JUDGMENT OF THE COURT (Sixth Chamber)
5 June 1997 *

In Case C-285/95,

REFERENCE to the Court under Article 177 of the EC Treaty by the Oberverwaltungsgericht Berlin for a preliminary ruling in the proceedings pending before that court between

Suat Kol

and

Land Berlin

on the interpretation of Articles 6(1) and 14(1) of Decision No 1/80 of 19 September 1980 on the development of the Association, adopted by the Council of Association established by the Association Agreement between the European Economic Community and Turkey,

THE COURT (Sixth Chamber),

composed of: G. F. Mancini, President of the Chamber, C. N. Kakouris, G. Hirsch, H. Ragnemalm and R. Schintgen (Rapporteur), Judges,

* Language of the case: German.

Advocate General: M. B. Elmer,
Registrar: D. Louterman-Hubeau, Principal Administrator,

after considering the written observations submitted on behalf of:

— Mr Kol, by C. Rosenkranz, of the Berlin Bar,

— the German Government, by E. Röder, Ministerialrat at the Federal Ministry of Economic Affairs, acting as Agent, assisted by K. Hailbronner, Professor at the University of Konstanz,

— the Spanish Government, by A. J. Navarro González, Director General of Community Legal and Institutional Coordination, and R. Silva de Lapuerta, Abogado del Estado, of the State Legal Service, acting as Agents,

— the French Government, by C. de Salins and A. de Bourgoing, Deputy Director and Special Adviser respectively in the Legal Affairs Directorate, Ministry of Foreign Affairs, acting as Agents,

— the United Kingdom Government, by J. E. Collins, Assistant Treasury Solicitor, acting as Agent, and by E. Sharpston, Barrister,

— the Commission of the European Communities, by P. Hillenkamp, Legal Adviser, and P. van Nuffel, of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of the German Government, the Spanish Government, the French Government, the United Kingdom Government and the Commission, at the hearing on 23 January 1997,

after hearing the Opinion of the Advocate General at the sitting on 6 March 1997,

gives the following

Judgment

1 By order of 11 August 1995, which was received at the Court on 28 August 1995, the Oberverwaltungsgericht (Higher Administrative Court) Berlin referred to the Court for a preliminary ruling under Article 177 of the EC Treaty two questions concerning the interpretation of Articles 6(1) and 14(1) of Decision No 1/80 of the Council of Association of 19 September 1980 on the development of the Association (hereinafter 'Decision No 1/80'). The Council of Association was established by the Association Agreement between the European Economic Community and Turkey signed on 12 September 1963 in Ankara by the Turkish Republic, on the one hand, and by the Member States of the EEC and the Community, on the other hand; it was concluded, approved and confirmed on behalf of the Community by Council Decision 64/732/EEC of 23 December 1963 (OJ 1973 C 113, p. 1).

2 The questions were raised in proceedings between Mr Kol, a Turkish national, and the *Land* Berlin concerning a decision expelling him from German territory.

3 The file on the case shows that on 15 February 1988 Mr Kol entered Germany where, on 9 May 1988, he married a German national.

4 The German authorities, suspecting that it was a marriage of convenience, first issued Mr Kol with a certificate that an application for a residence permit had been lodged, and then with a residence permit of limited duration which was renewed several times.

5 On 2 May 1991, after he and his spouse had declared that they lived together as man and wife in the marital home, Mr Kol obtained a German residence permit of unlimited duration.

6 That declaration proved to be false, however. Mr Kol's wife had commenced divorce proceedings in April 1990 and the spouses had ceased to cohabit some time before their declaration of 2 May 1991. The marriage was dissolved by judgment of 14 February 1992.

7 By judgment of 29 November 1993, the Amtsgericht Berlin Tiergarten fined Mr Kol for having made a false declaration in order to procure a residence permit. His wife was convicted of aiding and abetting him.

8 Mr Kol has shown that he was employed in Germany from 3 April 1989 to 31 December 1989 and on 7 February 1990 with his first employer, and from 15 June 1990 to 6 July 1993, from 6 September 1993 to 8 February 1994 and from 24 March 1994 onwards with a second employer.

