



## Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

9 February 2023\*

(Reference for a preliminary ruling – EEC-Turkey Association Agreement – Decision No 1/80 – Articles 6 and 7 – Turkish nationals already integrated into the labour market of the host Member State and enjoying an associated right of residence – Decisions of national authorities withdrawing the right of residence of Turkish nationals who have been lawfully resident in the Member State concerned for more than 20 years on the ground that they constitute a present, genuine and sufficiently serious threat to a fundamental interest of society – Article 13 – Standstill clause – Article 14 – Justification – Grounds of public policy)

In Case C-402/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the Raad van State (Council of State, Netherlands), made by decision of 23 June 2021, received at the Court on 30 June 2021,

in the proceedings between

**Staatssecretaris van Justitie en Veiligheid,**

v

**S,**

and in the proceedings

**E,**

**C**

v

**Staatssecretaris van Justitie en Veiligheid,**

THE COURT (Second Chamber),

composed of A. Prechal, President of the Chamber, M.L. Arastey Sahún, F. Biltgen (Rapporteur), N. Wahl and J. Passer, Judges,

Advocate General: G. Pitruzzella,

\* Language of the case: Dutch.

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 28 September 2022,

after considering the observations submitted on behalf of:

- E, by A. Durmus and E. Köse, advocaten,
- C, by A. Agayev and Š. Petković, advocaten,
- S, by N. van Bremen, advocaat,
- the Netherlands Government, by M.K. Bulterman and A. Hanje, acting as Agents,
- the Danish Government, by M. Brochner Jespersen, J. Farver Kronborg, V. Pasternak Jørgensen, M. Søndahl Wolff and Y. Thyregod Kollberg, acting as Agents,
- the German Government, by J. Möller and R. Kanitz, acting as Agents,
- the European Commission, by D. Martin and H. van Vliet, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

### **Judgment**

- 1 This reference for a preliminary ruling concerns the interpretation of Articles 6, 7, 13 and 14 of Decision No 1/80 of the Association Council of 19 September 1980 on the development of the Association between the European Economic Community and Turkey ('Decision No 1/80').
- 2 The request has been made in two sets of proceedings between the Staatssecretaris van Justitie en Veiligheid (State Secretary for Justice and Security, Netherlands) ('the State Secretary') and S, on the one hand, and E and C, respectively, and the State Secretary, on the other hand, concerning the adoption by the latter of decisions ordering the withdrawal of the right of residence of S, E and C (together 'the persons concerned') and their expulsion from the territory of the Netherlands.

### **Legal context**

#### ***European Union law***

##### *The Association Agreement*

- 3 It is apparent from Article 2(1) of the Agreement establishing an Association between the European Economic Community and Turkey signed on 12 September 1963 in Ankara by the Republic of Türkiye, on the one hand, and by Member States of the EEC and the Community, on

the other, and concluded, approved and confirmed on behalf of the Community by Council Decision No 64/732/EEC of 23 December 1963 (OJ 1964, 217, p. 3685) (‘the Association Agreement’) that the aim of that agreement is to promote the continuous and balanced strengthening of trade and economic relations between the Contracting Parties, while taking full account of the need to ensure an accelerated development of the Republic of Türkiye’s economy and to improve the level of employment and the living conditions of the Turkish people.

4 To that end, the Association Agreement involves a preparatory stage, enabling the Republic of Türkiye to strengthen its economy with aid from the Community (Article 3 of the agreement), a transitional stage during which the contracting parties ensure the progressive establishment of a customs union and the alignment of economic policies (Article 4 of the agreement) and a final stage based on the customs union and entailing closer coordination of the economic policies of the Contracting Parties (Article 5 of the agreement).

5 Article 6 of the Association Agreement provides:

‘To ensure the implementation and progressive development of the Association, the Contracting Parties shall meet in a Council of Association which shall act within the powers conferred on it by [the Association] Agreement.’

#### *The Additional Protocol*

6 The Additional Protocol, signed on 23 November 1970 in Brussels and concluded, approved and confirmed on behalf of the Community by Council Regulation (EEC) No 2760/72 of 19 December 1972 (OJ 1972 L 293, p. 1) (‘the Additional Protocol’) which, according to Article 62 thereof, forms an integral part of the Association Agreement, lays down, in Article 1, the conditions, arrangements and timetables for implementing the transitional stage referred to in Article 4 of that agreement.

7 The Additional Protocol includes Title II, headed ‘Movement of persons and services’, Chapter I of which concerns ‘workers’ and Chapter II of which is entitled ‘Right of establishment, services and transport’.

