

BEKLEYEN

JUDGMENT OF THE COURT (Second Chamber)

21 January 2010\*

In Case C-462/08,

REFERENCE for a preliminary ruling under Article 234 EC from the Oberverwaltungsgericht Berlin-Brandenburg (Germany), made by decision of 6 October 2008, received at the Court on 27 October 2008, in the proceedings

**Ümit Bekleyen**

v

**Land Berlin,**

THE COURT (Second Chamber),

composed of J.N. Cunha Rodrigues (Rapporteur), President of the Chamber, P. Lindh, A. Rosas, U. Löhms and A. Arabadjiev, Judges,

\* Language of the case: German.

Advocate General: P. Mengozzi,  
Registrar: R. Grass,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Ms Bekleyen, by C. Rosenkranz, Rechtsanwalt,
  
- the Danish Government, by J. Bering Liisberg and R. Holdgaard, acting as Agents,
  
- the Netherlands Government, by C.M. Wissels, acting as Agent,
  
- the Commission of the European Communities, by V. Kreuzschatz and G. Rozet, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 29 October 2009,

gives the following

### **Judgment**

- <sup>1</sup> This reference for a preliminary ruling concerns the interpretation of the second paragraph of Article 7 of Decision No 1/80 of the Association Council of 19 September 1980 on the development of the Association ('Decision No 1/80'). The Association Council was set up by the Agreement establishing an Association between the European Economic Community and Turkey, signed at Ankara on 12 September 1963 by the Republic of Turkey, on the one hand, and by the Member States of the EEC and the Community, on the other, and concluded, approved and confirmed on behalf of the Community by Council Decision 64/732/EEC of 23 December 1963 (OJ 1973 C 113, p. 1).
  
- <sup>2</sup> The reference has been made in the course of proceedings between Ms Bekleyen, a Turkish national, and Land Berlin concerning a decision by the latter refusing to grant her a residence permit in Germany.

## Legal context

### *EEC-Turkey Association*

<sup>3</sup> Article 59 of the Additional Protocol signed at 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 (JO 1972 L 293, p. 1) is worded as follows:

‘In the fields covered by this Protocol Turkey shall not receive more favourable treatment than that which Member States grant to one another pursuant to the Treaty establishing the Community.’

<sup>4</sup> According to Article 6(1) of Decision No 1/80:

‘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.’

5 Article 7 of Decision No 1/80 is worded as follows:

‘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.

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.’

*Directive 2004/38/EC*

- 6 Article 7 of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77, and corrigenda at OJ 2004 L 229, p. 35, OJ 2005 L 197, p. 34, and OJ 2007 L 204, p. 28) provides:

‘1. All Union citizens shall have the right of residence on the territory of another Member State for a period of longer than three months if they:

...

- (c) — are enrolled at a private or public establishment, accredited or financed by the host Member State on the basis of its legislation or administrative practice, for the principal purpose of following a course of study, including vocational training; and
  - have comprehensive sickness insurance cover in the host Member State and assure the relevant national authority, by means of a declaration or by such equivalent means as they may choose, that they have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State during their period of residence; ...’

**The main proceedings and the question referred for a preliminary ruling**

- 7 Ms Bekleyen, who was born in Berlin in 1975, lived with her family in Germany until she reached the age of 14. Her parents, Turkish nationals, had both been employed in Germany since 1971. In 1989, Ms Bekleyen returned with her entire family to Turkey, where she completed her secondary education as well as a course of study in landscape architecture.
- 8 In January 1999, with the approval of Land Berlin, Ms Bekleyen returned to Germany without her family for the purpose of continuing her higher education. In March 1999, she received an authorisation to stay, which was renewed on several occasions, the last time in the form of a residence permit valid up to 31 December 2005. In the summer of 2005, she completed her studies at the Technische Universität Berlin (Technical University of Berlin), graduating as an engineer in landscape planning.
- 9 On 19 December 2005, Ms Bekleyen applied for a residence permit pursuant to the second paragraph of Article 7 of Decision No 1/80, on the basis of the higher studies which she had completed in Germany. By decision of 21 September 2006, Land Berlin rejected that application on the ground that the conditions for obtaining a right of residence under the Agreement establishing an Association between the European Economic Community and Turkey were not fulfilled. Land Berlin maintained that the second paragraph of Article 7 of Decision No 1/80 requires a temporal link between the residence of the parents and that of the child, a condition which was not satisfied in this case. It takes the view that the wording and purpose of that provision imply, for the purpose of acquiring the right to employment and residence, that at least one parent be still present in the host Member State when the child commences his or her vocational training.
- 10 In May 2007, Ms Bekleyen was granted a residence permit valid until 13 May 2009, pursuant to Article 6(1), first indent, of Decision No 1/80, by reason of the fact that she was employed by a German company.

