

JUDGMENT OF THE COURT (First Chamber)

17 September 2009\*

In Case C-242/06,

REFERENCE for a preliminary ruling under Article 234 EC from the Raad van State (Netherlands), made by decision of 11 May 2006, received at the Court on 29 May 2006, in the proceedings

**Minister voor Vreemdelingenzaken en Integratie**

v

**T. Sahin,**

THE COURT (First Chamber),

composed of P. Jann, President of the Chamber, M. Ilešič, A. Tizzano, E. Levits and J.-J. Kasel (Rapporteur), Judges,

\* Language of the case: Dutch.

Advocate General: M. Poiares Maduro,  
Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 17 December 2008,

after considering the observations submitted on behalf of:

- Mr Sahin, by D. Schaap, advocaat,
  
- the Netherlands Government, by H.G. Sevenster, C. Wissels and M. de Mol, acting as Agents,
  
- the German Government, by C. Schulze-Bahr, M. Lumma and J. Möller, acting as Agents,
  
- the Italian Government, by I.M. Braguglia, acting as Agent, and by W. Ferrante, avvocato dello Stato,
  
- the Cypriot Government, by D. Lysandrou, acting as Agent,

- the United Kingdom Government, by T. Ward, Barrister,
  
- the Commission of the European Communities, by S. Boelaert and M. van Beek, 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 Article 13 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 1973 C 113, p. 1, the 'Association Agreement').
  
- 2 The reference was made in proceedings brought by Mr Sahin against the Minister voor Vreemdelingenzaken en Integratie (Minister for Immigration and Integration, the 'Minister') in relation to the requirement imposed on Turkish nationals to pay administrative charges before their applications for a residence permit or for an extension of the period of validity of such a permit would be considered.

## Legal context

### *Community legislation*

#### The EEC-Turkey Association

##### — The Association Agreement

- 3 According to Article 2(1) of the Association Agreement, the aim of that agreement is to promote the continuous and balanced strengthening of trade and economic relations between the Contracting Parties which includes, in relation to the workforce, the progressive securing of freedom of movement for workers (Article 12 of the Association Agreement), and the abolition of restrictions on freedom of establishment (Article 13 of that agreement) and on freedom to provide services (Article 14 of that agreement), with a view to improving the standard of living of the Turkish people and facilitating the accession of Turkey to the Community at a later date (fourth recital in the preamble to and Article 28 of that agreement).
  
- 4 To that end, the Association Agreement involves a preparatory stage, enabling the Republic of Turkey to strengthen its economy with aid from the Community (Article 3 of that agreement), a transitional stage covering the progressive establishment of a customs union and the alignment of economic policies (Article 4 of that 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 that agreement).

5 Article 6 of the Association Agreement is worded as follows:

‘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 this Agreement.’

6 Article 8 of the Association Agreement, in Title II headed ‘Implementation of the transitional stage’ provides:

‘In order to attain the objectives set out in Article 4, the Council of Association shall, before the beginning of the transitional stage and in accordance with the procedure laid down in Article 1 of the provisional Protocol, determine the conditions, rules and timetables for the implementation of the provisions relating to the fields covered by the Treaty establishing the Community which must be considered; this shall apply in particular to such of those fields as are mentioned under this Title and to any protective clause which may prove appropriate.’

7 Articles 12 to 14 of the Association Agreement also appear in Title II thereof, under Chapter 3 headed ‘Other economic provisions’.

8 Article 12 provides:

‘The Contracting Parties agree to be guided by Articles [39 EC], [40 EC] and [41 EC] for the purpose of progressively securing freedom of movement for workers between them.’

9 Article 13 provides:

‘The Contracting Parties agree to be guided by Articles [43 EC] to [46 EC] and [48 EC] for the purpose of abolishing restrictions on freedom of establishment between them.’

10 Article 14 states:

‘The Contracting Parties agree to be guided by Articles [45 EC], [46 EC] and [48 EC] to [54 EC] for the purpose of abolishing restrictions on freedom to provide services between them.’

11 Article 22(1) of the Association Agreement provides as follows:

‘In order to attain the objectives of this Agreement, the Council of Association shall have the power to take decisions in the cases provided for therein. Each of the parties shall take the measures necessary to implement the decisions taken....’