8 Article 59 of that protocol provides:

‘In the fields covered by this Protocol, [the Republic of Türkiye] shall not receive more favourable treatment than that which Member States grant to one another pursuant to the [EC Treaty].’

#### *Decision No 1/80*

9 Chapter II of Decision No 1/80, entitled ‘Social Provisions’, includes Section 1, entitled ‘Questions relating to employment and the free movement of workers’, which contains Articles 6 to 16 of that decision.

10 Article 6 of that decision provides:

‘1. Subject to Article 7 on free access to employment for members of his family, a Turkish worker duly registered as belonging to the labour force of a Member State:

- shall be entitled in that Member State, after one year’s legal employment, to the renewal of his permit to work for the same employer, if a job is available;
- shall be entitled in that Member State, after three years of legal employment and subject to the priority to be given to workers of Member States of the Community, to respond to another offer of employment, with an employer of his choice, made under normal conditions and registered with the employment services of that State, for the same occupation;
- shall enjoy free access in that Member State to any paid employment of his choice, after four years of legal employment.

...

3. The procedures for applying paragraphs 1 and 2 shall be those established under national rules.’

11 Article 7 of that decision states:

‘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.’

12 Article 13 of Decision No 1/80 states:

‘The Member States of the Community and [the Republic of Türkiye] may not introduce new restrictions on the conditions of access to employment applicable to workers and members of their families legally resident and employed in their respective territories.’

13 Article 14 of that decision 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 [the Republic of Türkiye] and the Member States of the Community, where such legislation or agreements provide for more favourable treatment for their nationals.'

- 14 In accordance with Article 16 of that decision, the provisions of Section 1 of Chapter II thereof are applicable as from 1 December 1980.

*Directive 2003/109/EC*

- 15 Article 12 of Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents (OJ 2004 L 16, p. 44), entitled 'Protection against expulsion', provides:

'1. Member States may take a decision to expel a long-term resident solely where he/she constitutes an actual and sufficiently serious threat to public policy or public security.

2. The decision referred to in paragraph 1 shall not be founded on economic considerations.

3. Before taking a decision to expel a long-term resident, Member States shall have regard to the following factors:

- (a) the duration of residence in their territory;
- (b) the age of the person concerned;
- (c) the consequences for the person concerned and family members;
- (d) links with the country of residence or the absence of links with the country of origin.

...'

*Netherlands law*

*The Law on foreign nationals*

- 16 Article 22 of the Wet tot algehele herziening van de Vreemdelingenwet (Vreemdelingenwet 2000) (Law on foreign nationals of 2000) of 23 November 2000 (Stb. 2000, No 495), in the version applicable in the main proceedings ('the Law on foreign nationals') provides:

'...

2. A residence permit of unlimited duration, referred to in Article 20, may be withdrawn where:

...

- (c) a final sentence has been pronounced against the holder in respect of an offence punishable by a term of imprisonment of three years or more, or he or she is subject to the measure referred to in Article 37a of the Wetboek van Strafrecht (Criminal Code);

(d) the foreign national poses a danger to national security.

3. Rules specifying the grounds laid down in paragraph 2 may be prescribed by or pursuant to a general administrative order.'

*The Decree on foreign nationals*

17 Article 3.86 of the Besluit tot uitvoering van de Vreemdelingenwet 2000 (Vreemdelingenbesluit 2000) (Decree on foreign nationals of 2000) of 23 November 2000 (Stb. 2000, No 497), in the version applicable up to 1 July 2012 ('the Decree on foreign nationals') is worded as follows:

' ...

4. An application [for extension of an ordinary residence permit of limited duration] may also be rejected on the basis of Article 18(1)(e) of the Law [on foreign nationals] where the foreign national has been sentenced, by a judicial decision which has become final, in connection with at least five offences or, in the event of a period of residence of less than two years, in connection with at least three offences, to a term of imprisonment or detention for minor children, community service or a measure referred to in Article 37a, Article 38m or Article 77h(4)(a) or (b) of the Criminal Code, or by a final penal order issued by the public prosecutor's office ("strafbeschikking") to community service or to the foreign equivalent of such a sentence or measure and the total duration of the non-suspended portion of those sentences or measures which must be executed is at least equal to the duration indicated in paragraph 5.

5. The duration referred to in paragraph 4 shall be:

...

[where the period of residence is of] at least 15 years but less than 20 years: 14 months.

...

11. By way of derogation from the preceding paragraphs, an application [for extension of an ordinary residence permit of limited duration] shall not be rejected:

...

(b) where the period of residence is 20 years.

...'

