JUDGMENT OF THE COURT (Sixth Chamber)
26 November 1998 *

In Case C-1/97,

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

Mehmet Birden

and

Stadtgemeinde Bremen,

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,

THE COURT (Sixth Chamber),

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

* Language of the case: German.

Advocate General: N. Fennelly,
Registrar: L. Hewlett, Administrator,

after considering the written observations submitted on behalf of:

— Mr Birden, by J. Kempas, Rechtsanwalt, Bremen,

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

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

— the French Government, by K. Rispal-Bellanger, Head of Subdirectorate in the Legal Affairs Directorate of the Ministry of Foreign Affairs, and C. Chavance, Foreign Affairs Secretary in the same Directorate, acting as Agents,

— the Commission of the European Communities, by P. J. Kuijper, Legal Adviser, acting as Agent, and by P. Gilsdorf, Rechtsanwalt, Hamburg and Brussels,

having regard to the Report for the Hearing,

after hearing the oral observations of Mr Birden, represented by J. Kempas, of the German Government, represented by C.-D. Quassowski, Regierungsdirektor in the

Federal Ministry of Economic Affairs, acting as Agent, of the Greek Government, represented by A. Samoni-Rantou and L. Pnevmatikou, and of the Commission, represented by P. Gilsdorf, at the hearing on 2 April 1998,

after hearing the Opinion of the Advocate General at the sitting on 28 May 1998,

gives the following

Judgment

1 By order of 9 December 1996, received at the Court on 6 January 1997, the Verwaltungsgericht der Freien Hansestadt Bremen (Administrative Court of the Free Hanseatic City of Bremen) referred to the Court for a preliminary ruling under Article 177 of the EC Treaty a question on the interpretation of Article 6(1) of Decision No 1/80 of the Association Council of 19 September 1980 on the development of the Association (hereinafter 'Decision No 1/80'). The Association Council 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. 2).

2 The question referred to the Court was raised in proceedings between Mr Birden, a Turkish national, and the Stadtgemeinde Bremen (City of Bremen) concerning the latter's refusal to extend Mr Birden's permit to reside in Germany.

Background to the dispute and legal framework

3 According to the file on the case in the main proceedings, Mr Birden was permitted to enter Germany in 1990, where he married a German national in 1992.

4 As a result of that marriage, he was granted a residence permit by that State, valid until June 1995, and an unconditional work permit of unlimited duration.

5 Having failed to find work in Germany, however, Mr Birden initially received social assistance pursuant to the Bundessozialhilfegesetz) (Federal Law on Social Assistance, hereinafter 'the BSHG').

6 Paragraph 1 of the BSHG provides:

'(1) Social assistance comprises the grant of maintenance assistance and the assistance given to persons in particular circumstances.

(2) The function of social assistance is to permit the beneficiary to live a life compatible with human dignity. To that effect, wherever possible, the assistance should place the beneficiary in a position to maintain himself; in that respect, the beneficiary of the assistance must cooperate to the best of his ability.'

7 According to paragraph 19 of the BSHG,

'(1) Work opportunities shall be created for people seeking assistance, in particular young people who are unable to find work. In order to create and maintain work opportunities, costs may also be assumed. The work opportunities shall normally be of temporary duration and apt to improve the integration into working life of the person seeking assistance.

(2) If an opportunity of performing ancillary, public utility work is created for the person seeking assistance, he may be granted either the usual remuneration or maintenance assistance plus appropriate expenses. Work offered will be ancillary only if it would not otherwise be done, or not on that scale or at that time. The requirement for the work offered to be ancillary may be disregarded in individual cases if this helps to promote integration into working life or if it is made necessary by the entitled person's and his family's particular circumstances.

(3) If maintenance assistance is granted under subparagraph (2) above, no contract of employment for the purpose of employment law and no employment relationship for the purpose of statutory health and pension insurance will arise. However, the provisions on protection at work shall apply.

...'

