JUDGMENT OF THE COURT (First Chamber)

16 June 2011 *

In Case C-484/07,

REFERENCE for a preliminary ruling under Article 234 EC from the Rechtbank 's-Gravenhage (Netherlands), made by decision of 22 October 2007, received at the Court on 31 October 2007, in the proceedings

Fatma Pehlivan

v

Staatssecretaris van Justitie,

THE COURT (First Chamber),

composed of A. Tizzano, President of the Chamber, J.-J. Kasel (Rapporteur), A. Borg Barthet, E. Levits and M. Berger, Judges,

* Language of the case: Dutch.

Advocate General: E. Sharpston,
Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 15 April 2010,

after considering the observations submitted on behalf of:

— Ms Pehlivan, by P.H. Hillen, advocaat,

— the Netherlands Government, by C. Wissels, M. de Mol and B. Koopman, acting as Agents,

— the German Government, by M. Lumma and J. Möller, acting as Agents,

— the Italian Government, by G. Palmieri, acting as Agent, assisted by W. Ferrante, avvocato dello Stato,

— the European Commission, by G. Rozet and M. van Beek, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 8 July 2010,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of the first indent of the first paragraph of Article 7 of Decision No 1/80 of the Association Council of 19 September 1980 on the development of the Association ('Decision No 1/80'). The Association Council was set up by the Agreement establishing an Association between the European Economic Community and Turkey, which was signed in Ankara on 12 September 1963 by the Republic of Turkey, on the one hand, and the Member States of the EEC and the Community, on the other, and concluded, approved and confirmed on behalf of the Community by Council Decision 64/732/EEC of 23 December 1963 (JO 1973 C 113, p. 1).

2 The reference has been made in proceedings between Ms Pehlivan, a Turkish national, and the Staatssecretaris van Justitie (State Secretary for Justice; 'the Staatssecretaris') concerning the withdrawal of the residence permit granted to her and the procedure concerning her deportation from Netherlands territory.

Legal context

The EEC-Turkey Association

3 Article 59 of the Additional Protocol, signed at Brussels on 23 November 1970 and concluded, approved and confirmed on behalf of the Community by Council Regulation (EEC) No 2760/72 of 19 December 1972 (OJ 1973 C 113, p. 17) is worded as follows:

'In the fields covered by this Protocol Turkey shall not receive more favourable treatment than that which Member States grant to one another pursuant to the Treaty establishing the Community.'

4 Section 1 of Chapter II of Decision No 1/80, headed 'Social provisions', deals with '[q]uestions relating to employment and the free movement of workers'. That section contains Articles 6 to 16 of that decision.

5 Article 6(1) of Decision No 1/80 provides:

'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.'

6 Article 7 of Decision No 1/80 provides:

'The members of the family of a Turkish worker duly registered as belonging to the labour force of a Member State, who have been authorised to join him:

— shall be entitled – subject to the priority to be given to workers of Member States of the Community – to respond to any offer of employment after they have been legally resident for at least three years in that Member State;

— shall enjoy free access to any paid employment of their choice provided they have been legally resident there for at least five years.

Children of Turkish workers who have completed a course of vocational training in the host country may respond to any offer of employment there, irrespective of the length of time they have been resident in that Member State, provided one of their parents has been legally employed in the Member State concerned for at least three years.'

7 Article 14 of Decision No 1/80 is worded as follows:

'1. The provisions of this section shall be applied subject to limitations justified on grounds of public policy, public security or public health.

2. They shall not prejudice the rights and obligations arising from national legislation or bilateral agreements between Turkey and the Member States of the Community where such legislation or agreements provide for more favourable treatment for their nationals.'

