

OPINION OF ADVOCATE GENERAL

BOT

delivered on 11 September 2008¹

1. In the present case, the Court is requested to interpret the first indent of the first paragraph of Article 7 of Decision No 1/80 of the Association Council² of 19 September 1980 on the development of the Association.³

2. That provision confers on a member of the family of a Turkish worker who has been authorised to join that worker on the territory of the host Member State and who has been resident there for at least three years to respond to any offer of employment on that territory.

3. More specifically, the national court asks whether a child of a Turkish worker may rely

on the rights conferred by the first indent of the first paragraph of Article 7 of Decision No 1/80, if that worker entered the territory of the host Member State as a political refugee. It also seeks to know whether that child may benefit from those rights, if, during the three years of residence required by that provision, the Turkish worker was employed for two years and six months and then unemployed for the remaining six months. Lastly, the Court is asked to rule as to whether the child of a Turkish worker may lose the benefit of the rights conferred by that provision, if it is found that the Turkish worker acquired his political refugee status and, thus, his right of residence, as a result of false statements.

4. In this Opinion, I shall show why, in my view, the provisions of Decision No 1/80 apply to a Turkish worker who entered the territory of the host Member State as a political refugee and to a member of his family. Subsequently, I shall propose that the Court interpret the first indent of the first paragraph of Article 7 of that decision as meaning that the child of a Turkish worker may claim the rights conferred pursuant to that provision, where, during the required three-year period, that worker was employed for two years and six months and was unemployed for the

1 — Original language: French.

2 — 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. The Agreement 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) ('the Association Agreement').

3 — The text of Decision No 1/80 is available in EEC–Turkey Association Agreement and Protocols and Other Basic Texts, Office for Official Publications of the European Communities, Brussels, 1992.

remaining six months. Lastly, I shall suggest that the Court rule that the first indent of the first paragraph of Article 7 of Decision No 1/80 must be interpreted as meaning that, where a Turkish worker obtained his political refugee status as a result of fraudulent conduct, the member of his family may claim the rights conferred by that provision only if that worker's residence permit was withdrawn after the required three-year period of cohabitation has expired.

opment of the Turkish economy and to improve the level of employment and the living conditions of the Turkish people'.⁴

6. The progressive achievement of freedom of movement for Turkish workers which is the aim of that agreement must occur according to the methods determined by the Association Council, which has the task of ensuring the implementation and the progressive development of the Association.⁵

I — Legal context

A — *Community law*

1. The Association Agreement

5. With the aim of regulating freedom of movement for Turkish workers in the territory of the Community, an association agreement was concluded on 12 September 1963 between the Community and the Republic of Turkey. The aim of that Agreement is 'to promote the continuous and balanced strengthening of trade and economic relations between the parties, while taking full account of the need to ensure the accelerated devel-

2. Decision No 1/80

7. The Association Council thus adopted Decision No 1/80 which is intended, *inter alia*, to improve the legal position of workers and their families in relation to the arrangements introduced by Decision No 2/76 of the Association Council of 20 December 1976. That decision granted Turkish workers an increasing right of access to employment in the host Member State and also gave the children of such workers a right to education in that State.

⁴ — See Article 2(1) of the Association Agreement.

⁵ — See Article 6 of the Association Agreement.

8. The rights of Turkish workers and those of members of their families are set out in Articles 6 and 7 of Decision No 1/80.

— shall enjoy free access in that Member State to any paid employment of his choice, after four years of legal employment.

9. Article 6 of that decision 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;

2. Annual holidays and absences for reasons of maternity or an accident at work or short periods of sickness shall be treated as periods of legal employment. Periods of involuntary unemployment duly certified by the relevant authorities and long absences on account of sickness shall not be treated as periods of legal employment, but shall not affect rights acquired as the result of the preceding period of employment.

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

— 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;

10. Article 7 of Decision No 1/80 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;
- limitations justified on grounds of public policy, public security or public health.’

- 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.’