8 On 3 January 1994, Mr Birden entered into a contract of employment as a semi-skilled odd-job man with the Kulturzentrum (Cultural Centre) Lagerhaus Bremen-Ostertor eV from 1 January 1994 to 31 December 1994. His net pay was DM 2 155.70 per month, after deduction of income tax, the solidarity surcharge, and contributions for health, care, pension and unemployment insurance; he was required to work 38.5 hours per week.

9 That employment relationship was subsequently extended under the same conditions until 31 December 1995.

10 For the duration of those contracts, Mr Birden did not receive any social assistance in the form of maintenance payments.

11 Those employment contracts were wholly funded by the Werkstatt Bremen (Workshop Bremen), an office of the Senator für Gesundheit, Jugend und Soziales (Senator for Health, Youth and Social Affairs) of the Freien Hansestadt Bremen, under a programme adopted by the Senate of that city and intended, in accordance with paragraph 19(2) of the BSHG, to provide paid employment, on a temporary basis, to recipients of social assistance in order to enable, in particular, unemployed persons with no entitlement to unemployment benefits to enter or re-enter the general labour market. That period of one or two years' work, which is subject to payment of compulsory social insurance contributions, thus affords participants in the programme the right to draw social security benefits or the possibility of placement on a work creation scheme.

12 On 10 June 1995, Mr Birden's marriage was dissolved.

13 On 15 August 1995 the competent authorities then refused to extend Mr Birden's permit to reside in Germany, on the grounds that, under national law, such an extension was no longer possible following his divorce and that he was not duly registered as belonging to the labour force of a Member State, for the purposes of Article 6(1) of Decision No 1/80, because the contracts of employment entered into on the basis of the BSHG were only temporary, their sole purpose was to enable a limited group of persons, in this case recipients of social assistance, to integrate into working life, they were funded by the public authorities and related to public utility work for a public employer not in competition with undertakings in the general labour market.

14 Mr Birden considered that he was entitled to an extension of his residence permit pursuant to the first indent of Article 6(1) of Decision No 1/80, on the ground that he had been in paid employment for more than one year with the same employer, and brought proceedings before the Verwaltungsgericht der Freien Hansestadt Bremen. Mr Birden stated in that respect that a new contract of employment, entered into with the same Kulturzentrum Lagerhaus Bremen-Ostertor eV for an indefinite period from 1 January 1996 and relating to a caretaker's post had not come into effect solely because he had been unable to provide his employer with a valid residence permit.

15 The national court considered that the contested decision complied with German law. None the less, it raised the question whether a solution more favourable to Mr Birden might not be derived from Article 6(1) of Decision No 1/80.

16 That provision, which appears in Chapter II (Social provisions), Section 1 (Questions relating to employment and the free movement of workers), is worded as follows:

'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.'

17 Although it pointed out that, at the time his residence permit expired, Mr Birden was in legal employment, held a valid work permit, had been in paid employment for more than one year with the same employer and had a job available, the Verwaltungsgericht der Freien Hansestadt Bremen none the less expressed doubts as to whether he was duly registered as belonging to the labour force of a Member State within the meaning of Article 6(1) of Decision No 1/80, since the activity performed by him in 1994 and 1995 had been supported by the public authorities within the framework of paragraph 19(2) of the BSHG.

The question submitted for a preliminary ruling

18 The Verwaltungsgericht der Freien Hansestadt Bremen therefore considered that the resolution of the dispute required an interpretation of that provision of Decision No 1/80 and stayed proceedings in order to refer the following question to the Court for a preliminary ruling:

'Is a Turkish worker a duly registered member of 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, if he has a job sponsored by that Member State with public funds and requiring payment of social security contributions which is meant to enable him to enter or re-enter working life and which, on account of the purpose of the State sponsorship, may only be offered (pursuant to Paragraph 19(2) of the Bundessozialhilfegesetz) to a limited group of persons?'