- 11 By an action which initially took the form of an action for failure to act, brought in July 2006 and subsequently directed against that decision of 21 September 2006, Ms Bekleyen sought confirmation of her right of residence pursuant to the second paragraph of Article 7 of Decision No 1/80.
- 12 The Verwaltungsgericht (Administrative Court) Berlin dismissed that action by a judgment of 9 August 2007. That court took the view that the action was indeed admissible since, notwithstanding the right of residence granted to Ms Bekleyen pursuant to Article 6(1) of Decision No 1/80, she had a legal interest in bringing proceedings. If she were granted the right to rely on the second paragraph of Article 7 of that decision, she would enjoy free access to the labour market in Germany. However, the action was dismissed as unfounded on the ground that Ms Bekleyen's extended stay in Turkey had the effect of causing her to forfeit her right to benefit from the preferential arrangements provided for under the second paragraph of Article 7 of Decision No 1/80.
- 13 Ms Bekleyen appealed against that judgment to the Oberverwaltungsgericht (Higher Administrative Court) Berlin Brandenburg.
- 14 Taking the view that, in those circumstances, resolution of the dispute required an interpretation of Decision No 1/80, the referring court decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'Is the second paragraph of Article 7 of Decision No 1/80 ... to be interpreted as meaning that the right of access to the labour market and the corresponding right of residence following the completion of a vocational training course in the host Member State can also be invoked in a situation in which the child who was born in the host Member State, but afterwards returned with her family to the family's country of origin, returns on her own to the relevant Member State after she has reached the age of majority in order to start a vocational training course, at a moment occurring 10 years after her parents, Turkish nationals who used to be employed in that Member State, had permanently left that Member State?'



**The question referred for a preliminary ruling**

- 15 By that question, the referring court asks essentially whether, in the case where a Turkish worker has been legally employed in the host Member State for more than three years, the child of such a worker may rely in that Member State, after completing her vocational training course there, on the right of access to the employment market and the corresponding right of residence, even though, after travelling back with her parents to their State of origin, she returned on her own to that Member State in order to start that training course there.
- 16 According to settled case-law, the second paragraph of Article 7 of Decision No 1/80 has direct effect in the Member States, with the result that Turkish nationals fulfilling the conditions which it lays down may directly rely on the rights which it confers on them (Case C-355/93 *Eroglu* [1994] ECR I-5113, paragraph 17, and Case C-502/04 *Torun* [2006] ECR I-1563, paragraph 19).
- 17 The rights granted by the second paragraph of Article 7 of Decision No 1/80 to the child of a Turkish worker with regard to employment in the host Member State necessarily imply the existence of a concomitant right of residence for that child, without which the right to have access to the employment market and actually to take up paid employment would be rendered totally ineffective (*Eroglu*, paragraphs 20 and 23, and *Torun*, paragraph 20).
- 18 The Court has also held that the wording of the second paragraph of Article 7 of Decision No 1/80 makes it clear that the right conferred on the child of a Turkish worker to respond to any offer of employment in the host Member State is dependent on two conditions: the child in question must have completed a course of vocational training in the Member State concerned and one of his or her parents must have been legally employed there for at least three years (Case C-210/97 *Akman* [1998] ECR I-7519, paragraph 25).

19 Furthermore, according to the Court's case-law, once a child has completed his education and acquired the right of access to the employment market of the host Member State and, as a result, the right to obtain a residence permit there for that purpose, it is not necessary for the parent of that child still to have the status of worker, or to continue to reside in that State, provided that, in the past, that parent was legally employed there for at least three years (see, to that effect, *Akman*, paragraph 51, and Case C-329/97 *Ergat* [2000] ECR I-1487, paragraph 44).

