



## Reports of Cases

### JUDGMENT OF THE COURT (Sixth Chamber)

3 June 2021 \*

(Reference for a preliminary ruling – EEC-Turkey Association Agreement – Decision No 1/80 – Articles 6 and 7 – Legal employment – Article 9 – Access to education for children of a Turkish worker – Right of residence – Refusal)

In Case C-194/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the Verwaltungsgericht Düsseldorf (Administrative Court, Düsseldorf, Germany), made by decision of 7 May 2020, received at the Court on 8 May 2020, in the proceedings

**BY,**

**CX,**

**FU,**

**DW,**

**EV**

v

**Stadt Duisburg,**

THE COURT (Sixth Chamber),

composed of L. Bay Larsen, President of the Chamber, R. Silva de Lapuerta (Rapporteur), Vice-President of the Court, and C. Toader, Judge,

Advocate General: G. Pitruzzella,

Registrar: A. Calot Escobar,

having regard to the written procedure,

\* Language of the case: German.

after considering the observations submitted on behalf of:

- the Danish Government, by J. Nymann-Lindegren, M. Jespersen and M. Wolff, acting as Agents,
- the Netherlands Government, by M.K. Bulterman and M.A.M. de Ree, acting as Agents,
- the Polish Government, by B. Majczyna, acting as Agent,
- the European Commission, by B.-R. Killmann and D. Martin, acting as Agents,

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

### **Judgment**

- 1 This request for a preliminary ruling concerns the interpretation of the first sentence of Article 9 of Decision No 1/80 of the Association Council of 19 September 1980 on the development of the Association between the European Economic Community and Turkey, read in conjunction with Articles 6 and 7 of that decision. The Association Council was set up by the Agreement establishing an Association between the European Economic Community and Turkey, signed in Ankara on 12 September 1963 by the Republic of Turkey, of the one part, and by the Member States of the EEC and the Community, of the other part, and concluded, approved and confirmed on behalf of the Community by Council Decision 64/732/EEC of 23 December 1963 (JO 1964, 217, p. 3685; ‘the Association Agreement’).
- 2 The request has been made in proceedings between BY, CX, FU, DW and EV, who are Turkish nationals, and the Stadt Duisburg (City of Duisburg, Germany) concerning the latter’s rejection of their application for a residence permit.

### **Legal context**

#### *EU law*

- 3 According to the third recital of Decision No 1/80:  
  
‘Whereas, in the social field, and within the framework of the international commitments of each of the Parties, the above considerations make it necessary to improve the treatment accorded workers and members of their families in relation to the arrangements introduced by Decision No 2/76 of the Association Council [of 20 December 1976 on the implementation of Article 12 of the Association Agreement]; whereas, furthermore, the provisions relating to social security should be implemented as should those relating to the exchange of young workers’.
- 4 Articles 6, 7 and 9 of Decision No 1/80 are in Section 1, entitled ‘Questions relating to employment and the free movement of workers’, of Chapter II of that decision, concerning ‘social provisions’.

5 Article 6(1) of Decision No 1/80 provides:

‘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.’

6 The first paragraph of Article 7 of that decision provides:

‘The members of the family of a Turkish worker duly registered as belonging to the labour force of a Member State, who have been authorised to join him:

- shall be entitled – subject to the priority to be given to workers of Member States of the Community – to respond to any offer of employment after they have been legally resident for at least three years in that Member State;
- shall enjoy free access to any paid employment of their choice provided they have been legally resident there for at least five years.’

7 Article 9 of the decision is worded as follows:

‘Turkish children residing legally in a Member State of the Community with their parents who are or have been legally employed in that Member State, shall be admitted to courses of general education, apprenticeship and vocational training under the same educational entry qualifications as the children of nationals of that Member State. They may in that Member State be eligible to benefit from the advantages provided for under the national legislation in this area.’

### ***German law***

8 Paragraph 4(2) of the Gesetz über den Aufenthalt, die Erwerbstätigkeit und die Integration von Ausländern im Bundesgebiet (Law on the residence, economic activity and integration of foreign nationals in the federal territory) of 30 July 2004 (BGB1. 2004 I, p. 1950), in the version applicable to the dispute in the main proceedings, provides:

‘Foreigners who possess a right of residence in accordance with the [Association Agreement] are required to furnish evidence of a right of residence by possessing a temporary residence permit, unless they possess a permanent settlement permit or an EU long-term residence permit. Said residence permit shall be issued on application.’

