



## Reports of Cases

### JUDGMENT OF THE COURT (First Chamber)

29 March 2012\*

((EEC-Turkey Association Agreement — Right of residence — Members of the family of a Turkish worker who has been naturalised — Retention of Turkish nationality — Date of naturalisation))

In Joined Cases C-7/10 and C-9/10,

REFERENCES for a preliminary ruling under Article 267 TFEU from the Raad van State (Netherlands), made by decision of 31 December 2009, received at the Court on 8 January 2010, in the proceedings

**Staatssecretaris van Justitie**

v

**Tayfun Kahveci** (C-7/10),

**Osman Inan** (C-9/10),

THE COURT (First Chamber),

composed of A. Tizzano, President of the Chamber, M. Safjan, M. Ilešič, E. Levits (Rapporteur) and M. Berger, Judges,

Advocate General: E. Sharpston,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 3 February 2011,

after considering the observations submitted on behalf of:

- Mr Kahveci, by A. Durmus and E. Köse, advocaaten,
- Mr Inan, by H. Drenth, advocaat,
- the Netherlands Government, by C. Wissels and J. Langer, acting as Agents,
- the Polish Government, by M. Szpunar, M. Arciszewski and A. Miłkowska, acting as Agents,
- the European Commission, by M. van Beek and G. Rozet, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 20 October 2011,

\* Language of the case: Dutch.

gives the following

### Judgment

- 1 The present references for a preliminary ruling concern the interpretation 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, 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 1977 L 361, p. 29; the 'Association Agreement').
- 2 The references have been made in proceedings between the Staatssecretaris van Justitie (State Secretary for Justice; 'the State Secretary') and, first, Mr Kahveci and, second, Mr Inan, concerning whether a member of the family of a worker who holds not only Turkish nationality but also that of the host Member State can rely on Article 7 of Decision No 1/80.

### Legal context

#### *Decision No 1/80*

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

'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.

...'

- 4 Article 14(1) of Decision No 1/80 states:

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

#### *National legislation*

- 5 Under Article 18(1)(e) of the Law on Foreign Nationals of 2000 (Vreemdelingenwet 2000, Stb. 2000, No 495; 'the Vw 2000'), an application for the extension of a temporary residence permit may be refused if the foreign national constitutes a threat to public policy or national security. Article 19 of the Vw 2000 provides that a temporary residence permit may be withdrawn on the same grounds.
- 6 Article 67(1)(b) of the Vw 2000 provides that the State Secretary may declare a foreign national undesirable if the latter has been convicted by a judgment which has become final of an offence punishable by a sentence of imprisonment of three years or more. By virtue of Article 67(3), a foreign national who has been declared undesirable cannot be lawfully resident in the Netherlands.

- 7 Article 3.86(1)(d) of the Decree on Foreign Nationals of 2000 (Vreemdelingenbesluit 2000, Stb. 2000, No 497) provides that an application for the extension of a temporary residence permit can be refused by virtue of Article 18(1)(e) of the Vw 2000 because of a threat to public policy if, inter alia, the foreign national has been convicted by a judgment which has become final of an offence punishable by imprisonment of three years or more, and has been given a custodial sentence the non-suspended portion of which is at least equal to the period set out in Article 3.86(2), which lays down a sliding scale based on the length of stay of the person concerned in the Netherlands.

### **The disputes in the main proceedings and the questions referred for a preliminary ruling**

#### *Case C-7/10*

- 8 Mr Kahveci holds Turkish nationality. His wife, also a Turkish national, was born in the Netherlands as the child of a Turkish worker and is duly registered as belonging to the labour force in the Netherlands. In June 1999, before her husband's lawful arrival in the Netherlands in the same year, she obtained Netherlands nationality whilst retaining her Turkish nationality.
- 9 The residence permit issued to Mr Kahveci was made subject to the restriction 'residence with spouse R. Kahveci'. The permit's validity was extended on a number of occasions, most recently to 12 March 2009. Until his imprisonment, Mr Kahveci resided with his wife.
- 10 On 23 January 2007, Mr Kahveci was definitively sentenced to a non-suspended term of imprisonment of six years and nine months.
- 11 By decision of 20 March 2007, the State Secretary declared Mr Kahveci undesirable because of his sentence and also withdrew his residence permit.
- 12 The objection lodged by Mr Kahveci against that decision was rejected on the ground that he could not rely on Article 7 of Decision No 1/80 since his wife held Netherlands nationality. Accordingly he could not be regarded as a family member of a Turkish worker duly registered as belonging to the labour force even though the latter had retained Turkish nationality in addition to Netherlands nationality.
- 13 Since the judge hearing applications for interim measures at the Rechtbank 's-Gravenhage (District Court, The Hague) had declared the action brought by Mr Kahveci against the rejection of that objection to be well founded, the State Secretary appealed to the Raad van State (Council of State).
- 14 He submits that Mr Kahveci no longer fell within the scope of Decision No 1/80 and that it no longer served any purpose for his wife to rely on the improvement in the social field which that decision brought about.