— The Additional Protocol

12 The Additional Protocol, signed on 23 November 1970 at Brussels and concluded, approved and confirmed on behalf of the Community by Council Regulation (EEC) No 2760/72 of 19 December 1972 (OJ 1977 L 361, p. 60) (‘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.

13 The Additional Protocol includes Title II, headed 'Movement of persons and services', Chapter I of which concerns '[w]orkers' and Chapter II of which concerns '[r]ight of establishment, services and transport'.

14 Article 36 of the Additional Protocol, which is included in Chapter I, provides that freedom of movement for workers between Member States of the Community and Turkey is to be secured by progressive stages in accordance with the principles set out in Article 12 of the Association Agreement between the end of the 12th and the 22nd year after the entry into force of that agreement and that the Council of Association is to decide on the rules necessary to that end.

15 Article 41(1) of the Additional Protocol, which is in Chapter II of Title II, is worded as follows:

'The Contracting Parties shall refrain from introducing between themselves any new restrictions on the freedom of establishment and the freedom to provide services.'

16 Article 59 of the Additional Protocol 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.’

— Decision No 1/80

17 On 19 September 1980 the Association Council, which was set up by the Association Agreement and consists, on the one hand, of members of the Governments of the Member States, of the Council of the European Union and of the Commission of the European Communities and, on the other hand, of members of the Turkish Government, adopted Decision No 1/80.

18 Article 6 of Decision No 1/80 is in Chapter II, ‘Social provisions’, Section 1, concerning ‘Questions relating to employment and the free movement of workers’. Paragraph 1 of that article is worded as follows:

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

— shall be entitled in that Member State, after one year’s legal employment, to the renewal of his permit to work for the same employer, if a job is available;

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

<sup>19</sup> Article 13 of Decision No 1/80, which is also part of Section 1, provides:

‘The Member States of the Community and Turkey 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.’

<sup>20</sup> Article 30 of Decision No 1/80 provides that the decision entered into force on 1 July 1980. However, under Article 16 of that decision, the provisions of Section 1 of Chapter II thereof are applicable from 1 December 1980.

Directive 68/360/EEC

<sup>21</sup> Article 9(1) of Council Directive 68/360/EEC of 15 October 1968 on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families (OJ, English Special Edition 1968 (II) p. 485), stated:

‘The residence documents granted to nationals of a Member State of the EEC ... shall be issued and renewed free of charge or on payment of an amount not exceeding the dues and taxes charged for the issue of identity cards to nationals.’

- <sup>22</sup> Directive 68/360 was repealed, with effect from 30 April 2006, by Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77, and corrigenda OJ 2004 L 229, p. 35, OJ 2005 L 197, p. 34, and OJ 2007 L 204, p. 28).

#### Directive 2004/38

- <sup>23</sup> Under Article 8 of Directive 2004/38, Member States may, for periods of residence longer than three months, require citizens of the European Union to register with the relevant authorities of the place of residence, that procedure being accomplished by the issue of a registration certificate to that effect. Further, under Article 9 of that directive, Member States may provide that family members of European Union citizens who are not Community nationals are required to hold a residence card where the planned period of residence is for more than three months. Failure to comply with the requirement to apply for a residence card may make the person concerned liable to proportionate and non-discriminatory sanctions. Under Article 11(1) of that directive, the residence card is to be valid for five years from the date of issue or for the envisaged period of residence of the Union citizen, if this period is less than five years.

24 Article 25 of Directive 2004/38, headed ‘General provisions concerning residence documents’, is worded as follows:

‘1. Possession of a registration certificate as referred to in Article 8, of a document certifying permanent residence, of a certificate attesting submission of an application for a family member residence card, of a residence card or of a permanent residence card, may under no circumstances be made a precondition for the exercise of a right or the completion of an administrative formality, as entitlement to rights may be attested by any other means of proof.

2. All documents mentioned in paragraph 1 shall be issued free of charge or for a charge not exceeding that imposed on nationals for the issuing of similar documents.’

### *National legislation*

25 The order for reference states that, on 1 December 1980, when the provisions on employment and freedom of movement for workers laid down by Decision No 1/80 — including Article 13 of that decision — entered into force in the Kingdom of the Netherlands, that Member State did not require the payment of administrative charges when an application for a residence permit was made and such charges were not levied either when an application to extend the period of validity of such a permit was made.