National legislation

8 The Law of 23 November 2000 providing for a comprehensive review of the Law on Foreign Nationals (Wet tot algehele herziening van de Vreemdelingenwet) (Stb. 2000, No 495; 'the Vw 2000') entered into force on 1 April 2001. Also applicable in the Netherlands since that date are the Decree on Foreign Nationals of 2000 (Vreemdelingenbesluit 2000, Stb. 2000, No 497; 'the Vb 2000') and the Regulation on Foreign Nationals of 2000 (Voorschrift Vreemdelingen 2000; Stcrt. 2001, No 10). In the Guidelines on the Implementation of the Law on Foreign Nationals of 2000 (Vreemdelingencirculaire 2000; 'the Vc 2000'), the Staatssecretaris explained how he intended to apply the Vw 2000 and the Vb 2000.

9 Article 14 of the Vw 2000 provides:

‘1. The Minister shall be authorised:

(a) to approve, to reject or not to consider applications for the grant of fixed-term residence permits;

(b) to approve, to reject or not to consider applications for the extension of the period of validity of such permits;

(c) to amend a fixed-term residence permit, either at the request of the permit holder or *ex officio* because of a change in circumstances;

(d) to withdraw a fixed-term residence permit;

…

2. A fixed-term residence permit shall be granted with restrictions relating to the purpose for which residence has been permitted. Other conditions may be attached to the permit. By or in accordance with a general administrative order, rules may be laid down on the restrictions and conditions.

3. A fixed-term residence permit shall be granted for not more than five consecutive years. By general administrative order, rules shall be laid down on the period of validity of the residence permit and the extension of its period of validity.’

10 Under Article 18(1) of the Vw 2000:

'An application for extension of the period of validity of a fixed-term residence permit as referred to in Article 14 may be rejected if:

…

(c) the foreign national has submitted incorrect information or has withheld information which would have led to the rejection of the original application;

…

(f) the foreign national fails to comply with the restriction subject to which the permit has been granted or with a condition attached thereto;

…'

11 Pursuant to Article 19 of the Vw 2000, a fixed-term residence permit may be withdrawn on the grounds stated in Article 18(1) of that Law.

12 Pursuant to Article 3.24 of the Vb 2000, a fixed-term residence permit, within the meaning of Article 14 of the Vw 2000, may be granted, subject to a restriction relating to family reunification, to a member of the family of a Netherlands national or of a foreign national who is legally resident within the meaning of that Law, other than

the spouse, the registered or non-registered partner or a minor child, if, in the opinion of the Staatssecretaris, the foreign national in fact forms part and, in his country of origin, already formed part of the family of the person with whom he intends to reside and the separation of that person from the foreign national would constitute a measure of disproportionate severity.

13 Article 3.51, paragraph 1, of the Vb 2000 provides:

'A fixed-term residence permit, within the meaning of Article 14 of the Vw 2000, subject to a restriction relating to continued residence, may be granted to a foreign national who has resided in the Netherlands for three years as the holder of a residence permit in the following cases:

(a) the reunification or formation of a family with a person having a non-temporary right of residence;

…'

14 Under Article 3.52 of the Vb 2000, a fixed-term residence permit, within the meaning of Article 14 of the Vw 2000, may be granted, subject to a restriction relating to 'continued residence', in cases other than those referred to in, inter alia, Article 3.51 to a foreign national who is legally resident in the Netherlands within the meaning of that Law and who, in the opinion of the Staatssecretaris, cannot be required to leave the Netherlands because of special individual circumstances.

15 The Vc 2000 sets out, inter alia, the policy followed by the Netherlands authorities in relation to Decision No 1/80. Section B11/3.5 of those guidelines, in the version applicable at the date of the facts in the main proceedings, stated, inter alia, as follows with regard to Article 7 of that decision:

'Explanation of the terms "members of the family": the spouse of the Turkish worker and their blood relatives in the descending line below the age of 21 years or persons dependent on them, and the blood relatives in the ascending line of that worker and his spouse who are dependent on them …

"legally resident": this term presupposes that the family member has actually lived with the Turkish worker for a continuous period of three or five years …. In the calculation of this period allowance must, however, be made for brief interruptions of cohabitation, without the intention of abandoning such cohabitation. An example might be absence from the communal residence for a reasonable period for which there are sound reasons or an involuntary stay of less than six months by the person concerned in his country of origin …'

