JUDGMENT OF THE COURT

4 May 1999 *

In Case C-262/96,

REFERENCE to the Court under Article 177 of the EC Treaty (now Article 234 EC) by the Sozialgericht Aachen (Germany) for a preliminary ruling in the proceedings pending before that court between

Sema Sürül

and

Bundesanstalt für Arbeit,

on the interpretation of certain provisions of Decision No 3/80 of the Association Council of 19 September 1980 on the application of the social security schemes of the Member States of the European Communities to Turkish workers and members of their families (OJ 1983 C 110, p. 60),

* Language of the case: German.

THE COURT,

composed of: G. C. Rodríguez Iglesias, President, J.-P. Puissochet, G. Hirsch and P. Jann (Presidents of Chambers), J. C. Moitinho de Almeida, C. Gulmann, J. L. Murray, D. A. O. Edward, H. Ragnemalm, L. Sevón and R. Schintgen (Rapporteur), Judges,

Advocate General: A. La Pergola,
Registrar: H. von Holstein, Deputy Registrar,

after considering the written observations submitted on behalf of:

— Sema Sürül, by Rainer M. Hofmann, Rechtsanwälte, Aachen,

— the German Government, by Ernst Röder, Ministerialrat in the Federal Ministry of Economic Affairs, and Bernd Kloke, Oberregierungsrat in the same Ministry, acting as Agents,

— the French Government, by Catherine de Salins, Head of Subdirectorate in the Legal Affairs Directorate of the Ministry of Foreign Affairs, and Anne de Bourgoing, chargé de mission with the same Directorate, acting as Agents,

— the Austrian Government, by Wolf Okresek, Ministerialrat in the Federal Chancellor's Office, acting as Agent,

— the United Kingdom Government, by John E. Collins, Assistant Treasury Solicitor, acting as Agent, assisted by Eleanor Sharpston, Barrister,

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

having regard to the Report for the Hearing,

after hearing the oral observations of Mrs Sürül, represented by Rainer M. Hofmann; the German Government, represented by Claus-Dieter Quassowski, Regierungsdirektor in the Federal Ministry of Economic Affairs, acting as Agent; the French Government, represented by Kareen Rispal-Bellanger, Head of Subdirectorate in the Legal Affairs Directorate in the Ministry of Foreign Affairs, acting as Agent; the Netherlands Government, represented by Marc Fierstra, Assistant Legal Adviser in the Ministry of Foreign Affairs, acting as Agent; the United Kingdom Government, represented by Eleanor Sharpston; and the Commission, represented by Peter Hillenkamp, at the hearing on 25 November 1997,

after hearing the Opinion of the Advocate General at the sitting on 12 February 1998,

having regard to the order of 23 September 1998 re-opening the oral procedure,

having regard to the Report for the Hearing,

after hearing the oral observations of Mrs Sürül, represented by Rainer M. Hofmann; the German Government, represented by Claus-Dieter Quassowski; the French Government, represented by Anne de Bourgoing; the Netherlands Government, represented by Mark Fierstra; the United Kingdom Government, represented by John E. Collins, assisted by Mark Hoskins, Barrister; and the Commission, represented by Peter Hillenkamp, at the hearing on 11 November 1988,

after hearing the Opinion of the Advocate General at the sitting on 17 December 1998,

gives the following

Judgment

1 By order of 24 July 1996, received at the Court on 26 July 1996, the Sozialgericht (Social Court), Aachen, referred to the Court for a preliminary ruling under Article 177 of the EC Treaty (now Article 234 EC) three questions on the interpretation of certain provisions of Decision No 3/80 of the Association Council of 19 September 1980 on the application of the social security schemes of the Member States of the European Communities to Turkish workers and members of their families (OJ 1983 C 110, p. 60)

2 Those questions were raised in proceedings brought by Sema Sürül, a Turkish national, against the Bundesanstalt für Arbeit (Federal Employment Office) concerning the latter's refusal to pay her family allowances as from 1 January 1994.

The association between the EEC and Turkey

3 The Agreement establishing an association between the European Economic Community and Turkey (hereinafter 'the Agreement') was signed at Ankara on 12 September 1963 by the Republic of Turkey of the one part and the Member States of the EEC and the Community of the other part, and was concluded, approved and confirmed on behalf of the Community by Council Decision 64/732/EEC of 23 December 1963 (OJ 1977 L 361, p. 29).

4 Pursuant to Article 2(1) of the Agreement, its aim is to promote the continuous and balanced strengthening of trade and economic relations between the parties. To that end, the Agreement provides for a preparatory stage enabling the Republic of Turkey to strengthen its economy with aid from the Community (Article 3), a transitional stage in which a customs union will be progressively established and economic policies will be aligned (Article 4) and a final stage based on the customs union, entailing closer coordination of economic policies (Article 5).

5 Article 6 of the Agreement provides:

'To ensure the implementation and the 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 According to Article 8 of the Agreement, in Title II, 'Implementation of the transitional stage',

'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 Article 9, also in Title II, provides:

'The Contracting Parties recognise that within the scope of this Agreement and without prejudice to any special provisions which may be laid down pursuant to Article 8, any discrimination on grounds of nationality shall be prohibited in accordance with the principle laid down in Article 7 of the Treaty establishing the Community.'

8 According to Article 12 of the Agreement,

'The Contracting Parties agree to be guided by Articles 48, 49 and 50 of the Treaty establishing the Community for the purpose of progressively securing freedom of movement for workers between them.'

9 Article 22(1) of the Agreement provides:

'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. ...'

