker wishes to extend his stay in the host Member State, although he expressly accepted its restriction, does not constitute an abuse of rights. The fact that he declared his intention of returning to Turkey after having been employed in the Member State for the purpose of perfecting his vocational skills is not such as to deprive him of the rights deriving from Article 6(1) of Decision No 1/80 unless it is established by the national court that that declaration was made with the sole intention of improperly obtaining work and residence permits for the host Member State.**

Mancini Murray Kapteyn

Ragnemalm Schintgen

Delivered in open court in Luxembourg on 30 September 1997.

R. Grass G. F. Mancini

Registrar President of the Sixth Chamber