3. Directive 2004/83/EC

12. Directive 2004/83/EC⁶ aims to set minimum rules for the classification and status of nationals of non-member countries and stateless persons as refugees in order to ensure that all Member States apply common criteria for the purpose of identifying those persons.⁷

13. Pursuant to Article 38(1) of Directive 2004/83, Member States have until 10 October 2006 to comply with it. That directive entered into force on 20 October 2004.⁸

11. Article 14(1) of Decision No 1/80 lays down that the provisions of Chapter II, Section I of that decision, which include Articles 6 and 7, ‘shall be applied subject to

6 — Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (OJ 2004 L 304, p. 12).

7 — See Recital (6).

8 — See Article 39.

B — *The Geneva Convention*

granted by a Contracting State to refugees apart from this Convention’.

14. The Convention relating to the Status of Refugees⁹ was signed on 28 July 1951 in Geneva and ratified by the Federal Republic of Germany on 1 December 1953. Its aim is to make it possible for refugees and stateless persons to acquire a status along with international recognition.

15. Consequently, under Article 1(A)(2) of that convention, the term ‘refugee’ is to apply to everyone who ‘owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it’.

16. Article 5 of the Geneva Convention states that ‘[n]othing in this Convention shall be deemed to impair any rights and benefits

9 — UN Treaty Series, Vol. 189, p. 150, No 2545 (1954). Convention as amended by Article 1(2) of the Protocol relating to the Status of Refugees done at New York on 31 January 1967 (‘the Geneva Convention’).

II — **The main proceedings**

17. In the main proceedings, the situation of the applicant’s father is as follows.

18. Ali Altun is a Turkish national. He arrived in Germany on 27 March 1996 as an asylum seeker. By decision of 19 April 1996, the Federal Office for the Recognition of Foreign Refugees acknowledged him as such. On 23 May 1996, an international travel document was issued to him by the locally competent authority for foreigners in Mönchengladbach along with an indefinite German residence permit.

19. Ali Altun was resident in Stuttgart from 1 May 1999 until 1 January 2000, since which date he has been resident in Böblingen.

20. In July 1999, he took up employment with a Stuttgart contract work agency. Then, from 1 April 2000, he was employed as a worker in a food production company. On 1 June 2002, that undertaking was declared insolvent. Ali Altun was released from his obligation to work and told to report to the employment office as unemployed. The employment relationship between Ali Altun and the food production undertaking came to an end formally on 31 July 2002.

21. From 1 June 2002 to 26 May 2003, he was in receipt of unemployment benefit.

22. From the month of June 1999, Ali Altun, whose family had remained in Turkey, requested family reunification for his wife, his son and his daughters.

23. His son, Ibrahim Altun, the applicant in the main proceedings, arrived in Germany on 30 November 1999, after obtaining a visa, and took up residence with his father. On 9 December 1999, he obtained a residence permit valid until 31 December 2000 issued by the office for foreigners of the *Land* capital, Stuttgart. That permit was extended by Stadt Böblingen on 4 December 2000 until 31 December 2002, and again on 21 November 2002 until 8 December 2003.

24. Ibrahim Altun first reported to the employment office as unemployed and then, from 1 September 2003, started a training course for young unemployed persons, which he abandoned on 2 April 2004.

25. On 22 March 2003, Ibrahim Altun attempted to rape a 16-year-old girl. On 28 April 2003, he was arrested and placed in investigative custody until 27 May 2003.

26. On 16 September 2003, he was convicted by the Amtsgericht Böblingen (Böblingen Local Court) (Germany), and given a suspended sentence of one year and three months.

27. On 20 November 2003, Ibrahim Altun made an application to the Stadt Böblingen for a further extension of his right of residence in Germany, which was refused by a decision of 20 April 2004. Stadt Böblingen also ordered Ibrahim Altun to leave Germany within the three months following notification of that decision, failing which, he would be deported to Turkey.

28. Stadt Böblingen stated as grounds that Ibrahim Altun had committed a serious criminal offence, which constitutes, under German law, a ground for refusal of an application to extend a right of residence. It also stated that he had not attained the legal status laid down in the first sentence of Article 7 of Decision No 1/80 of the Association Council.