19 The first point to be noted is that since the judgment in Case C-192/89 *Sevince* v *Staatssecretaris van Justitie* [1990] ECR I-3461, paragraph 26, 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 which the three indents of that provision confer on them progressively, according to the duration of their employment in the host Member State (see, most recently, Case C-36/96 *Günaydin* v *Freistaat Bayern* [1997] ECR I-5143, paragraph 24, and Case C-98/96 *Ertanir* v *Land Hessen* [1997] ECR I-5179, paragraph 24).

20 Second, it should be borne in mind that the Court has consistently held that the rights which that provision confers on Turkish workers in regard to employment necessarily imply the existence of a corresponding 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 (see, most recently, *Günaydin*, paragraph 26, and *Ertanir*, paragraph 26).

21 Third, it should be noted that, as is apparent from the actual wording of Article 6(1) of Decision No 1/80, that provision requires the person concerned to be a Turkish worker in a Member State, to be duly registered as belonging to the labour force of the host Member State and to have been in legal employment there for a certain period.

22 In order to give a useful reply to the national court to enable it to assess the relevance of the arguments relied on by the defendant in order to deny Mr Birden the benefit of the rights conferred by Decision No 1/80, those three concepts should be examined in turn.

The concept of worker

23 As regards the first of those concepts, it should be recalled at the outset that the Court has consistently concluded from the wording of Article 12 of the EEC-Turkey Association Agreement and Article 36 of the additional protocol, signed on 23 November 1970, annexed to that Agreement and concluded by Council Regulation (EEC) No 2760/72 of 19 December 1972 (OJ 1973 C 113, p. 18), as well as from the objective of Decision No 1/80, that the principles enshrined in Articles 48, 49 and 50 of the EC Treaty must be extended, so far as possible, to Turkish workers who enjoy the rights conferred by Decision No 1/80 (see, to that effect, Case C-434/93 *Bozkurt* v *Staatssecretaris van Justitie* [1995] ECR I-1475, paragraphs 14, 19 and 20; Case C-171/95 *Tetik* v *Land Berlin* [1997] ECR I-329, paragraphs 20 and 28, and the judgments in *Günaydin*, paragraph 21, and *Ertanir*, paragraph 21).

24 Reference should consequently be made to the interpretation of the concept of worker under Community law for the purposes of determining the scope of the same concept employed in Article 6(1) of Decision No 1/80.

25 In that respect, the Court has consistently held that the concept of worker has a specific Community meaning and must not be interpreted narrowly. It must be defined in accordance with objective criteria which distinguish the employment relationship by reference to the rights and duties of the persons concerned. In order to be treated as a worker, a person must pursue 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. The essential feature of an 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. By contrast, the nature of the legal relationship between the worker and the employer is not decisive for the purposes of determining whether a person is a worker within the meaning of Community law (see, as regards Article 48 of the Treaty, in particular, Case 66/85 *Lawrie-Blum* v *Land Baden-Württemberg* [1986] ECR 2121, paragraphs 16 and 17; Case 197/86 *Brown* v *Secretary of State for Scotland* [1988] ECR 3205, paragraph 21; Case C-357/89 *Raulin* [1992] ECR I-1027, paragraph 10;

and, as regards Article 6(1) of Decision No 1/80, *Günaydin*, paragraph 31, and *Ertanir*, paragraph 43).

26 A Turkish national such as Mr Birden, who is employed on the basis of a law such as the BSHG, performs, as a subordinate, services for his employer in return for which he receives remuneration, thus satisfying the essential criteria of the employment relationship.

27 Since Mr Birden worked 38.5 hours per week and received net pay of DM 2 155.70 per month, in keeping, moreover, with the collective agreement applicable to workers in the Member State concerned, it cannot be argued that he pursued an activity which was purely marginal and ancillary.

28 That interpretation is not altered by the fact that the remuneration of the person concerned is provided using public funds since, by analogy with the case-law relating to Article 48 of the Treaty, neither the origin of the funds from which the remuneration is paid, nor the 'sui generis' nature of the employment relationship under national law and the level of productivity of the person concerned can have any consequence in regard to whether or not the person is to be regarded as a worker (see, for example, Case 344/87 *Bettray* [1989] ECR 1621, paragraphs 15 and 16).