10 Article 1 of the Additional Protocol signed in Brussels on 23 November 1970 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. 61, hereinafter 'the Protocol') lays down the conditions, arrangements and timetables for implementing the transitional stage referred to in Article 4 of the Agreement. By virtue of Article 62 thereof, the Protocol forms an integral part of the Agreement.

11 The Protocol includes a Title II, 'Movement of persons and services', Chapter I of which concerns 'Workers'.

12 Article 36 of Chapter I lays down the timetable for the progressive attainment of freedom of movement for workers between the Member States of the Community and Turkey in accordance with the principles set out in Article 12 of the Agreement and provides that the Council of Association is to decide on the rules necessary to that end.

13 Article 39 of the Protocol provides:

'1. Before the end of the first year after the entry into force of this Protocol the Council of Association shall adopt social security measures for workers of Turkish nationality moving within the Community and for their families residing in the Community.

2. These provisions must enable workers of Turkish nationality, in accordance with arrangements to be laid down, to aggregate periods of insurance or employment completed in individual Member States in respect of old-age pensions, death benefits and invalidity pensions, and also as regards the provision of health services for workers and their families residing in the Community. These measures shall create no obligation on Member States to take into account periods completed in Turkey.

3. The abovementioned measures must ensure that family allowances are paid if a worker's family resides in the Community.

...'

14 It was on the basis of Article 39 of the Protocol that the Association Council established by the Agreement adopted Decision No 3/80 on 19 September 1980.

15 The purpose of that decision is to coordinate the social security systems of the Member States so as to enable Turkish workers working or having worked in the Community, members of those workers' families and survivors of such workers to enjoy benefits in the traditional branches of social security.

16 To that end, the provisions of Decision No 3/80 refer, for the most part, to a number of provisions of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community (OJ, English Special Edition 1971 (II), p. 416) and, less frequently, to Council Regulation (EEC) No 574/72 of 21 March 1972 laying down the procedure for implementing Regulation (EEC) No 1408/71 (OJ, English Special Edition 1972 (I), p. 159).

17 Articles 1 to 4 of Decision No 3/80 appear in Title I, 'General provisions'.

18 Article 1, entitled 'Definitions' provides,

'For the purposes of this Decision:

(a) the terms ... "member of family", "survivor", "residence" ... "family benefits", "family allowances" ... have the meaning assigned to them in Article 1 of ... Regulation (EEC) No 1408/71 ...

(b) "worker" means:

(i) subject to the restriction set out in Annex V, A. BELGIUM (1), to Regulation (EEC) No 1408/71, any person who is insured, compulsorily or on an optional continued basis, against one or more of the contingencies covered by the branches of a social security scheme for employed persons,

(ii) any person who is compulsorily insured against one or more of the contingencies covered by the branches of social security dealt with in this Decision under a social security scheme for all residents or for the whole working population, if such a person:

— can be identified as an employed person by virtue of the manner in which that scheme is administered or financed, or

— failing such criteria, is insured against some other contingency specified in the Annex under a scheme for employed persons, either compulsorily or on an optional continued basis;

...'

19 As far as Germany is concerned, the annex referred to in the second indent of Article 1(b)(ii) of Decision No 3/80 does not further define the concept of worker.

20 Pursuant to Article 2 of Decision No 3/80, entitled 'Persons covered':

'This decision shall apply:

— to workers who are, or have been, subject to the legislation of one or more Member States and who are Turkish nationals,

— to the members of the families of these workers, resident in the territory of one of the Member States,

— to the survivors of these workers.'

21 Article 3(1) of Decision No 3/80, which is entitled 'Equality of treatment' and adopts the wording of Article 3(1) of Regulation No 1408/71, provides:

'Subject to the special provisions of this Decision, persons resident in the territory of one of the Member States to whom this Decision applies shall be subject to the

same obligations and enjoy the same benefits under the legislation of any Member State as the nationals of that State.'

22 Article 4 of Decision No 3/80, entitled 'Matters covered' provides, in paragraph 1:

'This Decision shall apply to all legislation concerning the following branches of social security:

(a) sickness and maternity benefits;

(b) invalidity benefits, including those intended for the maintenance or improvement of earning capacity;

(c) old-age benefits;

(d) survivors' benefits;

(e) benefits in respect of accidents at work and occupational diseases;

(f) death grants;

(g) unemployment benefits;

(h) family benefits.'

23 Title III of Decision No 3/80, entitled 'Special provisions relating to the various categories of benefits', includes coordinating provisions inspired by Regulation No 1408/71 concerning benefits for sickness and maternity, invalidity, old age and death (pensions), accidents at work and occupational diseases, death grants, and family benefits and family allowances.

24 Unlike the other two decisions adopted on the same date by the EEC-Turkey Association Council (Decision No 1/80 on the development of the Association and Decision No 2/80 determining the conditions for implementing the special aid to Turkey (not published)), Decision No 3/80 does not specify the date of its entry into force.

25 Pursuant to Article 32 of Decision No 3/80:

'Turkey and the Community shall, each to the extent to which they are concerned, take the necessary steps to implement this Decision'.

26 On 8 February 1983 the Commission submitted to the Council a proposal for a Council (EEC) Regulation implementing within the European Economic Community Decision No 3/80 (OJ 1983 C 110, p. 19) which provided that that decision was to be 'applied within the Community' (Article 1) and laid down 'detailed rules for implementing' that decision.

27 The Council has not yet adopted that proposal for a regulation.

The national legislation

28 In Germany, family allowances are granted under the Bundeskindergeldgesetz (Federal Child Benefit Law, BGBl. I, p. 265; 'the BKGG') of 14 April 1964.