(1) Does the acquisition of the rights under the first [paragraph] of Article 7 of Decision No 1/80 ... require that the “principal person entitled”, with whom the member of the family has been legally resident for the period of three years, satisfies the conditions of the first [paragraph] of Article 7 ... throughout the whole of that period?

29. As his objection against that decision was rejected on 5 October 2004, Ibrahim Altun brought an action against that rejection before the Verwaltungsgericht Stuttgart (Stuttgart Administrative Court) (Germany). He argued that the application to extend his right of residence was not to be assessed solely under national law, but also in the light of the first sentence of Article 7 of Decision No 1/80.

(2) Does it suffice in this respect for a member of the family to acquire the rights under the first [paragraph] of Article 7 of Decision No 1/80 ... that the “principal person entitled” is employed during that period for two years and six months with different employers, is then involuntarily unemployed for six months, and also remains unemployed for a substantial period thereafter?

III — The questions referred for a preliminary ruling

30. Against that background the Verwaltungsgericht Stuttgart decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

(3) Can a person also rely on the first [paragraph] of Article 7 of Decision No 1/80 ... if he has received a residence permit as a member of the family of a Turkish national whose right of residence, and hence his lawful access to the labour force of a Member State, is based solely on the granting of political asylum on the ground of political persecution in Turkey?

(4) In the event that Question 3 is to be answered in the affirmative: Can a member of the family rely on the first [paragraph] of Article 7 of Decision No 1/80 if the grant of political asylum, and on that basis the right of residence and lawful access to the labour market of the “principal person entitled” (in this case the father), are based on false statements?

may directly rely before the national court on the rights conferred on them by that provision.¹⁰ In addition, where the conditions laid down in the first paragraph of Article 7 of that decision are fulfilled, not only does the direct effect of that provision mean that that Turkish national derives an individual employment right directly from Decision No 1/80 but also the effectiveness of that right necessarily implies a concomitant right of residence which is also founded on Community law and is independent of the continuing existence of the conditions for access to those rights.¹¹

(5) In the event that Question 4 is to be answered in the negative: Is it necessary in such a case, before refusal of the rights under the first [paragraph] of Article 7 of Decision No 1/80 to the member of the family, that the rights of the “principal person entitled” (in this case the father) should first be formally withdrawn or revoked?

32. It is not contested, in the case in the main proceedings, that Ibrahim Altun was authorised pursuant to the first indent of the first paragraph of Article 7 of Decision No 1/80 to join his father, Ali Altun, in the host Member State and lived with him for more than three years. Ibrahim Altun is thus capable of falling within that provision.

IV — Analysis

31. It must be recalled at the outset that, according to settled case-law, the first paragraph of Article 7 of Decision No 1/80 has direct effect, so that Turkish nationals fulfilling the conditions which it lays down

33. However, by its third question, the national court seeks to know whether the child of a Turkish worker may lose the benefit of the rights conferred by the first indent of the first paragraph of Article 7 of Decision No 1/80, if that worker entered the territory of the host Member State as a political refugee.

¹⁰ — See Case C-351/95 *Kadiman* [1997] ECR I-2133, paragraph 28; Case C-329/97 *Ergat* [2000] ECR I-1487, paragraph 34; and Case C-65/98 *Eyüp* [2000] ECR I-4747, paragraph 25.

¹¹ — See *Ergat*, paragraph 40.

34. Next, by its first and second questions, the national court asks whether that child may benefit from those rights, if, during the three years of cohabitation with the Turkish worker, that worker was employed for two years and six months and then unemployed for the remaining six months.

37. I do not think so.

35. Lastly, by its fourth and fifth questions, the national court asks whether the child of a Turkish worker may lose the benefit of the rights conferred by the first indent of the first paragraph of Article 7 of Decision No 1/80, if it is found that the Turkish worker acquired his political refugee status and, thus, his right of residence, as a result of false statements.

38. It should be pointed out at the outset that Directive 2004/83 entered into force on 20 October 2004 and that Member States had until 10 October 2006 to comply with that directive.¹² I am therefore of the view that it is not applicable to the facts of the case in the main proceedings, since Ali Altun entered German territory on 27 March 1996.

