

ALTUN

JUDGMENT OF THE COURT (Third Chamber)

18 December 2008 *

In Case C-337/07,

REFERENCE for a preliminary ruling under Article 234 EC from the Verwaltungsgericht Stuttgart (Germany), made by decision of 29 June 2007, received at the Court on 20 July 2007, in the proceedings

Ibrahim Altun

v

Stadt Böblingen,

THE COURT (Third Chamber),

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

Advocate General: Y. Bot,
Registrar: R. Grass,

* Language of the case: German.

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Mr Altun, by P. Horrig, Rechtsanwalt,

- the German Government, by M. Lumma and J. Möller, acting as Agents,

- the Greek Government, by G. Karipsiadis and T. Papadopoulou, acting as Agents,

- 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 11 September 2008,

gives the following

Judgment

- 1 This reference for a preliminary ruling concerns the interpretation of the first 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 and by the Member States of the EEC and the Community and concluded, approved and confirmed on behalf of the Community by Council Decision 64/732/EEC of 23 December 1963 (OJ 1973 C 113, p. 1).

- 2 The reference was made in the course of proceedings between Mr Ibrahim Altun, a Turkish national, and Städt Böblingen concerning proceedings to expel him from German territory.

Legal context

Decision No 1/80

- 3 Article 6(1) and (2) of Decision No 1/80 is worded as follows:

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

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

- 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.

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

⁴ Article 7 of Decision No 1/80 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:

The Geneva Convention

- 6 The Convention relating to the Status of Refugees, signed in Geneva on 28 July 1951 (United Nations Treaty Series, Vol 189, p. 150, No 2545 (1954)), entered into force on 22 April 1954. The version applicable to the dispute in the main proceedings is that resulting from the Protocol relating to the Status of Refugees, adopted on 31 January 1967 in New York and which entered into force on 4 October 1967 ('the Geneva Convention').

- 7 Under Article 1A(2) of the Geneva Convention, the term 'refugee' applies to any person who 'owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.'

- 8 Article 5 of the Geneva Convention provides that nothing in the convention 'shall be deemed to impair any rights and benefits granted by a Contracting State to refugees apart from this Convention'.

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

- 9 Ibrahim Altun, who is the applicant in the main proceedings, was born on 1 January 1985 and is the son of Mr Ali Altun. The latter, also a Turkish national, arrived in

Germany on 27 March 1996 as an asylum seeker. By decision of 19 April 1996, the Bundesamt für die Anerkennung ausländischer Flüchtlinge (Federal Office for the Recognition of Foreign Refugees) acknowledged him as such. As a result, on 23 May 1996, Mr Ali Altun obtained an indefinite German residence permit.

- 10 After several changes of residence, Mr Ali Altun settled in Böblingen from 1 January 2000.
- 11 Mr Ali Altun took up employment in July 1999 with a temporary work agency in Stuttgart. From April 2000, he worked in a food production company until the latter declared itself insolvent on 1 June 2002. Mr Ali Altun was told to report to the Arbeitsamt (Employment Office) as unemployed and his contract of employment officially ended on 31 July 2002. From 1 June 2002 to 26 May 2003, he received unemployment benefits.
- 12 In June 1999, Mr Ali Altun initiated the procedure for family re-unification with respect to his wife, his son and his daughters. Having been issued with a visa by the competent representation abroad of the Federal Republic of Germany, Mr Ibrahim Altun arrived in Germany on 30 November 1999 and took up residence with his father. On 9 December 1999, he obtained a residence permit which was valid until 31 December 2000. That permit was extended until 31 December 2002, and then until 8 December 2003.
- 13 On 26 September 2002, Mr Ibrahim Altun reported to the Arbeitsamt as unemployed. On 1 September 2003, he began a training course for unemployed young people which he abandoned on 2 April 2004.