16 As regards the right of continued residence of family members, Section B11/3.5.1 of the Vc 2000 states as follows:

'… the national rules on family reunification and formation … also usually give family members the right to work. They therefore go further than what is required by Decision No 1/80. In addition, minor family members granted, as minors, a residence permit in connection with family reunification with a person having a non-temporary residence permit are, on the expiry of one year, granted on request a residence permit (of their own) for continued residence …

"Legally resident for three years": after three years of legal residence the general rule is that members of the family of a Turkish worker duly registered as belonging to the labour force who have become resident in the Netherlands in the context of family reunification with the Turkish worker have free access to any employment of their choice. The fact that a family member was born in the Netherlands and so has not needed to apply for permission to join the Turkish worker in the Netherlands in the context of family reunification is not relevant in this regard …'

17 That last-mentioned point of the Vc 2000 means that, under Netherlands law, free access to the labour force, as referred to in the second indent of the first paragraph of Article 7 of Decision No 1/80, is the rule after three years of legal residence. That more favourable rule for the members of the family of a Turkish worker constitutes an exception to the first indent of the first paragraph of Article 7 of Decision No 1/80. That more favourable rule must be applied at all times.

18 In addition, the aforementioned family members may claim residence permits of their own for continued residence after three years of legal residence in the Netherlands. Such residence permits give them free access to any paid employment of their choice.

19 Pursuant to Article 7 of Decision No 1/80, no further conditions are imposed on the residence of family members after three years of legal residence in the Netherlands. The fact that, on the expiry of that period of three years, the Turkish worker is no longer duly registered as belonging to the labour force or that the family link is broken is of no further consequence for the right of residence of the family member concerned. That rule applies whether or not the family member is in possession of his own residence permit.

20 Section B2/8.3 of the Vc 2000, in the version applicable at the date of the facts in the main proceedings, states as follows:

'A residence permit shall not be granted if the child who is of the age of majority does not in fact form part or, in the country of origin, did not already form part of the parent's family. "In fact form part of the family" means that:

— the family link already existed in the foreign country;

— there is emotional and financial dependence on the parent, which must have already existed in the foreign country; and

— the foreign national must be going to live with his parent(s).

Children who have reached the age of majority no longer in fact form part of the family if the actual family link can be regarded as broken. This is always the case in one or more of the following circumstances:

— permanent assimilation into another family, the person with whom the foreign national intends to reside no longer having (actual) authority over him;

— permanent assimilation into another family, the person with whom the foreign national intends to reside no longer paying for his education and upkeep;

— the foreign national lives independently and provides for himself;

— the foreign national forms a separate family by entering into a marriage or relationship;

— the foreign national is responsible for or has custody of a legitimate or illegitimate child, a foster or adopted child or other dependent family members …'

The dispute in the main proceedings and the questions referred for a preliminary ruling

21 According to the documents relating to the case in the main proceedings, Ms Pehlivan, who was born in Turkey on 7 August 1979, was authorised to enter the Netherlands on 11 May 1999 for the purpose of family reunification with her parents, at least one of whom was duly registered as belonging to the labour force of the Netherlands.

22 For that reason the Staatssecretaris granted her, on 1 August 1999, a fixed-term residence permit, valid from 9 August 1999, with the restriction 'extended family reunification with parents'. The period of validity of that permit was last extended by the Netherlands authorities until 24 July 2003.

23 It is not disputed that, from 12 August 1999 and during a period of more than three years, Ms Pehlivan lived with her parents at their home in the Netherlands.

24 On 22 December 2000, Ms Pehlivan, during a short stay in Turkey, married a Turkish national. It was, however, not until 3 May 2002 that she informed the Foreign Nationals Department of her marriage, which was registered on 1 July 2002 by the competent body of the municipality where she was living.

25 A son was born from the marriage on 30 March 2002.

26 According to the information provided by Ms Pehlivan, her spouse entered the Netherlands in 2002 as a Turkish lorry driver and submitted an application to reside there. Following the rejection of that request, he was deported from the Netherlands. According to Ms Pehlivan, her husband lived with her and her parents in the family home for nine months from June 2002.