9 Paragraph 50(1) of that law provides:

‘Foreigners are required to leave the federal territory if they do not possess or no longer possess the necessary residence title, and no right of residence exists or no longer exists under the [Association Agreement].’

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

- 10 BY, CX, DW, EV and FU are Turkish nationals. CX is the spouse of BY and they are the parents of DW, EV and FU.
- 11 BY entered the territory of the Federal Republic of Germany on 5 September 2015 with a visa. On 4 November 2015, the City of Duisburg granted him a residence permit for self-employment, valid until 27 March 2017.
- 12 On 19 February 2016, CX, DW, EV and FU were authorised to join BY in that Member State for the purpose of reuniting the family and, on 20 April 2016, obtained residence permits on the basis of the national law which were valid until 27 March 2017.
- 13 CX was in paid employment, in the first place, from 1 February to 30 April 2016, in the second place, from 15 November to 31 December 2017, in the third place, from 1 January to 15 January 2018 and, finally, in the fourth place, from 1 August to 31 December 2018.
- 14 On expiry of the validity period of their residence permits, the applicants in the main proceedings applied to the City of Duisburg for an extension of the validity of those permits or for the issue of new residence permits. By orders of 18 March 2019, the City of Duisburg refused that application.
- 15 On 22 March 2019, the applicants in the main proceedings brought an action against those decisions before the referring court, the Verwaltungsgericht Düsseldorf (Administrative Court, Düsseldorf, Germany), arguing, in essence, that they could rely on a right of residence based on the first sentence of Article 9 of Decision No 1/80. In their opinion, that provision gives Turkish children not only a right of access to education and vocational training, but also a right of residence. Furthermore, they argue that, in order to ensure the effectiveness of those rights, the parents with rights of custody of the children concerned must necessarily have a right of residence.
- 16 While noting that the applicants in the main proceedings have not acquired any right under Articles 6 and 7 of Decision No 1/80, the referring court asks, in essence, whether the right of access to education and vocational training provided for in the first sentence of Article 9 of that decision implies an autonomous right of residence for Turkish children and, consequently, a right of residence for parents who actually have custody of those children. If that is so, that court seeks to ascertain what conditions are attached to the grant of a right of residence under that provision.

- 17 In those circumstances, the Verwaltungsgericht Düsseldorf (Administrative Court, Düsseldorf) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- ‘(1) Does the entitlement of Turkish children under the first sentence of Article 9 of [Decision No 1/80] also include a right of residence in the host Member State without the need to fulfil further conditions?
- (2) If Question 1 is answered in the affirmative:
- (a) Does an entitlement to residence under the first sentence of Article 9 of Decision No 1/80 require that the parents of the Turkish children benefiting from that provision have already acquired rights under Article 6(1) or Article 7 of Decision No 1/80?
  - (b) If Question 2(a) is answered in the negative: Is “legal employment” within the meaning of the first sentence of Article 9 of Decision No 1/80 to be interpreted in the same way as in Article 6(1) of [that decision]?
  - (c) If Question 2(a) is answered in the negative: Can an entitlement to residence in respect of Turkish children under the first sentence of Article 9 of Decision No 1/80 already arise after one of the parents has been in legal employment in the host Member State for a period of (only) three months?
  - (d) If Question 2(a) is answered in the negative: Does the right of residence of Turkish children also entail, without the need to fulfil further conditions, a right of residence for one or both parents with custody?’

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

- 18 By its questions, which it is appropriate to examine together, the referring court seeks to ascertain, in essence, whether the first sentence of Article 9 of Decision No 1/80 must be interpreted as meaning that it may be relied on by Turkish children whose parents do not satisfy the conditions laid down in Articles 6 and 7 of that decision and that the first sentence of Article 9 implies, where appropriate, the existence of an independent right of residence for those children in the host Member State and, consequently, for the parents who actually have custody of them. If that is so, that court seeks to ascertain what conditions are attached to the grant of a right of residence based on the first sentence of Article 9 of Decision No 1/80.
- 19 In that regard, it should be noted that the first sentence of Article 9 of Decision No 1/80 enshrines the right of Turkish children residing legally in a Member State with their parents who are or have been legally employed there to be admitted in that Member State to courses of general education, apprenticeship and vocational training under the same educational entry qualifications as the children of nationals of that Member State (judgment of 7 July 2005, *Gürol*, C-374/03, EU:C:2005:435, paragraph 22).
- 20 That provision lays down a duty of equal treatment between Turkish children and children of nationals of the host Member State with regard to access to education and vocational training in that Member State (see, to that effect, judgment of 7 July 2005, *Gürol*, C-374/03, EU:C:2005:435, paragraph 23).