29 Contrary to the assertions of the German Government, that conclusion is also not affected by the fact that, in *Bettray*, the Court held that work which constitutes merely a means of rehabilitation or reintegration for the persons concerned cannot be regarded as a genuine and effective activity and concluded that such persons cannot be regarded as workers for the purposes of Community law (paragraphs 17 to 20).

30 As the Commission pointed out in its observations and the Advocate General stated at paragraphs 25 and 45 of his Opinion, the situation of a person such as the applicant in the main proceedings differs considerably from that at issue in *Bettray*. It is thus apparent from the reasoning of that judgment that that case concerned a person who, by reason of his addiction to drugs, had been recruited on the basis of a national law intended to provide work for persons who, for an indefinite period, are unable, by reason of circumstances related to their situation, to work under normal conditions; furthermore, the person concerned had not been selected on the basis of his ability to perform a certain activity but, to the contrary, had performed activities adapted to his physical and mental possibilities, in the framework of undertakings or work associations created specifically in order to achieve a social objective.

31 Under those circumstances, the conclusion reached by the Court in *Bettray*, according to which a person employed under a scheme such as that at issue in that case could not, on that basis alone, be regarded as a worker and the fact that that conclusion does not follow the general trend of the case-law concerning the interpretation of that concept in Community law (see paragraph 25 above) can be explained only by the particular characteristics of that case and it cannot therefore be applied to a situation such as that of the applicant in the main proceedings, the features of which are not comparable.

32 A person such as Mr Birden must consequently be regarded as a worker within the meaning of Article 6(1) of Decision No 1/80.

The concept of being duly registered as belonging to the labour force

33 Next, in order to ascertain whether such a worker, recruited under an employment contract relating to the pursuit of a genuine and effective economic activity, 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, in accordance with settled

case-law (*Bozkurt*, paragraphs 22 and 23, *Günaydin*, paragraph 29, and *Ertanir*, paragraph 39), 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 activity is pursued and the applicable national legislation in the field of employment and social security law.

34 In a situation such as that of the applicant in the main proceedings, that condition is undoubtedly satisfied, since the person concerned pursued a paid activity on the territory of the Member State whose authorities had offered him employment subject to the legislation of that State, *inter alia* its employment and social security law.

35 However, the German Government contended that the employment contracts entered into with Mr Birden on the basis of Paragraph 19 of the BSHG had been limited to the temporary pursuit of a paid activity with a named employer.

36 It should none the less be pointed out in that respect that, from January 1992, the Turkish worker concerned held a permit to work in Germany that was of unlimited duration.

37 Furthermore, the Court has held that, although, 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 there and does not preclude those Member States, in principle, from regulating the conditions under which Turkish nationals work for up to one year as provided for in the first indent of Article 6(1) of that decision, none the less that provision 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 a continuous period of more than one year with the same employer the rights which the

three indents of that provision confer on him progressively according to the duration of his employment. The effect of such an interpretation would be to render Decision No 1/80 meaningless and deprive it of any practical effect (see, to that effect, the judgment in *Günaydin*, paragraphs 36 to 38).

38 Accordingly the Member States have no power to make conditional or restrict the application of the precise and unconditional rights which that decision grants to Turkish nationals who satisfy its conditions, particularly since the general and unconditional wording of Article 6(1) does not permit the Member States to restrict the rights which that provision confers directly on Turkish workers (see, to that effect, *Günaydin*, paragraphs 39 and 40).

39 In those circumstances, the fact that the employment contracts offered to the person concerned by the public authorities were only temporary has no relevance for the purposes of interpreting Article 6(1) of Decision No 1/80, in so far as the activity pursued by him in the host Member State satisfies the conditions laid down by that provision.