#### *Case C-9/10*

- 15 Mr Inan holds Turkish nationality. His father, Mr H. Inan, who is also a Turkish national and whose status as being duly registered as belonging to the Netherlands labour force is not questioned, has held Netherlands nationality since 1993 in addition to his Turkish nationality.
- 16 Mr Inan lawfully entered the Netherlands in 1999. The residence permit issued to him was subject to the restriction 'family reunification with parent H. Inan'. That permit's validity was extended on a number of occasions, most recently to 10 June 2005. Until his imprisonment, Mr Inan resided with his father.

- 17 On 22 May 2007, Mr Inan was definitively sentenced to a non-suspended term of imprisonment of seven years.
- 18 By decision of 13 November 2007, the State Secretary declared Mr Inan undesirable because of his sentence and dismissed his application for an extension of his residence permit.
- 19 The main proceedings then progressed in a manner analogous to those brought by Mr Kahveci, described in paragraphs 12 to 14 of this judgment.
- 20 In those circumstances, being of the view that the outcome of both the cases before it depended on the interpretation of European Union law, the Raad van State decided to stay the proceedings and to refer the following questions, which are formulated in identical terms in both cases, to the Court for a preliminary ruling:
- ‘1. Must Article 7 of Decision No 1/80 be interpreted as meaning that the family members of a Turkish worker duly registered as belonging to the labour force of a Member State cannot invoke that provision once that worker has acquired the nationality of the host Member State while retaining his Turkish nationality?
  2. In answering the first question, is the time at which the Turkish worker concerned acquired the nationality of the host Member State of relevance?’
- 21 By order of the President of the Court of 9 February 2010, Cases C-7/10 and C-9/10 were joined for the purposes of the written and oral procedure and of the judgment.

### **Consideration of the questions referred**

- 22 By its two questions, which it is appropriate to consider together, the national court asks, in essence, whether Article 7 of Decision No 1/80 must be interpreted as meaning that the members of the family of a Turkish worker duly registered as belonging to the labour force of a Member State can still invoke that provision once that worker has acquired the nationality of the host Member State while retaining his Turkish nationality.
- 23 It must be noted, as a preliminary point, that Article 7 of Decision No 1/80 forms an integral part of European Union law (see Case C-192/89 *Sevince* [1990] ECR I-3461, paragraphs 8 and 9). The Member States are thus bound by obligations arising under that provision in precisely the same way as they are under a duty to observe rights established by European Union legislation.
- 24 Next, it must be borne in mind that, in accordance with settled case-law, the first paragraph of Article 7 of Decision No 1/80 has direct effect, so 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 have rules of national law which are contrary to it disapplied (see, to that effect, inter alia, Case C-351/95 *Kadiman* [1997] ECR I-2133, paragraph 28; Case C-303/08 *Bozkurt* [2010] ECR I-13445, paragraph 31; and Case C-484/07 *Pehlivan* [2011] ECR I-5203, paragraph 39).
- 25 That having been said, in order to answer the questions posed, that provision should be interpreted in the light of its wording, the objective which it pursues and the system it establishes (see, to that effect, Case C-465/04 *Honyvem Informazioni Commerciali* [2006] ECR I-2879, paragraph 17).
- 26 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 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 (see *Bozkurt*, paragraph 26).