29 The family allowances provided for by the BKGG, which form part of a set of family policy measures, alleviate the financial burden of bringing up children. Under Articles 10 and 11 of the BKGG, a family with one child receives DEM 70 per month, to which a supplement is added for persons with a low income.

30 Articles 1(1) and 2(5) of the BKGG provide that family allowances may be claimed by any person domiciled or habitually resident in the territory covered by that Law provided that his or her dependent child is domiciled or habitually resident in that territory.

31 However, following an amendment which was published on 31 January 1994 in BGBl. I at p. 167 and which entered into force on 1 January 1994, Paragraph 1(3) of the BKGG provides that foreign nationals living in Germany are entitled to family allowances only if they hold a residence entitlement (Aufenthaltsberechtigung) or a residence permit (Aufenthaltserlaubnis).

32 For that purpose, the BKGG assimilates to Germans only the nationals of other Member States of the European Community, refugees and stateless persons.

33 According to the Ausländergesetz (German Law on Aliens), the residence entitlement (Aufenthaltsberechtigung) and the residence permit (Aufenthaltserlaubnis) confer on the alien concerned an individual right of residence which is unlimited or else of specified duration but capable of extension. On the other hand, the accessory residence authorisation (Aufenthaltsbewilligung) is a residence document issued for a specific purpose and for a limited period, thereby precluding the holder from subsequently acquiring a permanent authorisation.

The dispute in the main proceedings

34 According to the order for reference, Mr and Mrs Sürül are Turkish nationals lawfully resident in Germany.

35 In 1987 Mr Sürül was authorised to enter Germany to study there.

36 In 1991 his wife was granted authorisation to join him in Germany in order to reunite the family.

37 Both Mr and Mrs Sürül hold an accessory residence authorisation (Aufenthaltsbewilligung) entitling them to live in Germany.

38 Mr Sürül was also authorised to work, whilst studying, in an auxiliary capacity for a specified employer for up to 16 hours a week, and he is so employed with

the appropriate work permit. Mr Sürül pays no contributions to statutory sickness or old-age insurance schemes but is insured by his employer against accidents at work.

39 Mrs Sürül, on the other hand, is not authorised to engage in any gainful employment.

40 On 14 September 1992 Mrs Sürül gave birth within German territory to a child whom she cares for and brings up in the matrimonial home. In that regard, the Sozialgericht Aachen considers that under the German rules the compulsory insurance contributions to the statutory pension scheme are deemed to be paid for the benefit of the person who undertakes the bringing up of his or her child aged less than three years.

41 The Bundesanstalt für Arbeit then paid family allowances to Mrs Sürül, who also received, for 1993, the supplementary allowance for persons with a low income.

42 However, with effect from 1 January 1994, the Bundesanstalt für Arbeit terminated the payment of those family allowances on the ground that, as from that date, Mrs Sürül no longer fulfilled the qualifying criteria laid down by the BKGG because she did not possess a residence entitlement (Aufenthaltsberechtigung) or a residence permit (Aufenthaltserlaubnis). In March 1994, the Bundesanstalt für Arbeit also refused, on the same grounds, to continue payment of the supplementary family allowance to Mrs Sürül.

43 Following rejection of her administrative complaint against those decisions, Mrs Sürül brought proceedings before the Sozialgericht Aachen, claiming that she

was entitled under the rules of the EEC-Turkey Association Agreement to be treated in the same way as German nationals, so that the type of residence document issued to her in the Member State concerned was irrelevant.

44 That court considers that no provision of German law permits Mrs Sürül to continue to receive family allowances since the BKGG, in the version in force since 1 January 1994, assimilates to Germans only the nationals of other Member States of the European Community, refugees and stateless persons. However, it raises the question whether Mrs Sürül might be able to derive from the rules of the EEC-Turkey Association Agreement a right to be granted family allowances under the same conditions as German nationals.

The questions submitted

45 On the view, therefore, that determination of the case called for an interpretation of Community law, the Sozialgericht Aachen has stayed proceedings pending a preliminary ruling from the Court on the following three questions:

'1. Does a Turkish national living in Germany who comes within the personal scope of Article 2 of Decision No 3/80 of 19 September 1980 of the Association Council set up pursuant to the Agreement establishing an Association between the European Economic Community and Turkey ("Decision No 3/80"), and who possesses merely an *Aufenthaltsbewilligung*, have a right, deriving directly from Article 3 in conjunction with Article 4(1)(h) of Decision No 3/80, to German child benefit, that right being one which is conditional solely on fulfilment of the conditions applying with regard to German nationals and not on fulfilment of the further conditions applying to aliens which are laid down in the first sentence of Article 1(3) of the Bundeskindergeldgesetz ("BKGG") in the version thereof published in the Official Notice of 31 January 1994 (BGBl. I, p. 168)?

Or, to phrase that question in more general terms:

Is a Member State prohibited from refusing a Turkish national who comes within the personal scope of Article 2 of Decision No 3/80 family benefits provided for under its law on the ground that that person does not possess an *Aufenthaltsberechtigung* or an *Aufenthaltserlaubnis*?

2. Is a Turkish national residing in the territory of a Member State a worker within the meaning of Article 2 in conjunction with Article 1(b) of Decision No 3/80 during periods when, pursuant to the law of that State, compulsory contributions to the social security pension scheme are deemed, in favour of that person, to have been paid in respect of time spent in bringing up a child?

3. Is a Turkish national residing in the territory of a Member State who, in addition to following a course of studies, is employed there on the basis of a corresponding work permit for up to 16 hours per week as an auxiliary worker to be regarded on that ground alone as a worker within the meaning of Article 2 in conjunction with Article 1(b) of Decision No 3/80, or in any event because that person is insured under a statutory accident insurance scheme against accidents at work?'