39. Further, I am of the view that the Geneva Convention does not prevent the application of Decision No 1/80 to Turkish workers who entered the territory of the host Member State as refugees.

A — *The third question*

36. By its third question, the national court asks whether the fact that a Turkish worker entered the territory of Germany as a political refugee has an impact on the application of Decision No 1/80. The national court wishes essentially to know whether Directive 2004/83 and the Geneva Convention prevent the application of that decision.

40. I note that Article 5 of the Geneva Convention lays down that '[n]othing in this Convention shall be deemed to impair any rights and benefits granted by a Contracting State to refugees apart from this Convention'.

¹² — See Articles 38(1) and 39 of the directive.

41. I am of the view that Decision No 1/80 grants rights and benefits other than those granted by the Geneva Convention to political refugees of Turkish nationality.

42. The Court has held that the grounds on which the right of residence of a Turkish worker is recognised are not decisive for the purpose of applying Decision No 1/80.¹³

43. In the judgment in *Kus*, the Court stated that from the moment that the Turkish worker has been employed for more than one year under a valid residence permit, he fulfils the conditions of the first indent of Article 6(1) of that decision, even though that residence permit was initially granted to him for a purpose other than that of engaging in paid employment.¹⁴

44. Consequently, a Turkish political refugee may, in my view, benefit from the rights conferred by Article 6(1) of Decision No 1/80, provided that he fulfils the conditions laid down in that article, since he is, first and foremost, a worker.

13 — See Case C-294/06 *Payir and Others* [2008] ECR I-203, paragraphs 40 and 45. See also Case C-237/91 *Kus* [1992] ECR I-6781, paragraphs 21 and 22.

14 — See paragraph 23.

45. Moreover, unlike the Geneva Convention which does not lay down individual rights for members of the family of a political refugee, Decision No 1/80 provides for the possibility for members of the family of a Turkish worker,¹⁵ who are authorised to join him, to acquire rights so as to have lawful access to the labour force.

46. Thus, I am of the view that, once a Turkish political refugee has a valid right of residence and a valid work permit and, thus, legal access to the labour market, Decision No 1/80 is applicable to him.

47. Pursuant to German law, foreigners in possession of a residence permit or a right of residence of unlimited duration are not required to hold a workpermit.¹⁶ Thus, merely

15 — The Court gave a wide definition to 'member of the family'. It also ruled in Case C-275/02 *Ayaz* [2004] ECR I-8765 a stepson who is under the age of 21 years or is a dependant of a Turkish worker duly registered as belonging to the labour force of a Member State is a member of the family of that worker, for the purposes of the first paragraph of Article 7 of Decision No 1/80 (paragraph 48). The Court *inter alia* based its reasoning on the fact that there is nothing in that provision which might give the impression that the scope of the concept of 'member of the family' is limited to the worker's blood relations. It then went on to rule that, in the context of the Cooperation Agreement between the European Economic Community and the Kingdom of Morocco, signed in Rabat on 27 April 1976 and approved on behalf of the Community by Council Regulation (EEC) No 2211/78 of 26 September 1978 (OJ 1978 L 264, p. 1), that term extends to relatives in the ascending line of that worker and of his spouse who live with him in the host Member State (paragraphs 46 and 47).

16 — See Article 284(1) of the German Social Security Code III (Sozialgesetzbuch III).

by virtue of having a residence permit of unlimited duration, those persons have the right to present themselves on the German labour market.

48. In the case in the main proceedings, the German authorities issued an unlimited residence permit to Ali Altun. They thus agreed to offer him the status of worker by giving him access to the labour force.

49. It follows from this, in my view, that Ali Altun may claim the rights conferred by Article 6(1) of Decision No 1/80 and, accordingly, the members of his family who fulfil the conditions laid down in Article 7 of that decision may also claim the rights thereby conferred on them.

50. In the light of the foregoing, I am of the view that the provisions of Decision No 1/80 are applicable to a Turkish worker who entered the territory of the host Member State as a political refugee and to the members of his family.