9 On 7 July 1994 the Landeseinwohneramt Berlin (Residents' Registration Office for the *Land* Berlin) ordered Mr Kol's immediate expulsion. That measure, based on general grounds of a preventative nature, was aimed at deterring other aliens from making false statements in order to obtain a residence permit.

10 Mr Kol's application for interim relief was rejected by an order of 12 May 1995 of the Verwaltungsgericht (Administrative Court) Berlin, against which he appealed to the Oberverwaltungsgericht Berlin.

11 In support of his appeal Mr Kol claimed that his periods of employment in Germany gave him a right to remain there pursuant to Article 6(1) of Decision No 1/80 and that an expulsion order made solely on general grounds of a preventative nature was incompatible with Article 14(1) of that decision.

12 Although the Oberverwaltungsgericht Berlin found that the expulsion order complied with German law, it raised the question whether a solution more favourable to Mr Kol might not be derived from Articles 6(1) and 14(1) of Decision No 1/80.

13 Article 6(1), which appears in Chapter II (Social provisions), Section 1 (Questions relating to employment and the free movement for workers), is worded as follows:

'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.'

14 Article 14(1), which forms part of the same section of Chapter II of Decision No 1/80, provides as follows:

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

15 The Oberverwaltungsgericht Berlin had doubts, however, as to the interpretation to be given to the terms 'legal employment' and 'limitations justified on grounds of public policy, public security or public health' used in those two provisions. It raised the question whether Mr Kol's periods of employment subsequent to the false declaration of 2 May 1991 could be recognized as legal employment within the meaning of the first indent of Article 6(1) of Decision No 1/80. It further sought to ascertain whether the principles governing the free movement of workers who are nationals of a Member State, according to which a deportation order must be based exclusively on the personal conduct of the individual concerned and previous convictions cannot in themselves constitute grounds for making such an order, also apply to Turkish migrant workers.

16 Taking the view that a decision on the case accordingly required an interpretation of the abovementioned provisions, the Oberverwaltungsgericht Berlin stayed proceedings and referred the following two questions to the Court of Justice for a preliminary ruling:

'1) Are periods of employment spent in a Member State by a Turkish worker on the basis of a residence permit obtained by wilful and criminal deceit to be recognized as legal employment within the meaning of Article 6(1) of Decision No 1/80 of the EEC-Turkey Council of Association?

2) If Question 1 is answered in the affirmative:

Is the termination of residence of such a worker by virtue of an expulsion order made solely on general grounds of a preventative nature with a view to deterring other aliens compatible with Article 14(1) of the abovementioned decision?'

First question

17 It should be noted at the outset that, according to the file on the case in the main proceedings, Mr Kol has been convicted of having made a false declaration in order to obtain a German residence permit.

18 In those circumstances, the first question must be understood as seeking to ascertain essentially whether Article 6(1) of Decision No 1/80 must be interpreted as meaning that a Turkish worker satisfies the condition of having been in legal employment, within the meaning of that provision, in the host Member State,

where he has been employed there under a residence permit which was issued to him only as a result of fraudulent conduct in respect of which he has been convicted.

19 In order to reply to that question, the first point to note is that the order for reference shows that, on 2 May 1991, the date on which he made an inaccurate declaration in order to obtain a German residence permit of unlimited duration, Mr Kol had not been in legal employment for one year with the same employer, within the meaning of the first indent of Article 6(1) of Decision No 1/80. Mr Kol's two periods of employment in the host Member State prior to that date, the first of nearly nine months and the second of ten and a half months, were for two different employers; as the judgment in Case C-386/95 *Eker* [1997] ECR I-2697 makes clear, the first indent of Article 6(1) presupposes legal employment for an uninterrupted period of one year with the same employer.

20 Consequently Mr Kol cannot avail himself of the rights conferred by the first indent of Article 6(1) unless his periods of employment after 2 May 1991 may be regarded as legal employment within the meaning of that provision.