46 The crux of those three questions, which it is appropriate to consider together, is whether, on a proper construction of Article 3(1) of Decision No 3/80, a Member State may require of a Turkish national covered by that decision whom it has authorised to reside in its territory, but who holds in that host State only a conditional residence authorisation issued for a specified purpose and for a limited duration, that, in order to receive family allowances for his child who resides with him in that Member State, he must be in possession of a residence entitlement or a residence permit whereas for that purpose nationals of that State are required only to be resident there.

47 In order to provide a helpful answer to the questions so reformulated, it is necessary first to consider whether Article 3(1) of Decision No 3/80 is, by its nature, such as to confer directly on an individual rights which he may assert before a court of a Member State. If so, the question is then whether that decision covers the situation of a Turkish national such as the plaintiff in the main proceedings who seeks, in the Member State in which he has been authorised to reside, the benefit of an allowance of the kind at issue in this case and, finally, whether the principle of non-discrimination in the field of social security embodied in that provision of Decision No 3/80 precludes the host Member State from making the grant of that benefit subject to more restrictive conditions for Turkish migrants than for nationals.

The direct effect of Article 3(1) of Decision No 3/80

48 The German, French, Netherlands, Austrian and United Kingdom Governments submit that although the Court had no occasion to rule as to the direct effect of Article 3(1) of Decision No 3/80 in Case C-277/94 *Taflan-Met and Others* v *Bestuur van de Sociale Verzekeringsbank* [1996] ECR I-4085, it is nevertheless clear from the reasoning of that judgment that it is of general scope.

49 In that judgment, the Court held that, by its nature, Decision No 3/80 is intended to be supplemented and implemented in the Community by a subsequent act of the Council (paragraph 33) and that, even though some of its provisions are clear and precise, that decision cannot be applied so long as supplementary implementing measures have not been adopted by the Council (paragraph 37).

50 It follows, those Governments maintain, that no provision of Decision No 3/80 can have direct effect in the territory of any Member State until the supplementary measures essential for the concrete implementation of that decision, such as those set out in the proposal for a regulation submitted by the Commission, have been adopted by the Council.

51 It should be observed that, in *Taflan-Met* the Court held, in paragraphs 21 and 22, that it follows from the binding character which the Agreement attaches to decisions of the EEC-Turkey Association Council that Decision No 3/80 entered into force on the date on which it was adopted, that is to say, 19 September 1980, and that, since then, the Contracting Parties have been bound by that decision.

52 In the same judgment, the Court ruled that, so long as the supplementary measures essential for implementing Decision No 3/80 have not been adopted by the Council, Articles 12 and 13 of that decision do not have direct effect in the territory of the Member States and are therefore not such as to entitle individuals to rely on them before the national courts.

53 In *Taflan-Met* the plaintiffs in the main proceedings claimed invalidity or survivors' pensions on the basis of the coordination rules laid down in Articles 12 and 13 of Decision No 3/80. That case thus concerned the right of Turkish migrant workers, employed successively in more than one Member State, or the right of survivors of those workers, to certain social security benefits on the basis of technical provisions for the coordination of the different national laws applicable thereto referred to in Chapter 2, entitled 'Invalidity', and Chapter 3, entitled 'Old age and death (pensions)', of Title III of that decision.

54 It was in that context that the Court observed, in paragraphs 29 and 30 of *Taflan-Met*, comparing Regulations No 1408/71 and its implementing regulation, No 574/72, with Decision No 3/80, that, even though the Decision refers specifically to certain provisions of the two regulations, the Decision does not contain a large number of precise, detailed provisions, deemed indispensable for the purpose of implementing Regulation No 1408/71 within the Community. It emphasised in paragraph 32 in particular that, whilst Decision No 3/80 sets out the fundamental principle of aggregation for the branches sickness and maternity, invalidity, old age, death grants and family benefits by reference to Regulation No 1408/71, supplementary implementing measures of the kind set out in Regulation No 574/72 must

be adopted before that principle can be applied. The Court pointed out, at paragraphs 35 and 36, that such measures as well as detailed provisions relating, *inter alia*, to prevention of overlapping benefits and to determination of the applicable legislation, appear only in the proposal for a Council (EEC) Regulation implementing within the European Economic Community Decision No 3/80 submitted by the Commission on 8 February 1983, which has not yet been adopted by the Council. It concluded that, until adoption of those implementing measures, the coordinating rules in Decision No 3/80 on which the plaintiffs had based their claims could not be relied on by them directly before the national courts of a Member State.

55 In contrast, this case is not concerned with those coordinating provisions in Title III of Decision No 3/80. Mrs Sürül relies solely on the principle of non-discrimination on grounds of nationality laid down in Article 3(1) of that decision, with a view to obtaining, in the Member State of her residence and solely under the legislation of that State, entitlement to a social security benefit under the same conditions as those laid down for the nationals of the host Member State.

56 Moreover, the proposal for a regulation submitted by the Commission for the implementation of Decision No 3/80 in the Community contains no provision concerning the application of Article 3(1), which is taken word for word from Regulation No 1408/71, whose implementing regulation, No 574/72, likewise contains no measures for giving effect to that provision.

57 The reasoning which led the Court to hold that, as Community law stands, Articles 12 and 13 of Decision No 3/80 do not have direct effect, must apply by analogy to all the other provisions of that decision which require additional measures for their application in practice. That reasoning cannot, however, be transposed to the principle of equal treatment in the field of social security, embodied in Article 3(1) of that decision.