18 Article 3.98 of that decree provides:

'1. Under Article 22(2)(c) of the Law [on foreign nationals], an ordinary residence permit of unlimited duration may be withdrawn where the foreign national concerned has been sentenced, by a judicial decision which has become final, in connection with an offence punishable by a term of imprisonment of three years or more, to a term of imprisonment, community service or a measure referred to in Article 37a of the Criminal Code or to the foreign equivalent of such a

sentence or measure, and the total duration of those sentences or measures is at least equal to the duration referred to in Article 3.86(2), (3) or (5).

2. Articles 3.86 and 3.87 shall apply *mutatis mutandis*.’

19 Article 8.7 of the decree is worded as follows:

‘1. This paragraph shall apply to foreign nationals who are nationals of a State party to the EU Treaty or to the Agreement on the European Economic Area, or the Swiss Confederation, who travel to or reside in the Netherlands.

...’

20 Article 8.22 of that decree states:

‘1. The Minister may refuse or terminate legal residence on grounds of public policy or public security where the personal conduct of the foreign national concerned represents a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. Before making a decision, the Minister shall take into account the duration of residence of the person concerned in the Netherlands, his or her age, his or her state of health, his or her family and economic situation, his or her social and cultural integration in the Netherlands and the extent of his or her links with his or her country of origin.

...

3. Unless overriding grounds of public security so require, legal residence shall not be terminated where the foreign national:

a. has resided in the Netherlands for the previous 10 years; ...

...’

21 Article I of the Besluit houdende wijziging van het Vreemdelingenbesluit 2000 in verband met aanscherping van de glijdende schaal (Decree amending the Decree on foreign nationals as regards the tightening of the sliding scale) of 26 March 2012 (Stb. 2012, No 158), in the version applicable to the dispute in the main proceedings (‘the Decree of 26 March 2012’), amended the Decree on foreign nationals in the terms set out below.

22 The wording of Article 3.86(5) of the Decree on foreign nationals was replaced by the following:

‘The duration referred to in paragraph 4 shall be: ...

[where the period of residence is of] at least 15 years: 14 months.’

23 The wording of Article 3.86(11) of the Decree on foreign nationals, which has become paragraph 10, was replaced by the following:

‘By way of derogation from the preceding paragraphs, the application shall not be rejected where the period of residence is of 10 years except where:

(a) an offence under Article 22b(1) of the Criminal Code has been committed;

(a) an offence under the legislation on narcotics – which, according to its legal definition, is punishable by a term of imprisonment of six years or more – has been committed.’

24 Article II of the Decree of 26 March 2012 states:

‘This Decree shall not apply to a foreign national whose residence could not be interrupted under the law in force before the entry into force of this Decree.’

*The Circular on foreign nationals of 2000*

25 Paragraph B10/2.3 of the Vreemdelingencirculaire 2000 (Circular on foreign nationals of 2000), in the version applicable to the dispute in the main proceedings, provides:

‘…

Public policy and public security

In accordance with Article 8.22(1) of the Decree on foreign nationals, the [competent authority] shall deny legal residence or terminate it where the conduct of a Union citizen or a member of his or her family constitutes a present, genuine and serious threat to one of the fundamental interests of society, unless the application by analogy of Article 3.77 or Article 3.86 of the Decree on foreign nationals does not result in the termination of residence.

…’

26 Paragraph B 12/2.8 of that circular, in the version applicable to the dispute in the main proceedings, states:

‘The [competent authority] shall withdraw an ordinary residence permit of unlimited duration where a circumstance referred to in Article 22(2) of the Law on foreign nationals arises and Articles 3.97 and 3.98 of the Decree on foreign nationals do not derogate from it.’

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

*The disputes in the main proceedings*

*The dispute in the main proceedings involving S*

27 S, a Turkish national, has been lawfully residing in the Netherlands since 15 February 1983 and has held an ordinary residence permit of unlimited duration since 9 March 1992.

28 By decision of 5 October 2017, the State Secretary withdrew S’s residence permit, on the basis of Article 3.98 of the Decree on foreign nationals and of Article 3.86 thereof, as amended by the Decree of 26 March 2012 (‘the tightened sliding scale’), ordered him to leave immediately the territory of the Netherlands and imposed a ban on him entering that territory.