21 In that connection, the Court has consistently held (Case C-192/89 *Sevince* [1990] ECR I-3461, paragraph 30; Case 237/91 *Kus* [1992] ECR I-6781, paragraphs 12 and 22; Case C-434/93 *Bozkurt* [1995] ECR I-1475, paragraph 26) that legal employment within the meaning of the first indent of Article 6(1) presupposes a stable and secure situation as a member of the labour force of a Member State and, by virtue of this, implies the existence of an undisputed right of residence.

22 In the *Sevince* judgment, the Court stated that a Turkish worker was not in a stable and secure situation as a member of the labour force of a Member State during the period in which he benefited from the suspensory effect of an appeal he

had lodged against a decision refusing him a residence permit and had obtained authorization, on a provisional basis, pending the outcome of the dispute, to reside and be employed in the Member State in question (paragraph 31).

23 Similarly, in *Kus*, cited above, the Court held that a Turkish worker did not fulfil that requirement where a right of residence was conferred on him only by the operation of national legislation permitting residence in the host country pending completion of the procedure for the grant of a residence permit (paragraph 18), on the ground that the person concerned had been given the right to remain and work in that country only on a provisional basis pending a final decision on his right of residence (paragraph 13).

24 The Court considered that it was not possible to regard as legal, within the meaning of Article 6(1) of Decision No 1/80, periods in which the worker was employed so long as it was not definitively established that during that period the worker had a legal right of residence. Otherwise, a judicial decision finally refusing him that right would be rendered nugatory, and he would thus have been enabled to acquire the rights provided for in Article 6(1) during a period when he did not fulfil the conditions laid down in that provision (*Kus*, cited above, paragraph 16).

25 *A fortiori* that interpretation must apply in a situation such as that in the main proceedings where the Turkish migrant worker obtained a residence permit of unlimited duration in the host Member State only by means of inaccurate declarations in respect of which he was convicted of fraud.

26 Periods of employment after a residence permit has been obtained only by means of fraudulent conduct which has led to a conviction cannot be regarded as legal for the purposes of application of Article 6(1) of Decision No 1/80, since the Turkish

national did not fulfil the conditions for the grant of such a permit which was, accordingly, liable to be rescinded when the fraud was discovered.

27 Consequently, the periods in which the Turkish national was employed under a residence permit obtained in those circumstances were not based on a stable situation and such employment cannot be regarded as having been secure in view of the fact that, during the periods in question, the person concerned was not legally entitled to a residence permit.

28 Furthermore, employment under a residence permit issued as a result of fraudulent conduct which has led, as in this case, to a conviction, cannot give rise to any rights in favour of the Turkish worker, or arouse any legitimate expectation on his part.

29 In the light of the foregoing considerations, the answer to the first question must be that Article 6(1) of Decision No 1/80 is to be interpreted as meaning that a Turkish worker does not satisfy the condition of having been in legal employment, within the meaning of that provision, in the host Member State, where he has been employed there under a residence permit which was issued to him only as a result of fraudulent conduct in respect of which he has been convicted.

Second question

30 The national court submitted the second question only in the event of an affirmative answer to the first question.

31 In view of the negative answer to the first question referred to the Court, therefore, there is no need to rule on the second question.

Costs

32 The costs incurred by the German, Spanish, French and United Kingdom Government, and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Sixth Chamber),

in answer to the questions referred to it by the Oberverwaltungsgericht Berlin by order of 11 August 1995, hereby rules:

Article 6(1) of Decision No 1/80 of 19 September 1980 on the development of the Association, adopted by the Council of Association established by the Association Agreement between the European Economic Community and Turkey, is to be interpreted as meaning that a Turkish worker does not satisfy the condition of having been in legal employment, within the meaning of that provision, in the host Member State, where he has been employed there under a residence permit which was issued to him only as a result of fraudulent conduct in respect of which he has been convicted.

Mancini Kakouris Hirsch

Ragnemalm Schintgen

Delivered in open court in Luxembourg on 5 June 1997.

R. Grass

Registrar

G. F. Mancini

President of the Sixth Chamber