58 Circumstances such as those in the main proceedings are not such as to give rise to problems of a technical nature relating in particular to the aggregation of periods completed in different Member States, to non-overlapping of benefits paid by different competent institutions or to determination of the applicable national legislation, since the plaintiff in the main proceedings merely invokes for the combined application of the legislation of the host Member State and of the principle of non-discrimination on grounds of nationality embodied in Article 3(1) of Decision No 3/80. That claim can be examined without any need for recourse to coordinating measures which the Council has not yet adopted.

59 In those circumstances, the submission of the German, French, Netherlands, Austrian and United Kingdom Governments cannot be accepted and it is therefore necessary to verify whether Article 3(1) of Decision No 3/80 fulfils the requirements for it to have direct effect in the territory of the Member States.

60 It is settled case-law that a provision in an agreement concluded by the Community with non-member countries must be regarded as being directly applicable when, regard being had to its wording and to the purpose and nature of the agreement itself, the provision contains a clear and precise obligation which is not subject, in its implementation or effects, to the adoption of any subsequent measure (see, in particular, Case 12/86 *Demirel* [1987] ECR 3719, paragraph 14; Case C-18/90 *Kziber* [1991] ECR I-199, paragraph 15, and Case C-162/96 *Racke* [1998] ECR I-3655, paragraph 31). In Case C-192/89 *Sevince* v *Staatssecretaris van Justitie* [1990] ECR I-3461, paragraphs 14 and 15, the Court made it clear that the same conditions apply in determining whether the provisions of a decision of the EEC-Turkey Association Council may have direct effect.

61 In deciding whether Article 3(1) of Decision No 3/80 meets those criteria, it is necessary first to examine its terms.

62 That provision lays down in clear, precise and unconditional terms a prohibition of discrimination, based on nationality, against persons residing in the territory of any Member State to whom the provisions of Decision No 3/80 are applicable.

63 As the Commission rightly pointed out, that rule of equal treatment lays down a precise obligation of result and, by its nature, can be relied on by an individual before a national court as a basis for requesting it to disapply the discriminatory provisions of the legislation of a Member State under which the grant of a right is subject to a condition not imposed on nationals. No further implementing measures are required (see paragraphs 56 and 58 of this judgment).

64 That finding is supported by the fact that Article 3(1) of Decision No 3/80 constitutes merely the implementation and the concrete expression, in the particular field of social security, of the general principle of non-discrimination on grounds of nationality laid down in Article 9 of the Agreement, which refers to Article 7 of the EEC Treaty (subsequently, Article 6 of the EC Treaty and now, after amendment, Article 12 EC).

65 That interpretation is also confirmed by settled case-law of the Court (see *Kziber*, cited above, paragraphs 15 to 23, confirmed by Case C-58/93 *Yousfi* [1994] ECR I-1353, paragraphs 16 to 19; Case C-103/94 *Krid* [1995] ECR I-719, paragraphs 21 to 24; Case C-126/95 *Hallouzi-Choho* v *Bestuur van de Sociale Verzekeringsbank* [1996] ECR I-4807, paragraphs 19 and 20; and Case C-113/97 *Babahenini* [1998] ECR I-183, paragraphs 17 and 18) relating to the principle of equal treatment contained in Article 39(1) of the Cooperation Agreement between the European Economic Community and the People's Democratic Republic of Algeria, signed in Algiers on 26 April 1976 and concluded on behalf of the Community by Council Regulation (EEC) No 2210/78 of 26 September 1978 (OJ 1978 L 263, p. 1) and to Article 41(1) of the Cooperation Agreement between the European Economic Community and the Kingdom of Morocco, signed in Rabat on 26 April 1976 and concluded on behalf of the Community by Council Regulation (EEC) No 2211/78 (OJ 1978 L 264, p. 1).

66 According to that case-law, those provisions, which provide for the prohibition of all discrimination based on nationality in the field of social security against Algerian and Moroccan nationals as compared with the nationals of the host Member State, are directly effective notwithstanding the fact that the Cooperation Council has not adopted measures implementing Article 40(1) of the EEC-Algeria Agreement or Article 42(1) of the EEC-Morocco Agreement relating to the implementation of the principles stated in Articles 39 and 41 respectively.

67 The foregoing interpretation is not invalidated by the fact that Article 3(1) of Decision No 3/80 states that the prohibition of discrimination on grounds of nationality which it contains is to take effect '[s]ubject to the special provisions of this Decision'.

68 It is sufficient to note that, with respect to the family allowances at issue in this case, Decision No 3/80 neither makes any exception to nor imposes any restriction on the principle of equal treatment laid down in Article 3(1). In view of the fundamental nature of that principle, the existence of that reservation, taken word for word from Article 3(1) of Regulation No 1408/71 and appearing also in Article 9 of the Agreement and in Article 6 of the Treaty, is not in itself such as to affect the direct effect of the provision from which it allows derogations (see, to that effect, *Sevince*, cited above, paragraph 25) by depriving the rule on national treatment of its unconditional nature.

69 Consideration of the purpose and the nature of the Agreement of which that provision forms part does not contradict the finding that the principle of non-discrimination embodied in Article 3(1) of Decision No 3/80 is capable of directly governing the situation of individuals.

70 The purpose of the Agreement is to establish an association to promote the development of trade and economic relations between the parties, including in the field of employment, through the progressive achievement of freedom of movement for

workers, with a view to improving the standard of living of the Turkish people and facilitating the accession of the Turkish Republic to the Community at a later date (see the fourth recital in the preamble to the Agreement).