27 On 10 February 2004, a Turkish court ordered the marriage between Mr Pehlivan and his spouse to be dissolved.

28 On 1 April 2005, Ms Pehlivan left her parents' home and moved with her son to another address in the Netherlands.

29 By decision of 13 October 2003, the Staatssecretaris withdrew Ms Pehlivan's residence permit retroactively, with effect from 22 December 2000, the date on which she married her spouse. That withdrawal was based on the fact that, under Netherlands law, Ms Pehlivan was deemed to have definitively broken the actual family link with her parents by getting married.

30 The Netherlands authorities concluded on that basis that Ms Pehlivan had resided legally in the Netherlands only up to 22 December 2000, that is to say, for a period of less than three years, with the result that she could no longer validly rely on the first indent of the first paragraph of Article 7 of Decision No 1/80 and that she ought for that reason to be expelled.

31 Being of the opinion that she had in fact continued to reside with her parents after 22 December 2000 and that her situation with regard to the abovementioned provision of Decision No 1/80 had at no time been affected by her marriage, Ms Pehlivan lodged, on 7 November 2003, an appeal against the decision to deport her. Following rejection of that appeal, she brought, on 29 December 2005, an action before the Rechtbank 's-Gravenhage (District Court, The Hague), also applying for enforcement of the deportation decision to be suspended.

32 According to the referring court, it is common ground that Ms Pehlivan's father must be regarded as a Turkish worker within the meaning of Decision No 1/80 and that he is duly registered as belonging to the labour force of the host Member State.

33 It is also not in dispute between the parties to the main proceedings that Ms Pehlivan, since 12 August 1999, actually lived under the same roof as her parents for an uninterrupted period of at least three years.

34 As it took the view that the resolution of the dispute brought before it depends on whether that last-mentioned fact is sufficient to allow the conclusion that Ms Pehlivan fulfils the condition, laid down in the first indent of the first paragraph of Article 7 of Decision No 1/80, concerning legal residence for three years in the host Member State, and may thus validly rely on the rights conferred on her by that provision, the

Rechtbank 's-Gravenhage decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'1. (a) Must the first indent of the first paragraph of Article 7 of [Decision No 1/80] be interpreted as meaning that that article is applicable if a family member has actually cohabited with a Turkish worker for three years without the right of residence of that family member being challenged by the competent national authorities during those three years?

(b) Does the first indent of the first paragraph of Article 7 of [Decision No 1/80] prevent a Member State from stipulating during those three years that, if the family member who has been admitted marries, no further rights are acquired under that provision, even if the family member continues to live with the Turkish worker?

2. Does the first indent of the first paragraph of Article 7 [of Decision No 1/80] or any other provision or principle of European law prevent the competent national authorities from challenging the right of residence of the foreign national concerned with retroactive effect after that period of three years under national rules determining whether that person is a family member and/or was legally resident during those three years?

3. (a) Is it of any relevance to the answers to the above questions whether or not the foreign national intentionally withholds information which is relevant to his right of residence under national legislation? If so, in what way?

(b) Does it make any difference in this context whether that information becomes known in the aforementioned period of three years or only after those three years have elapsed, bearing in mind that, after that information has become known, the competent national authorities possibly need to undertake (further) investigations before reaching their decision? If so, in what way?'

Consideration of the questions referred

Preliminary observations

35 According to the order for reference, the reference for a preliminary ruling from the Rechtbank 's-Gravenhage concerns the situation of a Turkish national who, as a child, and therefore as a member of the family of a Turkish migrant couple, at least one of whom is duly registered as belonging to the labour force of the Netherlands, was authorised to join her parents on the territory of the host Member State for the purposes of family reunification, on the basis of the first paragraph of Article 7 of Decision No 1/80.