26 Only since the entry into force, on 1 April 2001, of 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’); the Decree on Foreign Nationals 2000 (Vreemdelingenbesluit 2000, Stb. 2000, No 497), and

the Foreign Nationals Order (Voorschrift Vreemdelingen), have foreign nationals been required to pay administrative charges for the processing of an application for a residence permit.

27 Further, pursuant to an amendment of the Foreign Nationals Order, applicable as from 1 May 2002, provision was also made for the levying of such administrative charges when applications to extend the period of validity of residence permits were made. At that time, the amount of the charges levied was increased.

28 In accordance with Article 24(2) of the Vw 2000, the effect of non-payment within the period allowed of the charges pertaining to the application for a residence permit is that the application may not be considered by the competent authority. Moreover, charges paid are not to be refunded if the application is rejected.

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

29 The decision for reference states that Mr Sahin is a Turkish national who obtained, on 13 July 2000, a temporary residence authorisation which permitted him to enter the Netherlands on 12 September 2000.

30 On 2 October 2000, while he was legally resident in the Netherlands, he submitted an application for a residence permit in order to be able to live with his Dutch wife.

- 31 On 14 December 2000, the Minister granted him such a residence permit, which was valid until 2 October 2001. That permit contained no restrictions in relation to taking employment.
- 32 On an application from Mr Sahin, on 28 September 2001 the Minister extended the validity of that residence permit until 2 October 2002.
- 33 However, only on 10 February 2003 did Mr Sahin apply for a further extension of the validity period of that permit.
- 34 On 23 April 2003 the Minister, pursuant to the Netherlands legislation, refused to consider that application, on the ground that Mr Sahin had not paid the relevant administrative charges, which amounted to EUR 169.
- 35 After Mr Sahin had paid that sum, albeit outside the period allowed for that purpose, on 26 May 2003 he filed a complaint against the Minister's decision of 23 April 2003, a complaint which the Minister rejected as unfounded on 20 April 2004.
- 36 On 16 May 2004 Mr Sahin brought an action challenging that rejection before the Rechtbank (District Court) (Netherlands) 's-Gravenhage on the basis of Article 13 of Decision No 1/80. That court upheld the action by judgment of 5 August 2004, annulled the Minister's decision of 20 April 2004 and instructed the Minister to decide the matter anew.

37 On 17 September 2004, the Minister again rejected Mr Sahin's complaint as unfounded.

38 By judgment of 30 May 2005, the Rechtbank 's-Gravenhage upheld the action brought by Mr Sahin on 15 October 2004 against the Minister's second decision of rejection, and held that the requirement imposed on Mr Sahin to pay administrative charges when making an application to extend the period of validity of his Netherlands residence permit was contrary to Article 13 of Decision No 1/80.

39 In support of the Minister's appeal against that judgment before the Raad van State (Council of State) (Netherlands), the Minister claimed that the court of first instance erred in holding that Mr Sahin's situation fell within the scope of Article 13.

40 According to the Raad van State, Mr Sahin did not pay in good time the administrative charges which were payable, with the result that, under national law, the Minister was obliged not to consider Mr Sahin's application.

41 It is common ground that, from 14 December 2000 until 2 October 2002, Mr Sahin was legally resident in the Netherlands, within the meaning of the national legislation, since, throughout that period, he was in possession of a valid residence permit. He was also entitled, during that period, to take employment in Netherlands territory. Accordingly, from March 2001 onwards, Mr Sahin held several jobs none of which however lasted more than one year without interruption in the service of the same employer, with the result that he cannot rely on the rights laid down in Article 6 of Decision No 1/80.

42 The question therefore arises whether any other provision of the legislation enacted in the context of the EEC-Turkey Association precludes the application of the

Netherlands legislation relating to the obligation to pay administrative charges in order to obtain a residence permit and the Minister's refusal to consider an application submitted for that purpose if such charges are not paid.