- 29 That decision was based on the fact that, since November 1994, S had been convicted of 39 criminal offences in connection with offences punishable by a term of imprisonment of three years or more and the total duration of his fixed terms of imprisonment, namely 66 months, compared with the duration of his lawful residence in the Netherlands, met the requirements of the tightened sliding scale. That decision was also based on the fact that S's conduct constituted a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society in that, first, he had committed serious offences, in particular a robbery, a burglary and the trafficking of hard drugs, and, second, the risk of S reoffending is high, since he had continued to commit crimes after having been placed for a period of two years in a special institution for multiple repeat offenders.
- 30 By decision of 27 March 2018, the State Secretary rejected S's complaint against the decision of 5 October 2017 as unfounded.
- 31 S having brought an action against that decision before the rechtbank Den Haag (District Court, The Hague, Netherlands), sitting in Rotterdam (Netherlands), that court, by judgment of 18 October 2018, annulled the decision of 27 March 2018 and that of 5 October 2017 on the ground that the tightened sliding scale constituted a 'new restriction' within the meaning of Article 13 of Decision No 1/80.
- 32 The State Secretary brought an appeal against that judgment before the Raad van State (Council of State, Netherlands), the referring court, claiming, inter alia, that the non-application of that national legislation to S would place him in a more favourable position than Union citizens, which is contrary to Article 59 of the Additional Protocol.

*The dispute in the main proceedings involving C*

- 33 C, a Turkish national, has been lawfully residing in the Netherlands since 3 May 1976 and has held an ordinary residence permit of unlimited duration since 25 March 1983.
- 34 By decision of 22 April 2018, the State Secretary withdrew C's residence permit, on the basis of the tightened sliding scale, ordered him to leave immediately the territory of the Netherlands and imposed a ban on him entering that territory. That decision was based on the fact that, since 1988, C had been convicted of 22 criminal offences, in particular after 2012, for robbery, bodily harm and trafficking in hard drugs – and the total duration of his fixed terms of imprisonment, namely 56 months, compared with the duration of his lawful residence in the Netherlands, met the requirements of the tightened sliding scale. The State Secretary also took the view that the fact that, between 1 September 1990 and 31 December 2000, C had sexually abused his daughter, who was a minor, added weight to its assessment that the personal conduct of the person concerned constituted a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society.
- 35 By decision of 3 October 2018, the State Secretary rejected C's complaint against that decision as unfounded.
- 36 By judgment of 24 July 2019, the rechtbank Den Haag (District Court, The Hague), sitting in Middelburg (Netherlands), declared the action brought by C against the decision of 3 October 2018 unfounded. That court held that Article 14 of Decision No 1/80 was applicable

since C's personal conduct represented a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society and, in that situation, C could not rely on Article 13 of that decision.

- 37 C brought an appeal against that judgment before the referring court, claiming that his personal conduct did not constitute a present threat affecting a fundamental interest of society and that Article 13 of Decision No 1/80 was applicable in the present case.

*The dispute in the main proceedings involving E*

- 38 E, a Turkish national, has been lawfully residing in the Netherlands since 1981 and has held an ordinary residence permit of unlimited duration since 16 March 1995.
- 39 By decision of 30 May 2018, the State Secretary withdrew C's residence permit, on the basis of the tightened sliding scale, ordered him to leave immediately the territory of the Netherlands and imposed a ban on him entering that territory. That decision was based on the fact that, since 1990, E had been convicted of 13 criminal offences, including after 2012, and the total duration of his fixed terms of imprisonment, namely 25 months, compared with the duration of his lawful residence in that territory, met the requirements of the tightened sliding scale. In addition, the State Secretary considered that E's personal conduct constituted a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society.
- 40 By decision of 24 September 2018, E's complaint against the decision of 30 May 2018 was rejected as unfounded.
- 41 By judgment of 2 May 2019, the rechtbank Den Haag (District Court, The Hague), sitting in Amsterdam (Netherlands), declared the action brought by E against the decision of 24 September 2018 unfounded, holding, first, that, even if the tightened sliding scale constituted a 'new restriction', within the meaning of Article 13 of Decision No 1/80, the scope of that article was limited by Article 14 of that decision and, second, that it would be contrary to Article 59 of the Additional Protocol not to apply that national legislation in the case of E as this would put him in a more favourable position than Union citizens.
- 42 E brought an appeal against that judgment before the referring court, claiming that the application of the tightened sliding scale was contrary to Article 13 of Decision No 1/80 and that he would not be placed in a more favourable situation than a Union citizen if that national legislation were not applied to him.

*Questions referred for a preliminary ruling*

- 43 The referring court, hearing the appeals against the judgments delivered at first instance in respect of S, C and E, considers that it is necessary, in order to resolve the disputes in the main proceedings, to interpret Articles 13 and 14 of Decision No 1/80.
- 44 That court does not rule out that the national legislation concerned, namely the Decree of 26 March 2012 which provides for the tightened sliding scale, may be classified as a 'new restriction' within the meaning of Article 13 of Decision No 1/80, since, contrary to the national legislation applicable prior to the entry into force of that decree, it no longer contains a

prohibition on the withdrawal of the residence permit of foreign nationals lawfully residing in the territory of the Netherlands for at least 20 years and therefore makes it more difficult for Turkish nationals to exercise their right to free movement in that territory.