40 The German Government also submitted that, even though Mr Birden received the usual remuneration, subject to income tax and the payment of compulsory social security contributions, for the work he performed and did not simultaneously receive social assistance and although, in accordance with the BSHG, he was thus in an employment relationship with his employer for the purposes of German employment law, the employment in question was none the less of an essentially social nature. That employment consisted of public utility work which, in other circumstances would not be carried out; it was financed by public funds and intended to improve the integration into working life of a limited group of persons unable to compete with most other job seekers. Those persons can therefore be distinguished from workers as a whole and consequently do not belong to the general labour force of the Member State concerned.

41 Likewise, the Commission submitted that a Turkish worker such as Mr Birden cannot be regarded as being duly registered as belonging to the labour force of a Member State within the meaning of Article 6(1) of Decision No 1/80, on the ground that that provision lays down two separate conditions, namely that the worker be duly registered as belonging to the labour force and that he be in legal employment. The first of those requirements should not be interpreted as referring to the lawful pursuit of a paid activity, since to do so would duplicate the second; it can therefore be regarded only as referring to the pursuit of a normal economic activity on the labour market, as opposed to employment created artificially and financed by the public authorities such as that undertaken by Mr Birden.

42 In that respect, it should be recalled, first, that a migrant Turkish worker — the applicant in the main proceedings — was recruited legally, within the terms of the requisite national permits and for a continuous period of two years, under an employment contract which involved the pursuit of a genuine and effective economic activity for the same employer in return for the usual remuneration. In that respect, the legal position of a person such as Mr Birden is therefore no different from that of migrant Turkish workers in general working on the territory of the host Member State.

43 Second, in accordance with the case-law of the Court, the specific purpose which the paid employment in question sought to achieve is not 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 (*Günaydin*, paragraph 53).

44 It follows that a worker in Mr Birden's position, to whom a new contract of employment had been offered by his employer from 1 January 1996, was therefore entitled, in accordance with the first indent of Article 6(1) of Decision No 1/80, to continue working for that employer until, after three years, he had the possibility of changing employer within the same occupation pursuant to the second indent of that provision.

45 Furthermore, as regards a job offered under circumstances such as those in the present case, any other interpretation would be contradictory, in so far as it would amount to a refusal to maintain as a member of the labour force of the host Member State a Turkish national to whom that State had applied national legislation specifically intended to integrate the persons concerned into the labour force.

46 Furthermore, that national legislation itself provides that, in a situation such as that of the applicant in the main proceedings, who no longer received social assistance during the period in which he was pursuing an activity under the BSHG, the person concerned is in an employment relationship with his employer for the purposes of national law.

47 Third, it is apparent from a comparison of the language versions in which Decision No 1/80 was drawn up that the Dutch ('die tot de legale arbeidsmarkt van een Lid-Staat behoort' and 'legale arbeid'), Danish ('med tilknytning til det lovlige arbejdsmarked i en bestemt medlemsstat' and 'lovlig beskæftigelse') and Turkish ('... bir üye ülkenin yasal isgücü piyasasina nizamlara uygun bir surette ...' and 'yasal calismadan') versions use the same adjective ('legal') to describe both the labour force of a Member State and the employment pursued in that State. Although it does not use the same word in both respects, the English version ('duly registered as belonging to the labour force of a Member State' and 'legal employment') undeniably has the same meaning.

48 It follows from those versions that entitlement to the rights enshrined in the three indents of Article 6(1) is subject to the condition that the worker complied with the legislation of the host Member State governing entry to its territory and pursuit of employment.

49 There is no doubt that a migrant Turkish worker such as Mr Birden satisfies that requirement, since it is not disputed that he legally entered the territory of the Member State concerned and occupied a post organised and financed by the public authorities of that State.

