

Case C-36/96

Faik Günaydin and Others

v

Freistaat Bayern

(Reference for a preliminary ruling
from the Bundesverwaltungsgericht)

(EEC-Turkey Association Agreement — Decision of the Association Council —
Freedom of movement for workers — Meaning of ‘duly registered as
belonging to the labour force of a Member State’ and ‘legal employment’ —
Temporary and conditional work and residence permits —
Application for extension of residence permit — Abuse of rights)

Opinion of Advocate General Elmer delivered on 29 April 1997 I - 5145
Judgment of the Court (Sixth Chamber), 30 September 1997 I - 5159

Summary of the Judgment

1. *International agreements — EEC-Turkey Association Agreement — Freedom of movement for persons — Workers — Access for Turkish nationals to paid employment of their choice in one of the Member States and ancillary right of residence — Conditions — Previous engagement in legal employment — Definition*
(Decision No 1/80 of the EEC-Turkey Association Council, Art. 6(1))

2. *International agreements — EEC-Turkey Association Agreement — Freedom of movement for persons — Workers — Access for Turkish nationals to paid employment of their choice in one of the Member States and ancillary right of residence — Extension of the right of residence — Abuse — Conditions*

(Decision No 1/80 of the EEC-Turkey Association Council, Art. 6(1))

1. Article 6(1) of Decision No 1/80 of the EEC-Turkey Association Council 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.