- 45 For that reason, that court is uncertain whether a Turkish national who, like the persons concerned, enjoys a right of residence associated to the rights derived from Article 6 of Decision No 1/80, in the case of C, or from Article 7 thereof, in the case of S and of E, may rely on Article 13 of that decision in order to prevent the application of such national legislation to his or her situation, since the case-law of the Court does not, in its view, provide a clear answer in that regard.
- 46 The referring court finds that the conduct of the persons concerned constitutes a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. It is apparent from the case-law of the Court, in particular the judgments of 18 July 2007, *Derin* (C-325/05, EU:C:2007:442, paragraph 74), and of 8 December 2011, *Ziebell* (C-371/08, EU:C:2011:809, paragraph 82), that, on the basis of an assessment of his or her personal conduct which complies with the principle of proportionality and the fundamental rights of the Turkish national concerned, a Member State may, pursuant to Article 14 of Decision No 1/80, withdraw from him or her the enjoyment of the rights conferred by Articles 6 and 7 of that decision if he or she represents such a threat. Furthermore, it follows from the wording of Article 14 of Decision No 1/80 that Article 13 of that decision applies subject to limitations justified, inter alia, on grounds of public policy.
- 47 The referring court notes that, in the present case, it is apparent from the explanatory memorandum to the Decree of 26 March 2012 that the reason for the adoption of the national legislation concerned is the changed perception of public policy protection within Netherlands society. In that regard, it starts from the premiss that the personal conduct of S, C and E constitutes a genuine, present and sufficiently serious threat affecting one of the interests of society so that their right of residence may in principle be terminated in application of Article 14 of Decision No 1/80. However, that court asks whether Article 13 of Decision No 1/80 is applicable where a foreign national already enjoys rights under Article 6 or Article 7 of that decision and, in the affirmative, what is the relationship between Articles 13 and 14 of Decision No 1/80.
- 48 In those circumstances, the Raad van State (Council of State) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- ‘(1) Can Turkish nationals who have the rights referred to in Article 6 or Article 7 of Decision No 1/80 still rely on Article 13 of Decision No 1/80?
- (2) Does it follow from Article 14 of Decision No 1/80 that Turkish nationals can no longer rely on Article 13 of Decision No 1/80 if, due to their personal conduct, they represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society?
- (3) Can the new restriction whereby the right of residence of Turkish nationals may be terminated even after 20 years [of lawful residence] on grounds of public policy be justified by reference to the changed social perceptions which gave rise to that new restriction? Is it sufficient that the new restriction serves the public policy objective, or is it also required that the restriction be suitable for achieving that objective and not go beyond what is necessary to attain it?’

## Questions referred for a preliminary ruling

### *The first question*

- 49 By its first question, the referring court asks whether Article 13 of Decision No 1/80 must be interpreted as meaning that it may be relied on by Turkish nationals who hold the rights referred to in Article 6 or Article 7 of that decision.
- 50 In that regard, it is apparent from the wording of Article 13 of Decision No 1/80 that that article lays down a standstill clause prohibiting the Member States from introducing new restrictions on the conditions of access to employment applicable to workers and members of their families legally resident and employed in their respective territories.
- 51 As is apparent from settled case-law, that standstill clause has direct effect (judgment of 21 October 2003, *Abatay and Others*, C-317/01 and C-369/01, EU:C:2003:572, paragraph 58 and the case-law cited) and is intended to apply to Turkish nationals who do not yet enjoy the rights in matters of employment and, accordingly, residence under Article 6(1) of that decision (judgment of 29 April 2010, *Commission v Netherlands*, C-92/07, EU:C:2010:228, paragraph 45 and the case-law cited). The rationale for that provision is the fact that the Member States have retained the power to authorise Turkish nationals to enter their territory to take up employment and is intended to ensure that the national authorities refrain from taking measures likely to compromise the attainment of the objective of Decision No 1/80, which is to allow freedom of movement for workers, even if, initially, with a view to the gradual introduction of that fundamental freedom, existing national restrictions as regards access to employment may be retained (see, to that effect, judgment of 21 October 2003, *Abatay and Others*, C-317/01 and C-369/01, EU:C:2003:572, paragraphs 80 and 81).
- 52 However, it is also apparent from settled case-law that the same standstill clause prohibits generally the introduction of any new national measure which has the object or effect of making the exercise by a Turkish national of the freedom of movement for workers on national territory subject to conditions that are more restrictive than those which applied at the time when Decision No 1/80 entered into force in the Member State concerned (judgments of 29 March 2017, *Tekdemir*, C-652/15, EU:C:2017:239, paragraph 25, and of 2 September 2021, *Udlændingenævnet*, C-379/20, EU:C:2021:660, paragraph 19 and the case-law cited).
- 53 Such a broad interpretation of the scope of the standstill clause in question is justified in the light of the objective of Decision No 1/80, which is to allow freedom of movement for workers. Both a new restriction which tightens the conditions of access to the first professional activity of a Turkish worker or members of his or her family and that which, once that worker or members of his or her family benefit from rights in the field of employment under Article 6 or Article 7 of that decision, restricts his or her access to paid employment guaranteed by those rights, are contrary to the objective of that decision to achieve the freedom of movement of those workers.
- 54 It is true that, as noted by the referring court, the Court considered, in paragraph 81 of the judgment of 21 October 2003, *Abatay and Others* (C-317/01 and C-369/01, EU:C:2003:572), a Turkish national who is already lawfully employed in a Member State no longer needs the protection of a standstill clause as regards access to employment, as such access has already been allowed and the person concerned subsequently enjoys, for the rest of his or her career in the host Member State, the rights which Article 6 of that decision expressly confers on him or her.