71 The Protocol, which, in accordance with Article 62 thereof, forms an integral part of the Agreement, provides in Article 36 for the timetable for the progressive achievement of such freedom of movement for workers and provides, in Article 39, for the Association Council to adopt social security measures for workers of Turkish nationality moving within the Community and for their families residing in the Member States. It was on that basis that the Association Council adopted Decision No 3/80, the aim of which is to guarantee the payment of social security benefits to migrant workers in the Community.

72 Moreover, the fact that the Agreement is intended essentially to promote the economic development of Turkey and therefore involves an imbalance in the obligations assumed by the Community towards the non-member country concerned is not such as to prevent recognition by the Community of the direct effect of certain of its provisions (see, by analogy, Case 87/75 *Bresciani* v *Amministrazione delle Finanze* [1976] ECR 129, paragraph 23; *Kziber*, cited above, paragraph 21; and Case C-469/93 *Amministrazione delle Finanze dello Stato* v *Chiquita Italia* [1995] ECR I-4533, paragraph 34).

73 Finally, it follows from paragraphs 55, 56 and 58 of this judgment that the rule in question assimilates persons who are covered by Decision No 3/80 and reside in the host Member State to nationals of the host State, by prohibiting any discrimination based on nationality and resulting from the legislation of that Member State. That rule is set out in Article 3(1) of the Decision and is not affected by its other provisions.

74 It follows from the foregoing considerations that Article 3(1) of Decision No 3/80 establishes, in the area in which that decision applies, a precise and unconditional principle such as is capable of being applied by a national court and, therefore, of

governing the legal situation of individuals. The direct effect which must therefore be accorded to that provision means that the persons to whom it applies are entitled to rely on it before the courts of the Member States.

The scope of Article 3(1) of Decision No 3/80

75 Although it is common ground that the family allowances at issue in the main proceedings constitute family benefits within the meaning of Article 4(1)(h) of Decision No 3/80 and therefore fall within its scope, the German Government nevertheless denies that Mrs Sürül is one of the persons to whom that decision applies.

76 Thus, the plaintiff in the main proceedings cannot, in its submission, be regarded as a worker within the meaning of Article 1(b) and Article 2, first indent, of Decision No 3/80.

77 The German Government submits, in its written observations, that affiliation to a branch of social security is not sufficient to confer the status of worker as regards the other branches of social security since the definitions contained in Article 1(b)(i) and (ii) of Decision No 3/80 should be construed not as alternatives but, on the contrary, as being specifically applicable to clearly identified and distinct schemes. Accordingly, even if it were assumed that Mrs Sürül were covered by statutory pension insurance for the first three years following the birth of her child (see paragraph 40 of this judgment), that fact alone is not such as to bring her within the cover of the other branches of social security, particularly as regards entitlement to family allowances.

78 The German Government adds that in Germany entitlement to family allowances does not depend on compulsory or optional affiliation to a social insurance scheme but accrues to all residents, irrespective of their occupational or professional status. Even though the annex to Decision No 3/80, referred to in the second indent of Article 1(b)(ii), does not lay down special implementing rules for Germany, it is necessary in this case, in accordance with Article 25(1) of that decision, to apply by analogy Annex I, point I, C ('Germany'), of Regulation No 1408/71.

79 According to the German Government, it follows that, in the field of family benefits which extends to the allowance at issue in the main proceedings, only a person who is compulsorily insured against the risk of unemployment or who, as a result of such insurance, obtains cash benefits under sickness insurance or comparable benefits can be classified as a worker. Mrs Sürül fulfils none of those conditions.

80 Nor, according to the German Government, can the plaintiff in the main proceedings be regarded as a member of a worker's family within the meaning of Article 1(a) and Article 2, second indent, of Decision No 3/80.

81 Mrs Sürül's spouse was, admittedly, engaged in gainful employment as well as his studies but, under German legislation, he was not required to insure himself against the risks of unemployment, sickness or old age. Only contributions to the statutory insurance scheme against accidents at work were compulsory, and these were paid in their entirety by Mr Sürül's employer. For the same reasons as those set out in paragraph 77 of this judgment, Mr Sürül is therefore covered only by the provisions of Decision No 3/80 which relate to accident insurance but not by those governing other branches of social security, in particular family allowances. In those circumstances, Mr Sürül cannot be regarded as a worker or his spouse as a member of a worker's family, within the meaning of that decision, for the purposes of receiving family allowances.

82 In order to determine the merits of that argument, it must first be noted that the definition which, for the purpose of the application of Decision No 3/80, Article 1(b) thereof gives to 'workers' corresponds very broadly to that of the concept of 'worker' in Article 1(a) of Regulation No 1408/71.

83 Pursuant to Article 1(a) of Decision No 3/80, the term 'member of family' has the meaning given to it by Article 1(f) of Regulation No 1408/71.

84 The definition of the persons to whom Decision No 3/80 applies contained in Article 2 thereof is inspired by the same definition set out in Article 2(1) of Regulation No 1408/71.

85 Second, it must be borne in mind that according to settled case-law the definition of 'worker' in Article 1(a) of Regulation No 1408/71 'for the purpose of this regulation' is of general scope and in the light of that consideration covers any person who has the status of a person insured under the social security legislation of one or more Member States, whether or not he pursues a professional or trade activity (see Case 182/78 *Algemeen Ziekenfonds Drenthe-Plattenland* v *Pierik* [1979] ECR 1977, paragraph 4). That expression means any person who is insured under one of the social security schemes mentioned in Article 1(a) of Regulation No 1408/71 for the contingencies and under the conditions mentioned in that provision (see Case C-2/89 *Kits van Heijningen* [1990] ECR I-1755, paragraph 9).