36 The referring court has established that Ms Pehlivan lived under the same roof as her parents for an uninterrupted period of more than three years, but the Netherlands authorities subsequently called into question her right of residence in the host Member State on the ground that she had married before the expiry of the three-year period laid down in the first indent of the first paragraph of Article 7 of Decision No 1/80. Those authorities based their action in that regard on national law, according to which the actual family link of a child who has obtained majority with its parents is deemed to have been broken where that child marries, since the child is no

long emotionally or financially dependent on its parents, with the result that, in such a case, the residence permit can no longer validly be based on family reunification.

37 In those circumstances, it is necessary to decide at the outset, as the referring court asks in essence by its first question, whether a Turkish national in a situation such as that of the applicant in the main proceedings may validly rely on the first indent of the first paragraph of Article 7 of Decision No 1/80.

38 To that end, it is in particular necessary to determine whether the first indent of the first paragraph of Article 7 of Decision No 1/80 can be interpreted as meaning that the fact that a member of the family of a Turkish migrant worker, admitted to a Member State on the basis of family reunification with her parents, marries before the expiry of the period of three years laid down in that provision, automatically renders illegal, for the purposes of that provision, the residence of the person concerned in the host Member State and whether, in consequence, that Member State may validly apply national legislation on residence of the type described in paragraph 20 of the present judgment to a Turkish national, such as the applicant in the main proceedings, in respect of whom it is common ground that she actually resided with her parents throughout that entire period.

The first question

39 In order to provide a useful response to the first question as defined in the two preceding paragraphs, it should be recalled that the first paragraph of Article 7 of Decision No 1/80 has direct effect, with the result that Turkish nationals to whom that provision applies have the right to rely on it directly before the courts of the Member States in order to obtain the disapplication of rules of national law which infringe that

provision (see, to that effect, inter alia, Case C-351/95 *Kadiman* [1997] ECR I-2133, paragraph 28, and Case C-303/08 *Bozkurt* [2010] ECR I-13445, paragraph 31).

40 As is apparent from the very wording of the first paragraph of Article 7 of Decision No 1/80, the acquisition of the rights provided for in that provision is made subject to two prior cumulative conditions, namely, first, that the person concerned must be a member of the family of a Turkish worker who is already duly registered as belonging to the labour force of the host Member State and, second, that he has been authorised by the competent authorities of that State to join that worker there (*Bozkurt*, paragraph 26). As stated in paragraphs 21 to 23 of the present judgment, it is common ground that, in the present case, Ms Pehlivan satisfied those conditions.

41 Once those prior conditions are met, it remains to be established, for the purposes of the application of the first paragraph of Article 7 of Decision No 1/80, whether the Turkish resident concerned has been legally resident for a certain period on the territory of the host Member State (see, inter alia, Case C-373/03 *Aydinli* [2005] ECR I-6181, paragraph 29).

42 The periods of residence as set out in the two indents of the first paragraph of Article 7, if they are not to be rendered totally ineffective, require that a concomitant right of residence for the duration of those periods be acknowledged for the members of the family of a Turkish worker authorised to join him in the host Member State (see *Kadiman*, paragraph 29, and *Bozkurt*, paragraphs 31 and 36). The refusal to confer such a right would render meaningless the authorisation granted by the Member State concerned to a member of the family of a migrant Turkish worker to join that worker and would constitute the very negation of the opportunity thus provided to the person concerned to reside in the territory of the host Member State.

43 Consequently, the member of the family of a Turkish worker who, like Ms Pehlivan, satisfies the two prior conditions indicated in paragraph 40 of the present judgment and who has resided legally in the territory of the host Member State for more than three years, necessarily enjoys a right of residence in that State which is based directly on that provision.

44 With regard, more specifically, to the criterion of legal residence before expiry of the initial three-year period, set out in the first indent of the first paragraph of Article 7 of Decision No 1/80, it is settled case-law of the Court that the terms used in the various provisions of Decision No 1/80 are concepts of European Union law which must be defined uniformly at European Union level, in the light of the spirit and purpose of the provisions in question, and of their context, in order to ensure their consistent application in the Member States (see, inter alia, Case C-98/96 *Ertanir* [1997] ECR I-5179, paragraph 59, and Case C-275/02 *Ayaz* [2004] ECR I-8765, paragraphs 39 and 40).