43 The referring court observes in that context that only on 10 February 2003, in other words after the validity of his residence permit had expired, did Mr Sahin submit an application to extend the permit, with the result that, under national law, he was no longer legally resident during the period from 2 October 2002 until 10 February 2003 and was no longer entitled to take paid employment in the Netherlands while that application was pending. Consequently, in the opinion of that court, the jobs held by Mr Sahin during that period of time were held illegally from the perspective of Netherlands domestic law.

44 On the other hand, after Mr Sahin submitted his application to extend the validity period of his residence permit, that is, after 10 February 2003, Mr Sahin's residence in the Netherlands was, in accordance with Netherlands law, again to be regarded as legal. Furthermore, since that belated application was made within the reasonable period of six months after the period of legal residence had ended, it has to be examined in the light of the requirements of national law relating to extending the period of residence and not those relating to the initial admission into the Netherlands.

45 In the present case, it is, more particularly, necessary to determine whether a Turkish national in a situation such as that described in paragraphs 29 to 44 of this judgment may properly rely on Article 13 of Decision No 1/80. In addition, while there is no doubt that the national legislation at issue in the main proceedings must be regarded as 'new' within the meaning of that article, given that it results in worsening the situation of Turkish nationals as compared with their situation under the rules applicable to them when Article 13 entered into force in the Kingdom of the Netherlands, it is also necessary to decide whether the constraints which that legislation imposes on Turkish nationals are to be construed as 'restrictions' within the meaning of Article 13, having regard, inter alia, to the fact that the amount of the charges levied in relation to such applications significantly exceeds that imposed on Community nationals and to members of their families.

46 In those circumstances the Raad van State decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

- ‘(1) (a) In the light of paragraphs 81 and 84 of the judgment in Joined Cases C-317/01 and C-369/01 *Abatay and Others* [2003] ECR I-12301, is Article 13 of Decision No 1/80 ... to be construed as meaning that an alien, a Turkish national, who has complied with the rules for first admission and residence in the country and from 14 December 2000 to 2 October 2002 was legally employed by various employers, but failed to request in due time the extension of the period of validity of his residence permit, as a result of which after the expiry of the permit and at the time of the application for its extension, under national law, he was neither legally resident nor entitled to work in the country, can rely on that provision?
- (b) Is the reply to question 1(a) affected by the fact that an application for extension not lodged by an alien in due time which is received within six months of the expiry of the period of validity of the residence permit, although under national law this application is treated as an application for the grant of a first residence permit, is examined in the light of the requirements laid down for authorisation of continued residence and the alien is allowed to await the decision on the application in the country?
- (2) (a) Is the word “restriction” in Article 13 of Decision No 1/80 to be understood to include the requirement upon an alien, a Turkish national, to whom Decision No 1/80 applies, to pay administrative charges in connection with the processing of an application for the extension of the period of validity of a residence permit, failing which payment his application will not be considered, in accordance with Article 24(2) of the Vw 2000?

(b) Is the reply to question 2(a) different if the amount of the charges for processing the application does not exceed the costs?

(3) Must Article 13 of Decision No 1/80, which also serves to implement the Additional Protocol to the [Association Agreement], read in conjunction with Article 59 of that Protocol, be interpreted as meaning that the amount of the administrative charges (EUR 169.00 for the alien at the relevant time) for Turkish nationals who fall within the scope of Decision No 1/80, payable in connection with the processing of an application for the grant or extension of a residence permit, may not exceed the amount of the charge (EUR 30) that can be levied on nationals of the European Community for the processing of an application for examination in the light of Community law and the issue of the corresponding residence documents (see Article 9(1) of Directive [68/360] and Article 25(2) of Directive [2004/38])?

## **The questions referred for a preliminary ruling**

### *Preliminary remarks*

<sup>47</sup> By the reference for a preliminary ruling, the referring court seeks, in essence to know, first, whether a Turkish national such as Mr Sahin is a person whose presence in the host Member State is legal and therefore within the scope of Article 13 of Decision No 1/80. Second, that court asks the Court whether the standstill clause laid down in that article precludes legislation in that State which provides that a Turkish national is required to pay administrative charges for the consideration of his application to obtain a residence permit or an extension of the period of validity thereof, in particular when those charges are markedly higher than those required of Community nationals in a comparable situation.

48 In order to give an answer which will help the referring court to resolve the dispute before it, each of those two aspects must in turn be examined.