86 It follows that, as the Court has also stated in relation to Regulation No 1408/71 in Case C-85/96 *Martínez Sala* [1998] ECR I-2691, paragraph 36, and Case C-275/96 *Kuusijärvi* [1998] ECR I-3419, paragraph 21, a person has the status of

worker where he is covered, even if only in respect of a single risk, on a compulsory or optional basis, by a general or special social security scheme, irrespective of the existence of an employment relationship.

87 As regards the German Government's objection based on an application by analogy of point I, C ('Germany'), of Annex I to Regulation No 1408/71, it must be borne in mind that Article 25(1) of Decision No 3/80 provides that '[f]or the purposes of implementing this Decision, Annexes I, III and IV to Regulation (EEC) No 1408/71 shall be applicable', so that that annex is applicable in relation to Decision No 3/80.

88 According to Annex I, point I, — 'Employed persons and/or self-employed persons (Article 1(a)(ii) and (ii) of the Regulation)' — C ('Germany') of Regulation No 1408/71:

'If the competent institution for granting family benefits in accordance with Chapter 7 of Title III of the Regulation is a German institution, then within the meaning of Article 1(a)(ii) of the Regulation:

(a) "employed person" means any person compulsorily insured against unemployment or any person who, as a result of such insurance, obtains cash benefits under sickness insurance or comparable benefits;

...'

89 As is clear from the wording of that provision, Annex I, Point I, C, of Regulation No 1408/71 clarified or narrowed the definition of employed person within the

meaning of Article 1(a)(ii) of that regulation solely for the purpose of the grant of family benefits pursuant to Title III, Chapter 7 (*Martínez Sala*, cited above, paragraph 43).

90 As the Advocate General pointed out in points 57 and 58 of his Opinion of 12 February 1998, the situation of a person such as the plaintiff in the main proceedings is not covered by any of the provisions of Chapter 7 of Title III. In this case, all the relevant aspects are internal to the host Member State in which Mr and Mrs Sürül reside with their child and in which the plaintiff in the main proceedings claims family allowances under the legislation of that State (see paragraphs 55 and 58 of this judgment).

91 In those circumstances, the restriction provided for in Annex I to Regulation No 1408/71, point I, C, cannot be applied to the plaintiff in the main proceedings, so that the question whether she has the status of worker for the purposes of Decision No 3/80 must be determined solely with respect to Article 1(b) thereof.

92 It is clear, furthermore, from the documents in the main proceedings that the competent German authorities initially paid family allowances to Mrs Sürül despite the fact that she did not fulfil the conditions laid down in that annex to Regulation No 1408/71 and that they did not terminate that payment until after the entry into force on 1 January 1994 of the new national legislation making the availability of that kind of benefit for aliens residing in Germany conditional upon the possession of a certain type of residence document.

93 In the light of the foregoing considerations, a Turkish national such as the plaintiff in the main proceedings will thus be able to benefit from the rights attaching to the status of worker within the meaning of Decision No 3/80 provided that it is established that she is insured, even if against only one risk, by virtue of compulsory or optional insurance with a general or special social security scheme mentioned in

Article 1(b) of that decision. That would be the case for the period for which she was covered by statutory pension insurance, as indicated by the national court in its second question.

94 Similarly, with regard to the period for which Mrs Sürül was not affiliated to a social security scheme she will be able to benefit from the rights attaching to the status of member of the family of a worker within the meaning of Decision No 3/80 provided that it is established that her husband is insured, even if against only one risk, by virtue of compulsory or optional insurance under a general or special social security scheme mentioned in Article 1(b) of that decision. That condition would be satisfied if, as the national court observes in its third question, he is covered by statutory insurance against accidents at work.

95 It is for the national court, which alone has jurisdiction to find and assess the facts in the case before it and to interpret and apply national law, to decide whether, during the period at issue, Mrs Sürül is herself to be regarded as a worker. Should that not be so for all or part of that period, it is again for that court to determine whether, for the period concerned, Mrs Sürül's husband fulfilled the condition mentioned in paragraph 94 of this judgment as having to be satisfied for him to be regarded as a worker, so that Mrs Sürül, in her capacity as the spouse of a Turkish worker whom she has been authorised to join in the host Member State in order to reunite the family, would be a member of a worker's family within the meaning of Decision No 3/80.

The scope of the principle of non-discrimination laid down in Article 3(1) of Decision No 3/80

96 In the event of a person such as the plaintiff in the main proceedings coming within the scope *ratione personae* of Decision No 3/80, it is necessary, finally, to determine whether Article 3(1) of that decision must be interpreted as precluding the

application of legislation of a Member State which requires that a Turkish national, who has been authorised to reside in its territory and is lawfully resident there, hold a certain type of residence document in order to receive family allowances.

97 In that connection, it is important to emphasise first that the principle laid down in Article 3(1) of Decision No 3/80, prohibiting all discrimination based on nationality in the field covered by that decision, means that a Turkish national to whom that decision applies must be treated in the same way as nationals of the host Member State, so that the legislation of that Member State cannot impose upon such a Turkish national more or stricter conditions than those applicable to its own nationals (see, by analogy, Case 186/87 *Cowan* v *Trésor Public* [1989] ECR 195, paragraph 10, *Kziber*, paragraph 28, and *Hallouzi-Choho,* paragraphs 35 and 36, both cited above).

98 It follows that a Turkish national who has been authorised to enter the territory of a Member State in order to reunite the family of a Turkish migrant worker and who lawfully resides there with that worker must be able to obtain in the host Member State a social security benefit provided for by the legislation of that State under the same conditions as the nationals of the Member State concerned.