45 In that regard, in accordance with the general objective pursued by that decision, which is to improve, in the social field, the treatment accorded to Turkish workers and members of their families with a view to achieving gradually freedom of movement (see, inter alia, Case C-329/97 *Ergat* [2000] ECR I-1487, paragraph 43), the system put in place by, in particular, the first paragraph of Article 7 of that decision is intended to create circumstances which will promote family reunification in the host Member State. First, that is to say, before the initial period of three years laid down in the first indent of that provision expires, that provision seeks to further the employment and residence of a Turkish worker who is already legally present on the territory of that State by means of the presence, with that worker, of members of his family. Thereafter, the second indent of that provision consolidates the position of the members of the Turkish migrant worker's family by giving them the possibility of themselves gaining access to the labour force of that Member State, in order to establish a position which is independent of that of the worker and thus to deepen the family's lasting integration in the host Member State (*Bozkurt*, paragraphs 33 and 34 and the case-law cited).

46 The Court has concluded from that that the family member is, as a rule and unless he has good reason not to, required actually to reside with the migrant worker as long as he does not himself have the right of access to the labour market, that is to say, until the three-year period laid down in the first indent of the first paragraph of Article 7 of Decision No 1/80 has expired (*Bozkurt*, paragraph 35). As the Court pointed out in paragraphs 42 and 44 of its judgment in *Kadiman*, the position would be different only if objective circumstances justified the failure of the family member concerned to live under the same roof as the Turkish migrant worker in the host Member State.

47 The Court has explained in that context that, in the light both of the essential purpose and of the spirit of the first paragraph of Article 7 of Decision No 1/80, the unity of the family, in pursuit of which the family member entered the territory of the host Member State, should be evidenced specifically by the continuous presence of that family member with the worker, such presence involving cohabitation of the persons concerned, until that family member acquires the right, after three years, to live independently of the parent who enabled him to integrate in the host Member State (*Ergat*, point 36).

48 The Court has also interpreted the first indent of the first paragraph of Article 7 of Decision No 1/80 as not precluding the host Member State from subjecting that right of residence of the family member during the first three years to conditions of such a kind as to ensure that the presence of that family member in its territory is in conformity with the spirit and purpose of the first paragraph of Article 7 (*Kadiman*, paragraph 33).

49 In order to determine the exact scope of that interpretation, it is necessary to recall the logic of the system underlying the first paragraph of Article 7 of Decision No 1/80, as established by the contracting parties.

50 In that regard, it is clear from the case-law of the Court that, first, the first admission to the territory of a Member State of a member of the family of a Turkish worker already duly registered as belonging to the labour force of that State is, as a rule, a matter for that State's national law, that competence being evident from the authorisation granted to the person concerned, by the competent national authorities, to join that worker (*Ayaz*, paragraphs 34 and 35).

51 Second, once the initial three-year period provided for in the first indent of the first paragraph of Article 7 of Decision No 1/80 has expired, the Member State is no longer entitled to attach any conditions to the residence of a member of a Turkish worker's family (see *Ergat*, paragraph 38, and Case C-467/02 *Cetinkaya* [2004] ECR I-10895, paragraph 30).

52 With regard to the intermediate phase, the view must be taken that, within the period of three years from the arrival of the family member concerned in the territory of the host Member State, that State has certain powers to regulate the residence of the person concerned, although those powers are not unlimited.

53 In particular, as is clear from the actual wording of paragraph 33 of the judgment in *Kadiman*, the host Member State may subject the residence of the member of the family of the Turkish worker only to conditions intended to guarantee full compliance with the objective pursued by the first paragraph of Article 7 of Decision No 1/80, by ensuring that the person concerned does not reside in its territory in disregard of the spirit and purpose of that provision, as stated in paragraph 45 of the present judgment.