- 14 Mr Ibrahim Altun was arrested on 28 April 2003 for attempted rape of a 16-year-old girl and he was placed in investigative custody until 27 May 2003. By judgment of 16 September 2003 of the Amtsgericht (Local Court) Böblingen, he was sentenced to one year and three months in prison which was suspended.
- 15 On 20 November 2003, he applied for a further extension of his residence permit, which was refused by Stadt Böblingen by decision of 20 April 2004. The latter also ordered him to leave the territory of the Federal Republic of Germany within three months from notification of that decision or face deportation to Turkey if he failed to obey that order.
- 16 Stadt Böblingen argued that the offence committed by Mr Ibrahim Altun was serious and constituted, according to national law, a ground for refusal of an application for an extension of a residence permit. Furthermore, Mr Ibrahim Altun was not entitled to the rights arising under the first paragraph of Article 7 of Decision No 1/80.
- 17 Since the objection brought by the applicant in the main proceedings against that decision was also rejected, he brought an action before the Verwaltungsgericht (Administrative Court) Stuttgart, arguing that his right of residence was not to be assessed only with regard to national law, but also on the basis of the first paragraph of Article 7 of Decision No 1/80.
- 18 Taking the view that, in those circumstances, the resolution of the dispute required the interpretation of Community law, the Verwaltungsgericht Stuttgart decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

- (1) Does the acquisition of rights under the first [paragraph] of Article 7 of Decision No 1/80 [...] require that the ‘principal person entitled’, with whom the member of the family has been legally resident for the period of three years, satisfy the conditions of the first [paragraph] of Article 7 [...] throughout the whole of that period?
- (2) Does it suffice in this respect for a member of the family to acquire the rights laid down under the first [paragraph] of Article 7 of Decision No 1/80 that the ‘principal person entitled’ is employed during that period for two years and six months with different employers, is then involuntarily unemployed for six months, and also remains unemployed for a substantial period thereafter?
- (3) Can a person also rely on the first [paragraph] of Article 7 of Decision No 1/80 if he has received a residence permit as a member of the family of a Turkish national whose right of residence, and hence his lawful access to the labour force of a Member State, is based solely on the granting of political asylum on the ground of political persecution in Turkey?
- (4) In the event that Question 3 is to be answered in the affirmative, can a member of the family rely on the first [paragraph] of Article 7 of Decision No 1/80 if the grant of political asylum, and on that basis the right of residence and lawful access to the labour market of the ‘principal person entitled’ (in this case the father), are based on false statements?
- (5) In the event that Question 4 is to be answered in the negative, is it necessary in such a case, before refusal of the rights under the first [paragraph] of Article 7 of

Decision No 1/80 to the member of the family, that the rights of the 'principal person entitled' (in this case the father) should first be formally withdrawn or revoked?'

The questions referred for a preliminary ruling

The first and second questions

- 19 By its first and second questions, which it is appropriate to examine together, the referring court asks essentially whether the child of a Turkish worker may enjoy rights arising by virtue of the first indent of the first paragraph of Article 7 of Decision No 1/80 where, during the three-year period of cohabitation of the child with the worker, the latter was employed for two and a half years before being made redundant in the following six months.
- 20 According to settled case-law, the first 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 it confers on them (see, Case C-351/95 *Kadiman* [1997] ECR I-2133, paragraph 28, and Case C-325/05 *Derin* [2007] ECR I-6495, paragraph 47).
- 21 The Court has also held that the rights granted by the first paragraph of Article 7 to the child of a Turkish worker with regard to employment in the Member State concerned necessarily imply the existence of a concomitant right of residence for that child,

without which the right of access to the employment market and actually to take up paid employment would be rendered totally ineffective (see, in particular, *Derin*, paragraph 47).