20 In the present case, it is common ground that Ms Bekleyen completed a course of vocational training in Germany and that her parents were in paid employment there for more than three years.

21 The Danish and Netherlands Governments, however, argue that the second paragraph of Article 7 of Decision No 1/80 makes the right of access of the child of a Turkish worker to the employment market conditional upon there being a temporal concomitance between the employment, or at least the residence, of one of the parents in the host Member State and the start of the child's vocational training. In the absence of such a temporal link in the case in the main proceedings, Ms Bekleyen, it is submitted, cannot rely on the rights conferred by the second paragraph of Article 7 of Decision No 1/80.

22 That argument cannot be accepted.

23 It must be noted at the outset that no such condition is referred to expressly in the second paragraph of Article 7 of Decision No 1/80 and that, as the Court has already held, that provision must not be interpreted strictly (*Akman*, paragraph 39).

24 Decision No 1/80 is designed 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 that decision and enjoy the rights conferred on them by the decision (Case C-337/07 *Altun* [2008] ECR I-10323, paragraph 29).

- 25 According to well-established case-law, the second paragraph of Article 7 of Decision No 1/80 is a more favourable provision than the first and is intended to provide specific treatment for children, as opposed to other members of the family of a Turkish worker, with a view to facilitating their entry into the employment market following completion of a course of vocational training, the objective being the achievement by progressive stages of freedom of movement for workers, in accordance with the aims of that decision (*Akman*, paragraph 38, and *Torun*, paragraph 23).
- 26 In contrast to the first paragraph of Article 7 of Decision No 1/80, which imposes on the members of the family of a Turkish worker the obligation to reside with the latter for a specific continuous period (*Altun*, paragraph 30), the second paragraph of that article does not lay down any condition relating to actual cohabitation in a household with the worker.
- 27 This is so because the second paragraph of Article 7 of Decision No 1/80 is not designed to create conditions conducive to family unity in the host Member State (*Akman*, paragraph 43), but to promote access of children of Turkish workers to the employment market.
- 28 That finding argues in favour of an interpretation of the second paragraph of Article 7 of Decision No 1/80 as meaning that that provision does not make the rights which it confers on the children of Turkish workers subject to the condition that one of their parents must still have the status of worker or continue to reside in the host Member State when the child starts his or her vocational training there.

- 29 Provided that the conditions laid down in the second paragraph of Article 7 of Decision No 1/80 are satisfied, that provision confers on the child of a Turkish worker an autonomous right of access to the employment market of the host Member State and, as a corollary, a right to reside there.
- 30 It is, admittedly, true that the right of free access of the child of a Turkish worker to the employment market is founded on the past employment of the Turkish worker in the host Member State.
- 31 None the less, as the Advocate General observed at point 63 of his Opinion, the specific function of the second paragraph of Article 7 in the integration of children of Turkish workers in the employment market of the host Member State has the effect that the condition that one of the parents must have worked in that State for at least three years cannot be construed as requiring that, when the child starts his or her vocational training, that parent must still have the status of worker. The sole purpose of that condition is to establish, in parallel with the child's vocational training, the level of the child's integration in the host Member State which is sufficient to enable him or her to benefit from the special treatment provided for in that provision.
- 32 It would be difficult to reconcile the requirement that the parent must have retained the status of worker and that imposing a temporal link between the residence of the parents in the host Member State and that of the child when the vocational training commences with the objective of the second paragraph of Article 7 of Decision No 1/80, which, as has been observed in paragraph 27 of this judgment, is not designed to create conditions conducive to family unity in the host Member State.
- 33 The referring court also raises the question whether such an interpretation of the second paragraph of Article 7 of Decision No 1/80 might lead, in breach of Article 59 of the Additional Protocol signed on 23 November 1970, to children of Turkish workers receiving more favourable treatment than that granted by Union law to children of nationals of Member States.