*The personal scope of Article 13 of Decision No 1/80*

49 The referring court asks whether a Turkish national such as Mr Sahin satisfies the requirement in Article 13 of Decision No 1/80 that he be 'legally' resident and employed. The court did find that Mr Sahin had, on the one hand, complied not only with the relevant national rules in relation to his initial admission into the Netherlands but with also the rules relating to residence until 2 October 2002 and, on the other hand, that that Turkish national had been lawfully employed there from the perspective of domestic law until the same date. Nevertheless, the referring court asks whether, subsequently, Mr Sahin can still legitimately rely on Article 13 when, under national law, the consequence of the fact that his residence permit had expired and that he submitted his application to extend that permit outside the prescribed period because the relevant administrative charges were paid late was that neither his residence nor his employment were still in compliance with the relevant national rules, and when, furthermore, he was not yet able to satisfy the conditions required to qualify for the specific rights in relation to employment and residence in the host Member State on the basis of Article 6(1) of that decision.

50 In that regard, it must, first, be recalled that, in paragraphs 75 to 84 of *Abatay and Others*, the Court held that Article 13 of Decision No 1/80 is not subject to the condition that the Turkish national concerned satisfy the requirements of Article 6(1) of that decision and that the scope of that Article 13 is not restricted to Turkish migrants who are in paid employment.

51 Those two provisions of Decision No 1/80 are aimed at different situations, since Article 6 governs the conditions in which actual employment permits the gradual integration of the person concerned in the host Member State, while Article 13 concerns the national measures relating to access to employment, while including within its scope family members whose admission into the territory of a Member State

does not depend on actual employment. The Court concluded, in *Abatay and Others*, that Article 13 is not intended to protect Turkish nationals already integrated into a Member State's labour force, but is intended to apply precisely to Turkish nationals who do not yet qualify for the rights in relation to employment and, accordingly, residence under Article 6(1) of Decision No 1/80.

52 That being the case, the fact that Mr Sahin does not satisfy the requirements for the specific rights under Article 6 does not mean that he is deprived of the possibility of validly relying on Article 13 of Decision No 1/80.

53 Second, as regards the meaning of 'legally' in Article 13 of Decision No 1/80, according to the case-law, this means that the Turkish worker or member of his family must have complied with the rules of the host Member State as to entry, residence and, where appropriate, employment, with the result that he is lawfully present in the territory of that State (see, *inter alia*, *Abatay and Others*, paragraph 84 and case-law there cited). Accordingly Article 13 is of no assistance to a Turkish national whose position is not lawful (*Abatay and Others*, paragraph 85).

54 In that regard it is clear from the documents before the Court that Mr Sahin was lawfully allowed to enter and reside in Netherlands territory; moreover, the competent Netherlands authorities granted him the unconditional right to take up any employment he might choose in that host Member State, and he did in fact avail himself of that right.

55 It is accordingly common ground that Mr Sahin complied with all the relevant national rules in relation to immigration controls and employment, from his lawful entry into the Netherlands on 12 September 2000 until 2 October 2002, when the validity of his residence permit expired. In particular, he was legally present in that Member State when the new domestic legislation entered into force, requiring the levying of

administrative charges for the issue and extension of residence permits, which, according to the documents before the Court, is the sole matter at issue in the main proceedings.

56 On the information provided by the referring court, only after 3 October 2002 did Mr Sahin's situation, as regards residence and employment, temporarily fail to comply with the requirements of the national rules, until, less than six months after the expiry of the period of validity of his residence permit, Mr Sahin applied in due form for the extension of that permit, and complied with the obligation to pay the administrative charges required for that purpose.

57 As stated by the referring court, from the date of that application, Mr Sahin's residence in the Netherlands had, under domestic law, again to be regarded as legal. Furthermore, under that law, such a belated application for renewal had to be examined in the light of the requirements of national law relating to extension of a residence permit and not those relating to the granting of such a permit.

58 It must be added that it is not disputed that Mr Sahin would have obtained an extension of his residence permit if he had paid the administrative charges attaching to his application at the right time. There is nothing in the documents before the Court to suggest that the competent Netherlands authorities intended to put an end to Mr Sahin's residence or were about to deport him.