50 Both the French ('appartenant au marché régulier de l'emploi d'un État membre' and 'emploi régulier') and Italian ('inserito nel regolare mercato del lavoro di uno Stato membro' and 'regolare impiego') versions use the word 'regular' twice. Finally, the German version ('der dem regulären Arbeitsmarkt eines Mitgliedstaats angehört' and 'ordnungsgemässer Beschäftigung') is less clear, in so far as it uses two different expressions, the first of which corresponds to 'regular' and the second more closely to 'legal'. However, those versions are clearly open to an interpretation consistent with that resulting from the other language versions, since the term 'regular' can undoubtedly be understood, for the purposes of the uniform application of Community law, as a synonym for 'legal'.

51 Consequently, the concept of 'being duly registered as belonging to the labour force' must be regarded as applying to all workers who have complied with the requirements laid down by law and regulation in the Member State concerned and are thus entitled to pursue an occupation in its territory. By contrast, contrary to the assertions of the German Government and the Commission, it cannot be interpreted as applying to the labour market in general as opposed to a specific market with a social objective supported by the public authorities.

52 That interpretation is, furthermore, confirmed by the objective of Decision No 1/80 which, according to the third recital in its preamble, 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. 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 (see *Bozkurt*, paragraphs 14, 19 and 20, *Tetik*, paragraph 20, *Günaydin*, paragraphs 20 and 21, and *Ertanir*, paragraphs 20 and 21).

53 In view of that objective and the fact that Decision No 2/76 refers only to legal employment, the concept of being duly registered as belonging to the labour force of a Member State, used in Decision No 1/80 alongside that of legal employment, cannot be interpreted as further restricting the rights derived by workers from

Article 6(1) of Decision No 1/80 on the ground that it sets out an additional condition, different from the condition that the person concerned be in legal employment for a certain period. To the contrary, that newly-introduced concept merely clarifies the requirement of the same nature already used in Decision No 2/76.

54 A Turkish worker such as Mr Birden must consequently be regarded as being duly registered as belonging to the labour force of a Member State for the purposes of Article 6(1) of Decision No 1/80.

The concept of legal employment

55 Finally as regards the question whether such a worker was in legal employment in the host Member State for the purposes of Article 6(1) of Decision No 1/80, it should be recalled that, according to settled case-law (judgments in *Sevince*, paragraph 30, *Bozkurt*, paragraph 26, and Case C-237/91 *Kus* v *Landeshauptstadt Wiesbaden* [1992] ECR I-6781, paragraphs 12 and 22), the legality of the 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.

56 In *Sevince*, paragraph 31, the Court held that a Turkish worker was not in a stable and secure situation as a member of the labour force of a Member State during a period in which a decision refusing him the right of residence was suspended as a consequence of his appeal against that decision and he obtained authorisation, on a provisional basis pending the outcome of the dispute, to reside and be employed in the Member State in question.

57 Likewise, in *Kus*, paragraph 13, the Court held that a worker who has a right of residence only as a result of the effect of national legislation allowing a person to reside in the host country during the procedure for granting a residence permit does not satisfy that condition of stability, on the ground that the person concerned had obtained the rights to reside and work in that country on a provisional basis only pending a final decision on his right of residence.

58 The Court considered that periods during which the person concerned was employed could not be regarded as legal employment for the purposes of Article 6(1) of Decision No 1/80 so long as it was not definitely established that, during those periods, the worker had a legal right of residence. 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 when he did not fulfil the conditions laid down in that provision (judgment in *Kus*, paragraph 16).

59 Finally, in Case C-285/95 *Kol* v *Land Berlin* [1997] ECR I-3069, paragraph 27, the Court held that periods in which a Turkish national was employed under a residence permit obtained only by means of fraudulent conduct on his part, which led to a conviction, were not based on a stable situation and 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.

60 By contrast, in a case such as this, it must be pointed out that the Turkish worker's right of residence in the host Member State was never challenged and the person concerned was not in a precarious situation that could be called into question at any time: in January 1992, he had obtained a permit to reside in Germany until 29 June 1995 together with an unconditional work permit of unlimited duration and

for an uninterrupted period from 1 January 1994 to 31 December 1995 he had lawfully pursued a genuine and effective activity for the same employer, so that his legal position was guaranteed for that whole period.