- 34 It is apparent from the order for reference that the dispute in the main proceedings relates solely to the question whether the right of residence in Germany which Ms Bekleyen seeks to obtain after completing her course of vocational training in that State and gaining access to the employment market there must be based on the second paragraph of Article 7 of Decision No 1/80, as she submits, or on Article 6(1), first indent, of that decision, which was the basis on which the residence permit valid up to 13 May 2009 was issued to her. However, the doubt expressed by the national court appears to derive from the fact that it considers that the child of a Member State national does not enjoy, under Community law, an independent right of residence in the case where his or her parents have left the host Member State and that child returns on his or her own to that State in order to start a vocational training course there.
- 35 In this respect, it should be recalled that Decision No 1/80 does not encroach upon the competence retained by the Member States to regulate both the entry into their territory of Turkish nationals and the conditions under which they may take up their first employment (Case C-237/91 *Kus* [1992] ECR I-6781, paragraph 25, and *Altun*, paragraph 48).
- 36 The Member States have also retained the power to regulate the entry into their territory of a member of the family of a Turkish worker and the conditions of that member's residence during the initial three-year period before he has the right to respond to any offer of employment (*Ergat*, paragraph 42).
- 37 Furthermore, unlike workers from the Member States, Turkish nationals are not entitled to freedom of movement within the European Union but can rely only on certain rights in the territory of the host Member State alone (Case C-325/05 *Derin* [2007] ECR I-6495, paragraph 66).
- 38 More specifically, as regards the conditions of access to the employment market in the host Member State, it should be observed that, whereas Ms Bekleyen must fulfil the conditions laid down in the second paragraph of Article 7 of Decision No 1/80, the child

of a Member State national derives such a right directly from Article 39(1) EC, which seeks to ensure freedom of movement for workers within the Union.

39 As regards, moreover, the entry and residence conditions in the host Member State, it is common ground that Ms Bekleyen's return to Germany to pursue her studies there and the residence permit issued to her for that purpose were founded on decisions of the national authorities taken, not on the basis of Decision No 1/80, but solely on the basis of national law.

40 By contrast, in a situation analogous to that of Ms Bekleyen, the return and residence in the host Member State of the child of a national of another Member State who, in the past, has been in paid employment in the host State would fall within the scope of Union law.

41 In that situation, the child of a worker who is a national of a Member State would have the right to settle in the host Member State, in order to pursue his or her studies there, on the basis of Article 18(1) EC, which confers on every citizen of the Union the right to move and reside freely within the territory of the Member States.

42 The exercise of that right of residence is subject only to the conditions laid down in Article 7(1)(c) of Directive 2004/38, which provides that a Union citizen must, *inter alia*, have comprehensive sickness insurance cover in the host Member State and sufficient resources to ensure that he or she does not become a burden on the social assistance system of that State.

43 Moreover, the case-law of the Court relating to the conditions under which rights derived from Article 7 of Decision No 1/80 may be restricted lays down, in addition to the exception based on public policy, public security and public health, which is

applicable in the same way to Turkish nationals and to nationals of Member States, a second ground for loss of those rights which is applicable only to Turkish migrants, namely if they leave the territory of the host Member State for a significant length of time without legitimate reason (*Derin*, paragraph 67).

44 It cannot therefore be argued that the interpretation of the second paragraph of Article 7 of Decision No 1/80 set out in paragraphs 23 to 32 of this judgment would have the effect of placing a child of a Turkish worker in a more favourable situation than that of a child of a national of a Member State.

45 In the light of the foregoing, the answer to the question referred is that the second paragraph of Article 7 of Decision No 1/80 must be interpreted as meaning that, in the case where a Turkish worker has previously been legally employed in the host Member State for more than three years, the child of such a worker may rely in that Member State, after completing her vocational training course there, on the right of access to the employment market and the corresponding right of residence, even though, after travelling back with her parents to their State of origin, she returned on her own to that Member State in order to start that training course there.

## Costs

46 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Second Chamber) hereby rules:

**The second paragraph of Article 7 of Decision No 1/80 of 19 September 1980 on the Development of the Association, adopted by the Association Council set up by the Agreement establishing an Association between the European Economic Community and Turkey, must be interpreted as meaning that, in the case where a Turkish worker has previously been legally employed in the host Member State for more than three years, the child of such a worker may rely in that Member State, after completing her vocational training course there, on the right of access to the employment market and the corresponding right of residence, even though, after travelling back with her parents to their State of origin, she returned on her own to that Member State in order to start that training course there.**

[Signatures]