59 In any event, the Court has already held that a residence permit issued by the national authorities has only declaratory and probative value and that, although Member States do indeed have the right to require that foreigners on their territory hold a valid residence permit and apply for its extension in good time and although, in principle, they retain the power to impose penalties for breach of such obligations, nevertheless Member States are not entitled to adopt in that regard measures which are disproportionate as compared with comparable domestic cases (see Case C-329/97 *Ergat* [2000] ECR I-1487, paragraphs 52, 55, 56, 61 and 62).

60 It will be for the referring court to take due account of all of the particular circumstances of the case in the main proceedings in order to assess whether Mr Sahin's presence in the host Member State must be regarded as being no longer legal, in relation to residence and employment, as required for the application of Article 13 of Decision No 1/80.

61 On the assumption that that condition of legality is satisfied in the present case, it is necessary to rule on the second part of the reference, set out in paragraph 47 of this judgment, relating to the exact significance of the standstill clause of Article 13 of Decision No 1/80.

*The scope of the standstill clause in Article 13 of Decision No 1/80*

62 In that regard, it must first be observed that it is clear from settled case-law of the Court that Article 13 of Decision No 1/80 may be validly 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 (see Case C-192/89 *Sevince* [1990] ECR I-3461, paragraph 26, and *Abatay and Others*, paragraphs 58 and 59 and the first indent of paragraph 117).

63 It is also settled case-law that the standstill clause enacted in Article 13 prohibits generally the introduction of any new measure having the object or effect of making the exercise by a Turkish national in its territory of the freedom of movement for workers subject to more restrictive conditions than those which applied at the time when Decision No 1/80 entered into force with regard to the Member State concerned (see *Abatay and Others*, paragraph 66, and the second indent of paragraph 117, and by analogy, as regards the standstill clause in relation to freedom of establishment and freedom to provide services in Article 41(1) of the Additional Protocol, Case C-228/06 *Soysal and Savatli* [2009] ECR I-1031, paragraph 47).

- <sup>64</sup> The Court has therefore more specifically held that Article 41(1) of the Additional Protocol prohibits the introduction, as from the date of entry into force of the legal act of which that provision forms part in the host Member State, of any new restrictions on the exercise of freedom of establishment or freedom to provide services, including those relating to the substantive and/or procedural conditions governing the first admission to the territory of that Member State of Turkish nationals intending to make use of those economic freedoms (see Case C-16/05 *Tum and Dari* [2007] ECR I-7415, paragraph 69, and *Soysal and Savatli*, paragraphs 47 and 49).
- <sup>65</sup> Since the Court has already ruled that the standstill clause in Article 13 of Decision No 1/80 is of the same kind as that contained in Article 41(1) of the Additional Protocol and that the objective pursued by those two clauses is identical (see Case C-37/98 *Savas* [2000] ECR I-2927, paragraph 50, and *Abatay and Others*, paragraphs 70 to 74), the interpretation set out in the preceding paragraph must be equally valid as regards the standstill obligation which is the basis of Article 13 in relation to freedom of movement for workers.
- <sup>66</sup> In the present case, the referring court has already made the finding that the domestic legislation in question must be considered to be 'new' within the meaning of Article 13 of Decision No 1/80, given that the legislation was adopted after the entry into force of that decision.
- <sup>67</sup> The Court has however also ruled in this connection that the adoption of new rules which apply in the same way both to Turkish nationals and to Community nationals is not inconsistent with any of the standstill clauses laid down in the fields covered by the EEC-Turkey Association (see, by analogy, as regards Article 41(1) of the Additional Protocol, *Soysal and Savatli*, paragraph 61). The Court added, in the same paragraph of that judgment, that, if such rules applied to nationals of Member States but not to Turkish nationals, Turkish nationals would be put in a more favourable position than

Community nationals, which would be clearly contrary to the requirement of Article 59 of the Additional Protocol, according to which the Republic of Turkey may not receive more favourable treatment than that which Member States grant to one another pursuant to the EC Treaty.