B — *The first and second questions*

51. The national court asks whether the child of a Turkish worker may benefit from the

rights under the first indent of the first paragraph of Article 7 of Decision No 1/80, if, during the three—year period of cohabitation with that worker, that worker was employed for two years and six months and then unemployed for the remaining six months.

52. The national court essentially wishes to know whether, in view of those circumstances, Ali Altun may be regarded as having been duly registered as belonging to the labour force pursuant to the first indent of the first paragraph of Article 7 of Decision No 1/80. It asks whether that may be the case when the Turkish worker was not legally employed for a period of three years.

53. First, it should be pointed out that the first indent of the first paragraph of Article 7 of the decision lays down that '[t]he 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'.

54. It is clear that, contrary to the express requirement in Article 6 of Decision No 1/80, nowhere in the wording of the first indent of

the first paragraph of Article 7 of that decision is it indicated that the Turkish worker must have been legally employed for the period of three years of cohabitation with the member of the family.

55. In the judgment in *Birden*,¹⁷ the Court made a distinction between the terms ‘worker’, ‘being duly registered as belonging to the labour force’ and ‘legal employment’.

56. It is apparent from that judgment that a worker is a person who must pursue, for another person in return for remuneration, an activity which is effective and genuine, to the exclusion of activities on such a small scale as to be regarded as purely marginal and ancillary.¹⁸

57. The Court went on to state that the concept of ‘being duly registered as belonging to the labour force’ must be regarded as applying to all workers who have complied with the requirements laid down by law and regulation in the Member State concerned and are thus entitled to pursue an occupation in its territory.¹⁹

58. Lastly, the Court referred to its settled case-law according to which the legality of the employment 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.²⁰

59. The distinction between those last two terms may appear to be rather unclear. A person who engages in legal employment by that fact alone fulfils the second condition, namely that of being duly registered as belonging to the labour force. A Turkish worker who engages in lawful paid employment on the territory of a Member State has necessarily obtained the right to engage in such activity and is presumed to have complied with the legislation of that Member State governing his entry on that territory and his employment.

60. However, for all that those two terms are linked, the case-law of the Court shows that a distinction must be made between them.

61. The Court held in its judgment in *Tetik*²¹ and in the context of Article 6(1) of Decision No 1/80 that a Turkish worker who has been employed for more than four years in a Member State and who voluntarily leaves that employment in order to seek other

17 — Case C-1/97 [1998] ECR I-7747.

18 — *Birden* (paragraph 25).

19 — *Ibidem* (paragraph 51).

20 — *Ibidem* (paragraph 55).

21 — Case C-171/95, [1997] ECR I-329.

employment in that Member State may not be treated as having definitively left the labour force of that State, provided that he continues to be duly registered as belonging to the labour force of the Member State in question. The Court went on to state that that condition is fulfilled inasmuch as that worker satisfies all the formalities that may be required in the Member State in question, for instance by registering as a person seeking employment with the relevant authorities.²²

62. It is only the definitive unavailability of the Turkish worker or the fact that he has left the labour force of the host Member State for good, by becoming, for example, a pensioner, which will exclude him from the labour force.²³

63. It follows, in my view, from that case-law that the concept of being duly registered as belonging to the labour force means that the Turkish worker must have legal access to the labour market of the host Member State. Thus, that does not mean that that worker must actually be working.

64. I am of the view that it is possible to transpose that solution to the first paragraph

of Article 7 of Decision No 1/80 and, all the more so, where the periods of unemployment are involuntary.

65. First, consistency in the interpretation of a term requires, in my view, that the expression 'duly registered as belonging to the labour force' be interpreted in the same way when used in the first paragraph of Article 7 of that decision as when it is used in Article 6(1) thereof.