- 55 However, that finding does not mean that the application of that standstill clause is precluded in such a situation. Even if a Turkish national and the members of his or her family who are covered by Article 6 and Article 7 of Decision No 1/80, respectively, may rely on the rights which they derive from those provisions in order to oppose restrictions on the exercise of their freedom of movement, without having to demonstrate, in addition, that those restrictions are new and therefore contrary to that standstill clause, the fact remains that those two situations may coincide.
- 56 Moreover, the Court has stated in paragraph 84 of the judgment of 21 October 2003, *Abatay and Others* (C-317/01 and C-369/01, EU:C:2003:572), that the scope of Article 13 of Decision No 1/80 is not limited to Turkish nationals already integrated into the employment market of a Member State. Accordingly, the latter must be regarded as covered by the scope of that provision.
- 57 In the present case, it is apparent from the request for a preliminary ruling that the main proceedings arise from the withdrawal, by the competent Netherlands authorities, of the right of residence of the persons concerned pursuant to national legislation adopted on grounds of public policy. That national legislation, introduced after the entry into force of Decision No 1/80 in the territory of the Netherlands, authorises the competent authorities to withdraw the right of residence and to expel a Turkish worker who has been legally resident in that territory for more than 20 years and who thereby derives rights from the third indent of Article 6(1) or from the second paragraph of Article 7 of that decision where he or she constitutes a present, genuine and sufficiently serious threat affecting one of the fundamental interests of society.
- 58 In that regard, it follows from the case-law that measures taken by a Member State which seek to define the criteria for the lawfulness of the Turkish nationals' situation, by adopting or amending, inter alia, the conditions relating to the residence of those nationals in its territory, are capable of constituting new restrictions within the meaning of Article 13 of Decision No 1/80 (see, to that effect, judgment of 7 November 2013, *Demir*, C-225/12, EU:C:2013:725, paragraphs 38 and 39).
- 59 Therefore, national legislation which permits the withdrawal of the right of residence of the persons concerned which they enjoy pursuant to the third indent of Article 6(1) and the second paragraph of Article 7 of Decision No 1/80 restricts their right to freedom of movement in relation to the right to freedom of movement which they enjoyed at the time of the entry into force of that decision and, accordingly, constitutes a new restriction within the meaning of Article 13 of that decision.
- 60 In the light of the foregoing, the answer to the first question must be that Article 13 of Decision No 1/80 must be interpreted as meaning that it may be relied on by Turkish nationals who hold the rights referred to in Article 6 or Article 7 of that decision.

### ***The second and third questions***

- 61 By its second and third questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 14(1) of Decision No 1/80 must be interpreted as meaning that Turkish nationals may rely on Article 13 of that decision in order to oppose a 'new restriction' – within the meaning of that provision and allowing the competent national authorities of a Member State to terminate their right of residence on the ground that, according to those authorities, they constitute a genuine, present and sufficiently serious threat affecting one of the

fundamental interests of society – from being applied to them. If so, the referring court seeks to ascertain whether and in what circumstances such a restriction may be justified under Article 14 of that decision.