- 22 As is apparent from the wording of the first indent of the first paragraph of Article 7 itself, the right granted to the child of a Turkish worker to respond to any offer of employment in the host Member State is subject to two conditions: the worker must be duly registered as belonging to the labour force of that State and the child must have been legally resident there for at least three years. It must be pointed out that the first condition does not refer to the concept of 'legal employment' which appears in Article 6(1) of Decision No 1/80, but relates solely to the notion of being 'duly registered as belonging to the labour force'.
- 23 As regards the concept of a Turkish worker being duly registered as belonging to the labour force, the Court has held, in the context of the interpretation of Article 6(1) of Decision No 1/80, that it embraces all workers who have met the conditions laid down by law or regulation in the host Member State and who are thus entitled to pursue an occupation in its territory (see, Case C-1/97 *Birden* [1998] ECR I-7747, paragraph 51, and Case C-294/06 *Payir and Others* [2008] ECR I-203, paragraph 29).
- 24 Furthermore, notwithstanding a temporary interruption of the employment relationship a Turkish worker continues to be duly registered as belonging to the labour force in the host Member State, for the purposes of Article 6(1) of Decision No 1/80, during the period which is reasonably necessary for him to find other paid employment, regardless of the cause of the absence of the person concerned from the labour force provided that that absence is temporary (Case C-383/03 *Dogan* [2005] ECR I-6237, paragraphs 19 and 20).

- 25 A Turkish worker is excluded from the labour force only if objectively he no longer has any chance of rejoining the labour force or has exceeded a reasonable time-limit for finding new employment after the end of the period of inactivity (see, to that effect, Case C-340/97 *Nazli* [2000] ECR I-957, paragraph 44, and *Dogan*, paragraph 23).
- 26 Mr Ali Altun's involuntary unemployment following the declaration of insolvency of the undertaking in which he was working cannot of itself prevent him from continuing to belong to the labour force of the host Member State.
- 27 The considerations set out in paragraphs 23 to 25 of this judgment with respect to the concept of being duly registered as belonging to the labour force for the purposes of Article 6(1) of Decision No 1/80 also apply to the interpretation of the first paragraph of Article 7 thereof.
- 28 A different interpretation of that concept, according to whether it is considered in the context of Article 6 of Decision No 1/80 or Article 7, would upset the coherence of the system put in place by the Association Council in order gradually to consolidate the situation of Turkish workers in the host Member State.
- 29 It must be recalled that Decision No 1/80 aims 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 thus enjoy the rights conferred on them by the decision (*Derin*, paragraph 53).

- 30 As regards the residency condition, the first indent of the first paragraph of Article 7 of Decision No 1/80 imposes on the family member of a Turkish worker the obligation to reside with the latter for a continuous period of at least three years.
- 31 The settled case-law of the Court requires, in that regard, that the unity of the family, in pursuit of which the family member of a Turkish worker entered the territory of the host Member State, should be evidenced for a specified period by actual cohabitation in a household with the worker and that this must be so until he or she becomes entitled to enter the labour market in that State (see Case C-329/97 *Ergat* [2000] ECR I-1487, paragraph 36, and *Derin*, paragraph 51).
- 32 It follows that, for the whole of the period necessary for the acquisition by the family member of the right of access to employment in the host Member State, the worker with whom he lives must be duly registered as belonging to the labour force of that State.
- 33 The two conditions set out in paragraph 22 of this judgment must be fulfilled simultaneously.
- 34 That is the interpretation of the first paragraph of Article 7 of Decision No 1/80 which follows from the wording and the objectives of that provision and from the case-law of the Court.

35 The Court has held that the rights conferred by the first paragraph of Article 7 of Decision No 1/80 may be exercised by the family member after the period of residence with the Turkish worker duly registered as belonging to the labour force of the host Member State, even if, after that period of residence, the worker himself no longer belongs to the labour force of that Member State (Case C-467/02 *Cetinkaya* [2004] ECR I-10895, paragraph 32).

36 The fact that the condition of eligibility for the right of access to employment in the host Member States disappears with respect to the worker after a family member has himself acquired that right is not therefore capable of calling into question the right acquired by that family member.

37 It must be held that, for the purposes of the acquisition, in accordance with the first paragraph of Article 7 of Decision No 1/80, of the right of access to employment in the host Member State by the family member of a Turkish worker, the condition that the latter be duly registered as belonging to the labour force must have been fulfilled for at least the three-year period of cohabitation.

38 According to the referring court, the applicant in the main proceedings lived with his father for a period of more than three years, that is from 30 November 1999, the date on which he arrived in Germany, until 20 April 2004, the date on which the decision to refuse the extension of his residence permit was taken. In addition, the referring court states that, until 20 April 2004, Mr Ali Altun was working for two and a half years and was then involuntarily unemployed from June 2002.