66. Next, that interpretation is, in my view, consistent with the general scheme and purpose of Decision No 1/80.

67. That decision is intended to promote the gradual integration in the host Member State of Turkish nationals who satisfy the conditions laid down in one of the provisions of the Decision and accordingly enjoy the rights conferred on them thereby.²⁴

68. The first stage consists in the progressive grant of rights to the Turkish worker according to the length of his employment. Thus it is that Article 6 of Decision No 1/80

22 — Paragraphs 40 and 41. See also Case C-383/03 *Dogan* [2005] ECR I-6237, paragraph 19.

23 — See Case C-340/97 *Nazlı* [2000] ECR I-957, paragraphs 37 to 39.

24 — See, in particular, Case C-325/05 *Derin* [2007] ECR I-6495, paragraph 53.

lays down, for the Turkish worker, after one year's legal employment, the right to renew the contract of employment with the same employer, after three years of legal employment, the right to respond to another offer in the same profession with another employer; and, lastly, after four years of legal employment, the right to enjoy free access to any paid employment of his choice.

69. Then, and this constitutes the second stage, in order to strengthen the integration of the Turkish worker on the labour market of the host Member State, Decision No 1/80 provides, in the first paragraph of Article 7 for the possibility for members of his family to be authorised to join him and take up residence there for the purposes of family reunification. Moreover, in order to deepen the integration of that Turkish worker's family unit, that article grants family members the right, after a specified time, to take up employment in that Member State.²⁵

70. The first paragraph of Article 7 of Decision No 1/80 is thus designed to create conditions conducive to family reunification in the host Member State, first by enabling family members to be with a migrant worker and then by consolidating their position by granting them the right of access to the labour force.²⁶

71. It appears to me that those conditions favourable to family reunification, and consequently to the good integration of the Turkish worker on the labour market of the host Member State, might be harmed if that worker were required not only to belong to the labour force of that Member State for a period of three years, but additionally to engage in legal employment for the entirety of that period.

72. Such an interpretation would, effectively, lead, in a case such as that in the main proceedings, to a denial of the rights conferred by the first indent of the first paragraph of Article 7 of Decision No 1/80 on a member of the family of a Turkish worker, on the ground that that worker, for a period of three years spent on the territory of the host Member State worked only two years and six months and was involuntarily unemployed for the remaining six months.

73. Taking account of the current economic situation which may prove difficult for job seekers and, surely, particularly so for a national of a non-Member State, and in the light of the objective of Article 7 of Decision No 1/80 which, I note, is to deepen the integration of the Turkish worker's family unit by creating conditions favourable to family reunification and thus to foster that worker's integration, I am of the view that such an interpretation would have the result of restricting excessively the scope of Article 7 of that decision.

²⁵ — See *Kadiman*, paragraphs 34 and 35.

²⁶ — *Ibidem*, paragraph 36.

74. Consequently, I am of the view that it is not necessary for the Turkish worker to have been legally employed for a period of three years in order for a member of his family to benefit from the rights which are conferred on him by the first indent of the first paragraph of Article 7 of that decision.

75. The national court also raises the question whether the Turkish worker must have been duly registered as belonging to the labour force for the three years of cohabitation with the member of the family in order for the latter to benefit from the rights conferred pursuant to the first indent of the first paragraph of Article 7 of Decision No 1/80.

76. In the judgment in *Cetinkaya*,²⁷ the national court asked whether a Turkish national, who was a member of the family of a Turkish worker and had satisfied the joint residence requirement, could lose the rights which the first paragraph of Article 7 of Decision No 1/80 confers solely because, at a given moment, that worker ceased to belong to the labour force.

77. The Court held that the rights conferred by the first paragraph of Article 7 of that decision may be exercised by the family member after the period of residence with the Turkish worker duly registered as

belonging to the labour force of the host Member State, even if, after that period of residence, the worker himself no longer belongs to the labour force of that Member State.²⁸

78. It follows, in my view, from that case-law that the requirement of being duly registered as belonging to the labour force must have been effective for, at least, the three-year period of joint residence with the member of the family.