- 62 In that regard, it must be borne in mind that Article 14(1) of Decision No 1/80 allows Member States to derogate from the application of the provisions of that decision which confer certain rights on Turkish workers.
- 63 Under that article, the application of the provisions of the section of Decision No 1/80 on employment and freedom of movement for workers may be subject to limitations justified on grounds of public policy, public security or public health.
- 64 It follows that a measure contrary to the prohibition laid down in Article 13 of Decision No 1/80 on adopting any new internal measure that has the object or effect of making the exercise by a Turkish national of the freedom of movement for workers on national territory subject to conditions that are more restrictive than those which applied to him or her at the time when that decision entered into force in the Member State concerned may be justified on grounds of public policy referred to in Article 14(1) of that decision (see, to that effect, judgment of 2 September 2021, *Udlændingenævnet*, C-379/20, EU:C:2021:660, paragraphs 22 and 23 and the case-law cited).
- 65 Furthermore, it should be noted that a Turkish national who holds a right of residence in the host Member State pursuant to Decision No 1/80 who is subject to such a restriction on grounds of public policy may challenge it before the national courts or tribunals by invoking the prohibition on adopting ‘new restrictions’ set out in Article 13 of that decision and the misapplication of Article 14 of that decision. It follows from the Court’s settled case-law that Article 13 of Decision No 1/80 may validly be relied on before the courts and tribunals of Member States by the Turkish nationals to whom it applies to prevent the application of rules of national law that conflict with it (judgment of 17 September 2009, *Sahin*, C-242/06, EU:C:2009:554, paragraph 62 and the case-law cited). Furthermore, the Court has accepted that a Turkish national who holds a right of residence in the host Member State under Decision No 1/80 may validly rely on Article 14(1) of that decision before the courts and tribunals of that Member State in order to block the application of a national measure which is contrary to that provision (see, to that effect, judgment of 8 December 2011, *Ziebell*, C-371/08, EU:C:2011:809, paragraph 51).
- 66 However, the exception laid down in Article 14(1) of Decision No 1/80 which is a derogation from the fundamental freedom that is the freedom of movement of workers must be interpreted strictly and its scope cannot be determined unilaterally by the Member States (see, to that effect, judgment of 8 December 2011, *Ziebell*, C-371/08, EU:C:2011:809, paragraph 81).
- 67 In the present case, the referring court asks under what circumstances a new measure contrary to the standstill clause such as the national measure at issue in the main proceedings may be regarded as being justified by public policy requirements. In particular, it asks whether the tightening of the sliding scale provided for by that national measure because of changed social perceptions takes sufficient account of the restrictive interpretation to be applied to the concept of ‘public policy’ and whether it falls within the discretion of the Member State concerned.
- 68 In that regard, it must be borne in mind that while Member States retain the freedom to determine the requirements of public policy in accordance with their national needs, which can vary from one Member State to another and from one era to another, particularly as justification

for a derogation from the principle of free movement of persons (see, to that effect, judgment of 22 May 2012, *I*, C-348/09, EU:C:2012:300, paragraph 23), the exercise of that discretion is circumscribed in several respects.

- 69 Thus, it is apparent from paragraph 66 of the present judgment that the requirements of public policy must be interpreted strictly.
- 70 In addition, it is apparent from the case-law that the measures adopted by the Member States covered by those requirements and referred to in Article 14(1) of Decision No 1/80 must be suitable for securing the attainment of the objective of protecting public policy pursued and must not go beyond what is necessary in order to attain it (see, to that effect, judgment of 2 September 2021, *Udlændingenævnet*, C-379/20, EU:C:2021:660, paragraph 23 and the case-law cited).
- 71 Furthermore, as regards the situation of a Turkish national who, like the persons concerned, resides in the host Member State for more than 10 years, the Court has held that the reference framework for the purposes of the application of Article 14(1) of Decision No 1/80 is Article 12 of Directive 2003/109. It follows from that reference framework that, in the first place, the long-term resident concerned can be expelled solely where he or she constitutes a genuine and sufficiently serious threat to public policy or public security, in the second place, the expulsion decision cannot be founded on economic considerations, in the third place, before adopting such a decision, the competent authorities of the host Member State are required to take account of the duration of residence of the person concerned in the territory of that Member State, his or her age, the consequences of expulsion for him or her and his or her family members, his or her links with the country of residence or the absence of links with the country of origin (see, to that effect, judgment of 8 December 2011, *Ziebell*, C-371/08, EU:C:2011:809, paragraphs 79 and 80).
- 72 Thus, the Court has held that measures justified on grounds of public policy or public security may be taken only if, after a case-by-case assessment by the competent national authorities which respects both the principle of proportionality and the fundamental rights of the person concerned, in particular the right to respect for private and family life, it is shown that the personal conduct of the person concerned constitutes a present, genuine and sufficiently serious threat to a fundamental interest of society (judgment of 8 December 2011, *Ziebell*, C-371/08, EU:C:2011:809, paragraph 82).
- 73 The Court has stated that, in order to determine whether the threat is present, account must be taken of factual matters which occurred after the final decision of the competent authorities which may point to the cessation or the substantial diminution of the threat which the conduct of the person concerned constitutes to the requirements of the fundamental interest in question (see, to that effect, judgment of 8 December 2011, *Ziebell*, C-371/08, EU:C:2011:809, paragraph 84).
- 74 In the light of the foregoing, it must be held that, in the present case, the tightening of the sliding scale provided for by the national measure at issue in the main proceedings for reasons of public policy is covered by the competent Netherlands authorities' discretion laid down in Article 14(1) of Decision No 1/80. Moreover, the reference to the changed social perceptions leading to that new restriction and the fact that that new restriction supports the public policy objective may contribute its justification.