61 Such a worker must consequently be regarded as having been in legal employment in the Member State concerned for the purposes of Article 6(1) of Decision No 1/80, so that, in so far as he satisfies all the conditions of that provision, he may rely on the rights conferred by it.

62 In that respect, it should be pointed out that it is not disputed that when his employment contract expired on 31 December 1995, Mr Birden had entered into a new contract of employment, with the same employer, for an indefinite period from 1 January 1996. He therefore had a job available with the same employer within the meaning of the first indent of Article 6(1) of Decision No 1/80; the only reason that contract could not be put into effect was that he had not obtained an extension of his residence permit in the host Member State.

63 The foregoing interpretation cannot be affected by the fact that the two employment contracts awarded to Mr Birden in 1994 and in 1995 were for a limited period pursuant to the national legislation.

64 If the temporary nature of the employment contract was sufficient to raise doubts as to whether the employment of the person concerned was in fact legal, Member States would be able wrongly to deprive Turkish migrant workers whom they permitted to enter their territory and who have lawfully pursued an economic activity there for an uninterrupted period of at least one year of rights on which they are entitled to rely directly under Article 6(1) of Decision No 1/80 (see paragraphs 37 to 39) above.

65 Likewise, the fact that Mr Birden's residence permit was issued to him only for a fixed period is not relevant, since it is settled case-law that the rights conferred on Turkish workers by Article 6(1) of Decision No 1/80 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 that effect, the judgments in *Bozkurt*, paragraphs 29 and 30, *Günaydin*, paragraph 49, and *Ertanir*, paragraph 55).

66 Furthermore, the fact that, in a case such as the present, work and residence permits were granted to the worker only after his marriage to a German national does not affect that interpretation, even though the marriage was subsequently dissolved.

67 According to settled case-law, Article 6(1) of Decision No 1/80 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, *Günaydin*, paragraph 52, and, by analogy, Case C-355/93 *Eroglu* v *Land Baden-Württemberg* [1994] ECR I-5113, paragraph 22).

68 A Turkish worker such as Mr Birden must consequently be regarded as having been in legal employment in the host Member State for the purposes of Article 6(1) of Decision No 1/80.

69 In view of all the foregoing considerations, the answer to the question referred by the Verwaltungsgericht der Freien Hansestadt Bremen must be that Article 6(1) of Decision No 1/80 is to be interpreted as follows:

A Turkish national who has lawfully pursued a genuine and effective economic activity in a Member State under an unconditional work permit for an uninterrupted period of more than one year for the same employer, in return for which he received the usual remuneration, is a worker duly registered as belonging to the labour force of that Member State and in legal employment there within the meaning of that provision.

In so far as he has available a job with the same employer, a Turkish national in that situation is thus entitled to demand the renewal of his residence permit in the host Member State, even if, pursuant to the legislation of that Member State, the activity pursued by him was restricted to a limited group of persons, was intended to facilitate their integration into working life and was financed by public funds.

Costs

70 The costs incurred by the German, Greek and French Governments, and by the Commission, 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 question referred to it by the Verwaltungsgericht der Freien Hansestadt Bremen, by order of 9 December 1996, hereby rules:

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 follows:

A Turkish national who has lawfully pursued a genuine and effective economic activity in a Member State under an unconditional work permit for an uninterrupted period of more than one year for the same employer, in return for which he received the usual remuneration, is a worker duly registered as belonging to the labour force of that Member State and in legal employment there within the meaning of that provision.

In so far as he has available a job with the same employer, a Turkish national in that situation is thus entitled to demand the renewal of his residence permit in the host Member State, even if, pursuant to the legislation of that Member State, the activity pursued by him was restricted to a limited group of persons, was intended to facilitate their integration into working life and was financed by public funds.

Kapteyn Mancini

Murray Ragnemalm Schintgen

Delivered in open court in Luxembourg on 26 November 1998.

R. Grass P. J. G. Kapteyn

Registrar President of the Sixth Chamber