- 27 Where those 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 worker concerned has been legally resident for a certain period on the territory of the host Member State with the worker from whom he derives his rights (see, inter alia, Case C-373/03 *Aydinli* [2005] ECR I-6181, paragraph 29).
- 28 Consequently, the Court has already held that a member of the family of a worker holding only Turkish nationality necessarily enjoys, if he satisfies the conditions indicated in paragraphs 26 and 27 of the present judgment, a right of residence in that State which is based directly on the first paragraph of Article 7 of Decision No 1/80 (*Pehlivan*, paragraph 43).
- 29 With regard to the main proceedings, it is common ground that, as has been noted in paragraphs 8 to 10 and 15 to 17 of the present judgment, Mr Kahveci and Mr Inan satisfy the conditions referred to in paragraphs 26 and 27 hereof.
- 30 It therefore remains to be determined, in the light of the objective pursued by the first paragraph of Article 7 of Decision No 1/80 and the system which it establishes, whether the fact that the Turkish worker who is already duly registered as belonging to the labour force of the host Member State has acquired, in addition to Turkish nationality, the nationality of the host Member State means that the members of his family can no longer rely on that provision.
- 31 In that regard, it should be noted that the scheme of gradual acquisition of rights which is provided for in the first paragraph of Article 7 of Decision No 1/80 pursues a dual objective.
- 32 First, before the initial period of three years expires, that provision seeks to enable family members to be with a migrant worker, with a view to thus furthering, by means of family reunification, the employment and residence of the Turkish worker who is already legally integrated in the host Member State (see, inter alia, Case C-65/98 *Eyüp* [2000] ECR I-4747, paragraph 26; Case C-467/02 *Cetinkaya* [2004] ECR I-10895, paragraph 25; and *Bozkurt*, paragraph 33).
- 33 Thereafter, that provision seeks to deepen the lasting integration of the Turkish migrant worker's family in the host Member State by granting to the family member concerned, after three years of legal residence, the possibility of himself gaining access to the labour force. The fundamental objective thus pursued is that of consolidating the position of that family member, who is, at that stage, already legally integrated in the host Member State, by giving him the means to earn his own living in that State and therefore to establish a position which is independent of that of the migrant worker (see, inter alia, *Eyüp*, paragraph 26; *Cetinkaya*, paragraph 25; *Aydinli*, paragraph 23; Case C-325/05 *Derin* [2007] ECR I-6495, paragraphs 50 and 71; and *Bozkurt*, paragraph 34).
- 34 In the light of the general objective pursued by Decision No 1/80, which is, unlike that of a cooperation agreement such as the agreement concluded between the European Economic Community and the Kingdom of Morocco, signed in Rabat on 27 April 1976 and approved on behalf of the Community by Council Regulation (EEC) No 2211/78 of 26 September 1978 (OJ 1978 L 264, p. 1), 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-179/98 *Mesbah* [1999] ECR I-7955, paragraph 36, and 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 thus intended to create conditions which will promote family reunification in the host Member State (see *Pehlivan*, paragraph 45).

- 35 That aim pursued by Decision No 1/80 would be impeded if acquisition of the nationality of the host Member State were to require a worker who retains Turkish nationality to forego the benefit of the conditions which promote family reunification in the host Member State.
- 36 In addition, it must be pointed out that the Court has held that Turkish nationals who satisfy the conditions laid down in one of the provisions of Decision No 1/80 accordingly enjoy the rights conferred on them by that decision (see, inter alia, Case C-337/07 *Altun* [2008] ECR I-10323, paragraphs 28 and 29, and *Bozkurt*, paragraph 39) and that Member States are not entitled to provide for rules which differ from those resulting from Decision No 1/80 or which impose conditions other than those provided for in that decision (see *Pehlivan*, paragraph 56).
- 37 According to the Court's settled 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 therefore no longer have the power to adopt measures which may undermine the legal status expressly conferred on such nationals by the law resulting from the EEC-Turkey Association Agreement (see *Pehlivan*, paragraph 56 and the case-law cited).
- 38 A rule of the type at issue in the main proceedings, providing that the rights conferred by the first paragraph of Article 7 of Decision No 1/80 can no longer be relied upon where the Turkish worker who is already legally integrated in the host Member State has obtained Netherlands nationality, would have precisely the effect of undermining the legal status expressly conferred on Turkish nationals by the law resulting from the EEC-Turkey Association Agreement.
- 39 Accordingly, it must be stated that, as regards Turkish nationals such as Mr Kahveci and Mr Inan, it is Article 14(1) of Decision 1/80 which establishes the relevant legal framework for assessing to what extent a Turkish national who has been convicted of criminal offences may be deprived, by means of expulsion from the host Member State, of the rights which he derives directly from that decision (see, inter alia, *Derin*, paragraph 74, and *Bozkurt*, paragraph 54).
- 40 In that regard, the Court has held that it is for the national authorities concerned to assess on a case-by-case basis the personal conduct of the offender and whether it constitutes a present, genuine and sufficiently serious threat to public policy and security, and that those authorities are also required to observe both the principle of proportionality and the fundamental rights of the person concerned. In particular, a measure ordering expulsion based on Article 14(1) of Decision No 1/80 may be taken only if the personal conduct of the person concerned indicates a specific risk of new and serious prejudice to the requirements of public policy (see *Derin*, paragraph 74, and *Bozkurt*, paragraph 60).
- 41 It follows from the foregoing that the answer to the questions referred is that Article 7 of Decision No 1/80 must be interpreted as meaning that the members of the family of a Turkish worker duly registered as belonging to the labour force of a Member State can still invoke that provision once that worker has acquired the nationality of the host Member State while retaining his Turkish nationality.

### Costs

- 42 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:

**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 the members of the family of a Turkish worker duly registered as belonging to the labour force of a Member State can still invoke that provision once that worker has acquired the nationality of the host Member State while retaining his Turkish nationality.**

[Signatures]