99 Next, under legislation such as the BKGG, family allowances may be claimed by any person who is domiciled or habitually resident in the territory covered by that legislation provided that his or her dependent children are domiciled or habitually resident in the same territory.

100 However, since 1 January 1994, the BKGG has provided that aliens residing in Germany who cannot be assimilated to Germans are entitled to family allowances only if they hold a particular type of residence document.

101 Thus, a Turkish national such as the plaintiff in the main proceedings who has been authorised to reside in the territory of the host Member State, actually resides there with her child and therefore fulfils all the conditions imposed on nationals of that State by the relevant legislation is refused family allowances for her child solely because she does not meet the requirement of possession of a residence entitlement or a residence permit.

102 That requirement, not being applicable to a national of the Member State concerned, even in the event of his staying there temporarily, by its nature covers only aliens and its application therefore leads to unequal treatment on grounds of nationality.

103 In those circumstances, it must be held that the fact that a Member State requires a Turkish national covered by Decision No 3/80 to possess a certain type of residence document in order to receive a benefit such as the allowance at issue in the main proceedings, no such document being required of nationals of that State, constitutes discrimination within the meaning of Article 3(1) of that decision.

104 Since no argument such as to provide objective justification for that difference of treatment has been raised before the Court, such discrimination is incompatible with that provision of Decision No 3/80.

105 In the light of all the foregoing considerations, the answer to the questions submitted must be that, on a proper construction of Article 3(1) of Decision No 3/80, a Member State may not require of a Turkish national covered by that decision whom it has authorised to reside in its territory, but who holds in that host State only a conditional residence authorisation issued for a specified purpose and for a limited duration, that, in order to receive family allowances for his child who

resides with him in that Member State, he must be in possession of a residence entitlement or a residence permit, whereas for that purpose nationals of that State are required only to be resident there.

The temporal effects of this judgment

106 When presenting oral argument, the German, French and United Kingdom Governments asked the Court to limit the temporal effects of this judgment in the event of its ruling that the principle of non-discrimination on grounds of nationality contained in Article 3(1) of Decision No 3/80 must be construed as enabling a Turkish national such as the plaintiff in the main proceedings to claim family allowances in the host Member State under the same conditions as the nationals of that State. Those Governments state that a judgment to that effect would be such as to undermine a large number of legal relationships established on the basis of national legislation which has been in force for some time and to have serious financial repercussions for the social security systems of the Member States.

107 In that connection, regard must be had to the case-law of the Court to the effect that the interpretation which, in the exercise of the jurisdiction conferred on it by Article 177 of the Treaty, the Court gives to a rule of Community law clarifies and defines where necessary the meaning and scope of that rule as it must be or ought to have been understood and applied from the time of its entry into force. It follows that the rule as thus interpreted may, and must, be applied by the courts even to legal relationships which arose and were established before the judgment ruling on the request for interpretation, provided that in other respects the conditions for bringing a dispute relating to the application of that rule before the competent courts are satisfied (see, in particular, Case 24/86 *Blaizot* v *University of Liège* [1988] ECR 379, paragraph 27).

108 It is only exceptionally that, in application of a general principle of legal certainty which is inherent in the Community legal order, the Court may decide to restrict the right to rely upon a provision it has interpreted with a view to calling in question legal relations established in good faith. As the Court has consistently held, such a restriction may be allowed only in the actual judgment ruling upon the interpretation sought (see in particular Case C-35/97 *Commission* v *France* [1998] ECR I-5325, paragraph 49).

109 In this case it must be observed, first, that this is the first time that the Court has been called on to interpret Article 3(1) of Decision No 3/80.

110 Next, the judgment in *Taflan-Met*, cited above, may well have created a situation of uncertainty as to the right of individuals to rely before a national court on Article 3(1) of Decision No 3/80.

111 In those circumstances, pressing considerations of legal certainty preclude any reopening of the question of legal relationships which have been definitively determined before the delivery of this judgment, where that would retroactively throw the financing of the social security systems of the Member States into confusion.

112 However, in order not to affect unduly the judicial protection of the rights which individuals derive from Community law, it is appropriate to make an exception to that limitation of the effects of this judgment for the benefit of those persons who, before the date of delivery hereof, initiated proceedings or made an equivalent claim.

113 It must therefore be held that the direct effect of Article 3(1) of Decision No 3/80 may not be relied on in support of claims relating to benefits in respect of periods

prior to the date of this judgment except as regards those persons who, before that date, initiated proceedings or made an equivalent claim.

Costs

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

On those grounds,

THE COURT,

in answer to the questions referred to it by the Sozialgericht Aachen by order of 24 July 1996, hereby rules:

1. **On a proper construction of Article 3(1) of Decision No 3/80 of the Association Council of 19 September 1980 on the application of the social security schemes of the Member States of the European Communities to Turkish workers and members of their families, a Member State may not require of a**

Turkish national covered by that decision whom it has authorised to reside in its territory, but who holds in that host State only a conditional residence authorisation issued for a specified purpose and for a limited duration, that, in order to receive family allowances for his child who resides with him in that Member State, he must be in possession of a residence entitlement or a residence permit, whereas for that purpose nationals of that State are required only to be resident there.

2. **The direct effect of Article 3(1) of Decision No 3/80 may not be relied on in support of claims relating to benefits in respect of periods prior to the date of this judgment except as regards those persons who, before that date, initiated proceedings or made an equivalent claim.**

Rodríguez Iglesias	Puissochet	Hirsch	Jann
Mointinho de Almeida	Gulmann	Murray	Edward
Ragnemalm	Sevón		Schintgen

Delivered in open court in Luxembourg on 4 May 1999.

R. Grass — Registrar

G. C. Rodríguez Iglesias — President