79. In the case in the main proceedings, it is not contested that Ibrahim Altun lived with his father for at least three years. During that period of three years, the national court indicates that Ali Altun was employed for two years and six months and that he was unemployed for the remaining six months. In addition, it is indicated, in the observations of the applicant in the main proceedings that Ali Altun found new employment on 7 October 2004.²⁹

80. Consequently, I am of the view that Ali Altun was duly registered as belonging to the labour force for the three-year period of cohabitation with his son, Ibrahim Altun, and that the latter can benefit from the rights conferred by the first indent of the first paragraph of Article 7 of Decision No 1/80.

27 — Case C-467/02, [2004] ECR I-10895.

28 — See paragraph 32 of that judgment.

29 — See page 8 of the Observations.

81. In the light of all of the foregoing, I am of the view that the child of a Turkish worker may claim the rights conferred pursuant to that provision, if that worker, during the three-year residence period required, has been employed for two years and six months and has been unemployed for the remaining six months.

84. In the observations which it submitted to the Court, the Commission of the European Communities contends that the Court lacks jurisdiction to rule on those questions, in view of their hypothetical nature.³¹

C — The fourth and fifth questions

82. The national court asks, essentially, whether a member of the family may benefit from the rights conferred by the first paragraph of Article 7 of Decision No 1/80 where the Turkish worker entered the territory of the host Member State as a political refugee and where the grant of that status is based on false statements.

85. Although, the national court does not specify whether Ali Altun's residence permit was the subject of annulment proceedings before the national courts and whether, in fact, the subject of the action in the main proceedings is the application for annulment of Ali Altun's son's residence permit, in my view, the fact remains that the latter's situation is inextricably linked to that of his father. Under Decision No 1/80, it is, above all, the situation of the Turkish worker which will allow the member of his family to acquire rights. It follows that an element which may change the situation of a Turkish worker may have consequences for that of a member of his family. Consequently, I am of the view that it is necessary to answer those preliminary questions.

83. The national court indicates, in its order for reference, that 'there is a whole series of indications ... to show that [Ali Altun's] statements in connection with his asylum procedure cannot correspond to the truth'.³⁰

86. The national court seeks to know whether the fact that the competent authorities are of the view that Ali Altun's status as a political refugee and, thus, the right of residence deriving from that status were accorded on the basis of false statement deprives Ibrahim Altun of the benefit of the rights conferred by the first indent of the first paragraph of Article 7 of Decision No 1/80.

³⁰ — See page 11 of the order for reference.

³¹ — Paragraph 46.

87. In my view, the fraudulent conduct of a Turkish worker upon his entry on the territory of the host Member State as a political refugee deprives the child of that worker of the benefit of those rights, where the authorities proceed to withdraw the right of residence of the worker before the expiration of the period of three years of residence required.

88. It is necessary, first, to point out that the Court held in its judgment in *Kol*³² that 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 the 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.³³

89. That case-law is capable, in my view, of being applied by analogy to Article 7 of that decision. In my view that article makes obtaining the rights which it confers conditional, in particular, on the requirement that the Turkish worker be duly registered as belonging to the labour force, in other words that he have lawful access to the labour market in the host Member State.

90. If it should prove that that Turkish worker obtained his residence permit and his work permit only as a result of fraudulent conduct, access to the labour market cannot be considered to be lawful, since the conditions for the grant of the residence permit, which allow that access to the labour market, are not fulfilled.

91. In such a case, I am of the view that the benefit for the rights conferred on a member of the family by Article 7 of Decision No 1/80 depends on whether the latter has acquired rights or not at the moment of withdrawal of that the Turkish worker's residence permit.

92. As already indicated at point 30 of my Opinion in *Derin*, once the conditions required by the first paragraph of Article 7 of Decision No 1/80 are fulfilled, that provision confers upon members of the family of a Turkish worker independent rights of access to employment in the host Member State which do not depend on the continued fulfilment of the conditions.³⁴

32 — Case C-285/95, [1997] ECR I-3069.
33 — Paragraph 26.

34 — See *Ayaz*, (paragraph 41). See also *Ergat*, (paragraph 38) and *Cetinkaya* (paragraph 30).