- 21 It is apparent from the very wording of that provision that the acquisition of the rights provided for in that provision is subject to two cumulative conditions, namely, first, that Turkish children reside legally in the host Member State with their parents and, second, that the parents are, or have been, legally employed in that Member State.
- 22 It must therefore be ascertained whether Turkish children of Turkish nationals who are not, or have not been, employed in the host Member State or who have been legally employed in that Member State for a period of less than one year are able to rely on the right of access to education and vocational training under the first sentence of Article 9 of Decision No 1/80.
- 23 In that regard, the first of those conditions requires the Turkish children in question to reside legally in the host Member State with their parents in order to be able to access education and vocational training in that Member State.
- 24 As regards the second condition, it must be understood as requiring one of the parents to be, or have been, in paid employment in the host Member State in compliance with the provisions relating to employment set out in Decision No 1/80, namely Articles 6 and 7 of that decision.
- 25 Decision No 1/80 seeks, inter alia, according to its third recital, to improve, in the social field, the treatment accorded to workers and members of their family. In particular, Articles 6, 7 and 9 of that decision form part of Section 1 of Chapter II, entitled ‘Social Provisions’, which concerns questions relating to the employment and free movement of Turkish workers.
- 26 As regards, in the first place, Article 6(1) of Decision No 1/80, it lists the main conditions to which the exercise of paid employment by Turkish nationals duly registered as belonging to the lawful labour force of a Member State for the grant and extension of a work permit is subject. That provision requires the person concerned to be a Turkish worker in a Member State, to be duly registered as belonging to the labour force of the host Member State and to have been in legal employment there for a certain period (judgment of 26 October 2006, *Güzeli*, C-4/05, EU:C:2006:670, paragraph 26 and the case-law cited).
- 27 In particular, as is apparent from the first indent of Article 6(1) of Decision No 1/80, a worker acquires the right to obtain the renewal of his or her work permit for the purposes of continuing in paid employment with the same employer after a period of one year’s legal employment (see, to that effect, judgment of 8 November 2012, *Gülbahce*, C-268/11, EU:C:2012:695, paragraphs 37 and 45).
- 28 Similarly, the condition that the Turkish worker in question must be duly registered as belonging to the ‘labour force’ within the meaning of the first indent of Article 6(1) of Decision No 1/80 presupposes a stable and secure situation as a member of the labour force of that Member State and, by virtue of this, implies an undisputed right of residence (judgment of 8 November 2012, *Gülbahce*, C-268/11, EU:C:2012:695, paragraph 39 and the case-law cited).
- 29 In the second place, under the first paragraph of Article 7 of Decision No 1/80, the acquisition of an independent right of access to the labour market under that provision is subject to three cumulative conditions, namely, first, that the person concerned must be regarded as a member of the family of a Turkish worker who is duly registered as belonging to the labour force of the host Member State, second, that that person has been authorised by the competent authorities of that

Member State to join that worker there and, third, that he or she has been legally resident for a certain period in the territory of that Member State (see, to that effect, judgment of 19 July 2012, *Dülger*, C-451/11, EU:C:2012:504, paragraph 29).

- 30 In that context, it must be held that Turkish children, of whom neither parent satisfies the conditions laid down in Articles 6 and 7 of Decision No 1/80, referred to in paragraphs 26 to 29 of the present judgment, are not able to rely on the right of access to general education and vocational training set out in the first sentence of Article 9 of Decision No 1/80.
- 31 Consequently, the answer to the questions referred is that the first sentence of Article 9 of Decision No 1/80 must be interpreted as meaning that it cannot be relied on by Turkish children whose parents do not satisfy the conditions laid down in Articles 6 and 7 of that decision.

### **Costs**

- 32 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 (Sixth Chamber) hereby rules:

**The first sentence of Article 9 of Decision No 1/80 of the Association Council of 19 September 1980 on the development of the Association between the European Economic Community and Turkey must be interpreted as meaning that it cannot be relied on by Turkish children whose parents do not satisfy the conditions laid down in Articles 6 and 7 of that decision.**

[Signatures]