- 75 However, the reference to the changed social perceptions and the justification based on public policy are not sufficient in themselves to give legitimacy to the national measure at issue in the main proceedings taken pursuant to Article 14(1) of Decision No 1/80. Those measures must also be suitable for securing the attainment of the objective of protecting public policy pursued and not go beyond what is necessary in order to attain it, which it is for the referring court to ascertain. When making that assessment, the latter will have to take into account the rights conferred by Decision No 1/80, in particular those referred to in Articles 6, 7 and 13 thereof. Furthermore, it will be for the referring court to assess whether those measures provide for a prior and individual assessment of the current situation of the Turkish worker concerned, which complies with both the principle of proportionality and his or her fundamental rights as set out in paragraphs 71 to 73 of the present judgment.
- 76 In the present case, in order to determine whether the legislation at issue in the main proceedings complies with those requirements, the following factors may, subject to verification which it will be for the referring court to carry out, constitute relevant factors. First, the fact that withdrawal of the right of residence conferred on the person concerned by Decision No 1/80 and his or her expulsion from Netherlands territory is not automatic once he or she is convicted of a crime. Second, the fact that the competent authorities which intend to adopt such a withdrawal decision must take into account the duration of residence in the Netherlands of the person concerned, his or her age, state of health, family and economic situation, social and cultural integration in that Member State and the extent of his or her links with his or her country of origin and must, ultimately, weigh the severity of the sentence imposed on the person concerned as punishment for the offence committed by that person against the duration of his or her residence. Third, the fact that those authorities must, for the purposes of adopting such a decision, take into consideration not only the fact that that person has or has not repeatedly committed offences over several years, but also other factors, such as the fact that that person has made positive changes to his or her conduct following his or her conviction, in particular by expressing remorse, ceasing to consume drugs, by embarking on studies or whether, on the contrary, that person denies the facts forming the basis for his or her conviction or seeks to downplay them.
- 77 Consequently, the answer to the second and third questions is that Article 14(1) of Decision No 1/80 must be interpreted as meaning that Turkish nationals who, according to the competent national authorities of the Member State concerned, constitute a genuine, present and sufficiently serious threat to one of the interests of society, may rely on Article 13 of that decision in order to oppose a ‘new restriction’, within the meaning of that provision, from being applied to them allowing those authorities to terminate their right of residence on grounds of public policy. Such a restriction may be justified under Article 14 of that decision in so far as it is suitable for securing the attainment of the objective of protecting public policy pursued and it does not go beyond what is necessary in order to attain it.

### **Costs**

- 78 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 (Second Chamber) hereby rules:

**1. Article 13 of Decision No 1/80 of the Association Council of 19 September 1980 on the development of the Association between the European Economic Community and Turkey**

**must be interpreted as meaning that it may be relied on by Turkish nationals who hold the rights referred to in Article 6 or Article 7 of that decision.**

**2. Article 14 of Decision No 1/80**

**must be interpreted as meaning that Turkish nationals who, according to the competent national authorities of the Member State concerned, constitute a genuine, present and sufficiently serious threat to one of the interests of society, may rely on Article 13 of that decision in order to oppose a ‘new restriction’, within the meaning of that provision, from being applied to them allowing those authorities to terminate their right of residence on grounds of public policy. Such a restriction may be justified under Article 14 of that decision in so far as it is suitable for securing the attainment of the objective of protecting public policy pursued and it does not go beyond what is necessary in order to attain it.**

[Signatures]