93. I am, therefore, of the view that, once the member of the family has acquired the rights conferred by the first indent of the first paragraph of Article 7 of Decision No 1/80, it is not possible to object to them on the ground that the Turkish worker's conduct, in the past, may have been fraudulent, and that the competent authorities have for those reasons proceeded to withdraw his right of residence, after he obtained those rights.

94. In my view, legal certainty prevents the withdrawal, on account of fraud by a Turkish worker in his application for the right of residence on the territory of the host Member State, of the rights which a member of the family of that worker has acquired by virtue of that provision.

95. On the other hand, where the rights conferred by the first indent of the first paragraph of Article 7 of Decision No 1/80 have not yet been acquired at the time when the Turkish worker's right of residence is withdrawn, I am of the view that the competent authorities are able to refuse to members of the family of that Turkish worker the benefit of the rights conferred by the article.

96. In view of all of the foregoing, I am of the view that the first indent of the first paragraph

of Article 7 of Decision No 1/80 must be interpreted as meaning that, where a Turkish worker obtained his political refugee status as a result of fraudulent conduct, the member of his family may claim the rights conferred by that provision only if that worker's residence permit was withdrawn after the expiry of the required three-year period of cohabitation.

97. In addition, since the application for an extension of stay for Ibrahim Altun was refused on the ground that he had committed a serious criminal offence, the question arises whether the rights which the provision confers on him may not be limited because of that offence.

98. It is apparent from the case-law of the Court that the rights are conferred by the first paragraph of Article 7 of Decision No 1/80 may be limited in only two situations.

99. First, those rights may be curtailed when the party concerned leaves the territory of the

host Member State for a significant length of time without legitimate reason.³⁵

in reviewing the lawfulness of the expulsion of a Turkish national, factual matters which occurred after the final decision of the competent authorities which may point to the cessation or the substantial diminution of the present threat which the conduct of the person concerned constitutes to the requirements of public policy.³⁹

100. Second, the competent authorities of the host Member State may decide to withdraw the rights, pursuant to Article 14 of Decision No 1/80, where the party concerned constitutes a genuine and serious threat to public order, public security or public health.³⁶

101. With regard, in particular, to the application of Article 14, the Court has held that a measure ordering expulsion based on that provision may be taken only if the personal conduct of the person concerned indicates a specific risk of new and serious prejudice to the requirements of public policy.³⁷ The Court also held that such a measure cannot be ordered automatically following a criminal conviction and with the aim of general deterrence.³⁸

103. Lastly, the public policy measures taken by the host Member State must comply with the principle of proportionality,⁴⁰ in other words, they must be suitable for securing the attainment of the objective which they pursue; and they must not go beyond what is necessary in order to attain that objective.

102. In that regard, the Court specified that national courts must take into consideration,

104. It falls thus to the national court to establish those facts in order to decide whether Ibrahim Altun's conduct indicates a specific risk of new and serious prejudice to the requirements of public policy.

35 — See *Cetinkaya*, (paragraphs 36 and 38).

36 — *Idem*.

37 — See *Derin*, (paragraph 74).

38 — *Idem*.

39 — See *Cetinkaya*, (paragraph 47).

40 — See *Derin*, (paragraph 74).

V — Conclusion

105. With regard to all of the foregoing, I propose that the Court should give the following reply to the Verwaltungsgericht Stuttgart:

- '(1) The provisions of Decision No 1/80 of 19 September 1980 on the development of the Association, adopted by the Association Council introduced 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, are applicable to the child of a Turkish worker, if that worker entered the territory of the host Member State as a political refugee.

- (2) The first indent of the first paragraph of Article 7 of Decision No 1/80 must be interpreted as meaning that the child of a Turkish worker may claim the rights conferred pursuant to that provision if, during the three-year residence period required, that worker has been employed for two years and six months and has been unemployed for the remaining six months.

- (3) The first indent of the first paragraph of Article 7 of Decision No 1/80 must be interpreted as meaning that, where a Turkish worker obtained his political refugee status as a result of fraudulent conduct, the member of his family may claim the rights conferred by that provision only if that worker's residence permit was withdrawn after the required three-year period of cohabitation has expired.'