54 Given that, during those three years, the members of the family of the Turkish worker concerned are not entitled, as a rule and subject to more favourable treatment as provided for in Article 14(2) of Decision No 1/80, to live independently while in paid

employment, the only reason for their residence in the host Member State, during that period, is the unity of the family, which enables the Turkish worker on whose account they were permitted to enter the territory of that State to reside there in the presence of the members of his family.

55 Consequently, the host Member State may validly require that, during the initial period of three years, the family member in question should continue actually to reside with the Turkish migrant worker concerned.

56 By contrast, that Member State is not entitled to provide in that regard for rules which differ from those resulting from Decision No 1/80 or which impose conditions other than those provided for in that decision. According to the Court's well-established case-law, it follows both from the primacy of European Union law and from the direct effect of a provision such as the first paragraph of Article 7 of Decision No 1/80 that Member States are not permitted to modify unilaterally the scope of the system of gradually integrating Turkish nationals in the host Member State and do not, therefore, have the power to adopt measures which may undermine the legal status expressly conferred on those nationals by the law governing the EEC-Turkey Association (see, to that effect, Case C-65/98 *Eyüp* [2000] ECR I-4747, paragraphs 40 and 41; Case C-188/00 *Kurz* [2002] ECR I-10691, paragraphs 66 to 68; and Case C-14/09 *Genc* [2010] ECR I-931, paragraphs 36 to 38).

57 That is, however, precisely what legislation of the kind at issue in the main proceedings does. Thus, legislation of the kind contained in section B2/8.3 of the Vc 2000, far from providing merely that the member of the Turkish worker's family must actually live under the same roof as the latter during the first three years of his residence in the host Member State, lays down a rule under which, inter alia, the marriage of a child who has attained majority or who enters into a relationship is, per se, deemed to have broken the actual family link. That legislation accordingly enables the national authorities automatically to withdraw the residence permit from the family member

who is in such a situation, even if the person concerned continued to cohabit with that worker.

58 It must for that reason be concluded that legislation of that kind clearly goes beyond the limits of the measures which the host Member State is authorised to adopt on the basis of Decision No 1/80. No conditions whatsoever such as that indicated in the previous paragraph are to be found in the first paragraph of Decision No 1/80, which is, on the contrary, drafted in a general and unconditional manner, and no such condition finds support on the basis of the spirit in which that provision was adopted.

59 With regard, in particular, to the situation of a family member such as the applicant in the main proceedings, according to the findings of the referring court Ms Pehlivan, since her admission to Netherlands territory in 1999 and until 1 April 2005, the date on which she left the family home to set up home at a new address, never ceased living with her parents, who are legally present in the host Member State and at least one of whom was duly registered as belonging to the labour force of that State.

60 According to the information available to the Court, it is thus apparent that, in the present case, Ms Pehlivan resided in the host Member State for an uninterrupted period of more than three years, in full conformity with the requirements of the first paragraph of Article 7 of Decision No 1/80 and with the underlying objective of that provision, namely that of family reunification.

61 In those circumstances, Ms Pehlivan must be considered to have been at all times legally resident in the Netherlands, within the meaning of that provision. In circumstances

such as those in the main proceedings, Ms Pehlivan's right of residence in the host Member State is not therefore, in any event, at all affected by the marriage which she entered into before expiry of the three-year period laid down in the first indent of that provision, since that marriage did not, in the present case, lead to her ceasing actually to cohabit with that Turkish worker.

62 That interpretation is, moreover, consistent with the settled case-law of the Court according to which members of a Turkish worker's family who fulfil the conditions laid down in the first paragraph of Article 7 of Decision No 1/80 can lose the rights conferred on them by that provision only in two cases, that is to say, either where the presence of the Turkish migrant in the host Member State constitutes, by reason of his personal conduct, a genuine and serious threat to public policy, public security or public health, within the terms of Article 14(1) of that decision, or where the person concerned has left the territory of that State for a significant length of time without legitimate reason (see, inter alia, *Bozkurt*, paragraph 42 and the case-law cited).