68 However, in the case in the main proceedings, it is clear, on the one hand, from the documents before the Court, that in the Netherlands the issue of documents for the identification of national citizens is subject to payment of an administrative charge of a certain amount. On the other hand, under Article 25(2) of Directive 2004/38, the documents mentioned in paragraph 1 of that article, which include those covering citizens of the Union who move to or reside in a Member State other than that of which they are nationals and also the residence cards required for members of their families, whatever their nationality, who accompany them or join them, are to be issued on payment of a charge which must not exceed that imposed on nationals of the Member State concerned for the issuing of similar documents.

69 It follows that Turkish workers and members of their families cannot validly rely on one of the standstill clauses laid down in the context of the EEC-Turkey Association, such as Article 13 of Decision No 1/80, in order to insist that the host Member State exempt them from payment of any administrative charge as a prerequisite to consideration of an application for the grant of a residence permit or the extension of the period of validity of such a permit, even though, at the date when that decision entered into force in that Member State, the State concerned had not imposed on them any obligation of that kind. Any other interpretation would be inconsistent with Article 59 of the Additional Protocol, which prohibits Member States from according to Turkish nationals treatment which is more favourable than that accorded to Community nationals who are in a comparable situation.

70 The standstill clause in Article 13 of Decision No 1/80 therefore does not, as such, preclude the introduction of legislation of that type which makes the granting of a

residence permit or an extension of the period of validity thereof conditional on the payment of administrative charges by foreign nationals residing in the territory of the Member State concerned.

- 71 Nevertheless, such legislation must not amount to creating a restriction within the meaning of Article 13 of Decision No 1/80. Read in conjunction with Article 59 of the Additional Protocol, Article 13 implies that although a Turkish national to whom those provisions apply must certainly not be placed in a position more advantageous than that of Community nationals, he cannot on the other hand be subjected to new obligations which are disproportionate as compared with those established for Community nationals.
- 72 It is clear from the order for reference that, at the material time in the case in the main proceedings, Turkish nationals were required, under the Netherlands legislation, to pay a sum amounting to EUR 169 for the processing of an application for a residence permit or extension thereof, whereas the amount which Community nationals could be charged in the Netherlands for the processing of a similar application was only EUR 30. Moreover, it is common ground that the period of validity of the documents in question is in some cases shorter when they are issued to Turkish nationals, with the result that Turkish nationals are obliged to apply for the renewal of such documents more often than Community nationals and that, consequently, the financial impact on the former is significant, the more so since, if the application is rejected, the sum paid is not refunded.
- 73 In that regard, in neither its written observations lodged with the Court nor in response to questions put to it at the hearing has the Netherlands Government advanced any relevant argument capable of justifying such a significant difference between the amounts of the administrative charges imposed on Turkish nationals and those provided for in relation to Community nationals. It must be added in that context that the Court cannot accept the argument of the Netherlands Government that the enquiries and checks required before a residence document can be issued to a Turkish national are more complex and more costly than those needed in respect of a Community national, given that, under the Netherlands legislation concerned,

payment of the administrative charge must be made before the application for a residence permit or extension thereof is even considered, and that, furthermore, there is nothing to prevent a Member State from requiring the applicant himself to submit to the competent authorities a dossier containing all the supporting documents required for such an application.

74 It must therefore be concluded that national legislation such as that at issue in the main proceedings constitutes a restriction prohibited by Article 13 of Decision No 1/80 to the extent that, before an application for the grant of a residence permit or extension thereof can be considered, the legislation requires payment, by Turkish nationals to whom Article 13 applies, of administrative charges of an amount which is disproportionate as compared with that demanded in similar circumstances from Community nationals.

75 In light of all of the foregoing the answer to be given to the questions referred is that Article 13 of Decision No 1/80 must be interpreted as precluding the introduction, from the entry into force of that decision in the Member State concerned, of national legislation, such as that at issue in the main proceedings, which makes the granting of a residence permit or an extension of the period of validity of such a permit conditional on payment of administrative charges, where the amount of those charges payable by Turkish nationals is disproportionate as compared with the amount required from Community nationals.

## **Costs**

76 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 13 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 precluding the introduction, from the entry into force of that decision in the Member State concerned, of national legislation, such as that at issue in the main proceedings, which makes the granting of a residence permit or an extension of the period of validity thereof conditional on payment of administrative charges, where the amount of those charges payable by Turkish nationals is disproportionate as compared with the amount required from Community nationals.**

[Signatures]