63 From this it follows that, in particular, that, as the Court has already held and contrary to the legislation at issue in the main proceedings, the fact that, at the time when the facts at issue occur, the person concerned has reached the age of majority, does not affect the rights which he has acquired on the basis of the first paragraph of Article 7 of Decision No 1/80 (see, to that effect, inter alia, *Ergat*, paragraphs 26 and 27, and Case C-502/04 *Torun* [2006] ECR I-1563, paragraph 28 and case-law cited).

64 On the basis of all those considerations, it must be concluded that, in circumstances such as those at issue in the main proceedings, the marriage, entered into by the member of the family of a Turkish worker before expiry of the three-year period provided for under the first paragraph of Article 7 of Decision No 1/80, is irrelevant with regard to the retention of the right of residence enjoyed by the holder of that right, in

so far as, during the whole of that period, that person actually lived under the same roof as that worker. The Member State concerned was therefore not justified in calling into question in the present case the right of residence which the applicant in the main proceedings derives from European Union law, and it is for the national courts to apply that law in its entirety and to protect the rights which it confers directly on individuals, setting aside any provision of the law of that State which may conflict with it (see *Eyüp*, paragraph 42, and *Kurz*, paragraph 69).

65 Lastly, it must be pointed out that the interpretation given in the preceding paragraph is not incompatible with the requirements of Article 59 of the Additional Protocol signed on 23 November 1970. On similar grounds to those set out by the Court in paragraphs 62 to 67 of its judgment in Case C-325/05 *Derin* [2007] ECR I-6495, in paragraph 21 of its judgment in Case C-349/06 *Polat* [2007] ECR I-8167, and in paragraph 45 of its judgment in *Bozkurt*, the situation of a member of the family of a Turkish migrant worker cannot usefully be compared to that of a member of the family of a national of a Member State, having regard to the significant differences between their respective legal situations (see, to that effect, Case C-462/08 *Bekleyen* [2010] ECR I-563, paragraphs 37, 38 and 43).

66 Consequently, in the light of all of the foregoing, the answer to the first question is that the first indent of the first paragraph of Article 7 of Decision No 1/80 must be interpreted as meaning that:

— that provision precludes legislation of a Member State under which a family member properly authorised to join a Turkish migrant worker who is already duly registered as belonging to the labour force of that State loses the enjoyment of the rights based on family reunification under that provision for the reason only that, having attained majority, he or she gets married, even where he or she continues to live with that worker during the first three years of his or her residence in the host Member State;

— a Turkish national who, like the applicant in the main proceedings, comes within that provision may validly claim a right of residence in the host Member State on the basis thereof, notwithstanding the fact that he or she got married before the expiry of the three-year period laid down in that first indent of the first paragraph of Article 7 of Decision No 1/80, in the case where, during the whole of that period, he or she actually lived under the same roof as the Turkish migrant worker through whom he or she was admitted to the territory of that State on the ground of family reunification.

67 In the light of the answer to the first question, it is no longer necessary to reply to the other questions submitted by the referring court.

Costs

68 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. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (First Chamber) hereby rules:

The first indent of the first paragraph of Article 7 of Decision No 1/80 of 19 September 1980 on the development of the Association, adopted by the Association Council set up by the Agreement establishing an Association between the European Economic Community and Turkey, must be interpreted as meaning that:

— **that provision precludes legislation of a Member State under which a family member properly authorised to join a Turkish migrant worker who is already**

duly registered as belonging to the labour force of that State loses the enjoyment of the rights based on family reunification under that provision for the reason only that, having attained majority, he or she gets married, even where he or she continues to live with that worker during the first three years of his or her residence in the host Member State;

— **a Turkish national who, like the applicant in the main proceedings, comes within that provision may validly claim a right of residence in the host Member State on the basis thereof, notwithstanding the fact that he or she got married before the expiry of the three-year period laid down in that first indent of the first paragraph of Article 7 of Decision No 1/80, in the case where, during the whole of that period, he or she actually lived under the same roof as the Turkish migrant worker through whom he or she was admitted to the territory of that State on the ground of family reunification.**

[Signatures]