39 Therefore, the conditions laid down in the first indent of the first paragraph of Article 7 of Decision No 1/80 concerning whether the Turkish worker is duly registered as belonging to the labour force of the host Member State and the period of legal residence of his family member in that Member State are fulfilled in this case.

40 Having regard to the foregoing considerations, the answer to the first and second questions must be that the first indent of the first paragraph of Article 7 of Decision No 1/80 is to be interpreted as meaning that the child of a Turkish worker may enjoy rights arising by virtue of that provision where, during the three-year period when the child was cohabiting with that worker, the latter was working for two and a half years before being unemployed for the following six months.

The third question

41 By that question, the referring court asks essentially whether the fact that a Turkish worker obtained the right of residence in a Member State and, therefore, the right of access to employment in that State as a political refugee precludes a member of his family from enjoying the rights arising by virtue of the first paragraph of Article 7 of Decision No 1/80.

42 According to settled case-law, the exercise of the rights that Turkish nationals derive from Decision No 1/80 is not subject to any condition relating to the ground on which the right of entry and of residence was originally granted in the host Member State (see,

to that effect, with respect to Article 6 of Decision No 1/80, Case C-237/91 *Kus* [1992] ECR I-6781, paragraphs 21 and 22, and *Payir and Others*, paragraph 40; and, with respect to Article 7, Case C-335/93 *Eroglu* [1994] ECR I-5113, paragraph 22).

43 Thus, the first paragraph of Article 7 of Decision No 1/80 does not make the recognition of the right of access to employment in the host Member State and, concomitantly, the right of residence in that State of family members of a Turkish worker, dependent on the circumstances in which the right of entry and residence were obtained by the latter.

44 The referring court takes the view that refugees are already sufficiently protected by the rights conferred on them by the Geneva Convention and that it is unnecessary to bring them within the scope of an association agreement concluded with their State of origin. Such a 'double benefit' would not appear appropriate.

45 In that regard, it must be observed that Article 5 of the Geneva Convention states that nothing in the convention is to be deemed to impair any rights and benefits granted to refugees apart from that convention.

46 Decision No 1/80 grants to the family members of a Turkish worker rights which they cannot invoke under the Geneva Convention.

47 While Article 7 of Decision No 1/80 provides for the right of family members of a Turkish worker to respond to offers of employment in the host Member State if certain

conditions relating in particular to the length of their stay in that State have been fulfilled, the Geneva Convention does not confer any right of that kind on the family members of a political refugee.

48 It is true 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 (see, in particular, *Payir and Others*, paragraph 36).

49 However, the refusal to apply Decision No 1/80 on account of the status of political refugee enjoyed by Mr Ali Altun when his permission to enter and to stay in Germany was issued would impair the rights that he and the members of his family derive from that decision.

50 Therefore, the answer to the third question must be that the fact that a Turkish worker has obtained the right of residence in a Member State and, accordingly, the right of access to the labour market of that State as a political refugee does not prevent a member of his family from enjoying the rights arising under the first paragraph of Article 7 of Decision No 1/80.

The fourth and fifth questions

51 By its fourth and fifth questions, which it is appropriate to examine together, the referring court asks essentially whether and, if appropriate, in what circumstances the rights a family member of a Turkish worker derives from the first paragraph of Article 7 of Decision No 1/80 may be called into question where that worker obtained the status of political refugee on the basis of false statements.

52 The referring court explains that its uncertainty in that regard derives from the fact that there is a whole series of evidence from which it may be established that the information given by Mr Ali Altun in his application for asylum could not be true.

53 According to the case-law of the Court, the legality of the employment of a Turkish national in the host Member State presupposes a stable and secure situation as a member of the labour force of that Member State and implies, by virtue of that situation, an undisputed right of residence (Case C-192/89 *Sevince* [1990] ECR I-3461, paragraph 30, and Case C-4/05 *Güzeli* [2006] ECR I-10279, paragraph 38).

54 In this context, the Court has held that periods in which a Turkish national is employed under a residence permit which was issued to him only as a result of fraudulent conduct which has led to a conviction are not based on a stable situation and such employment cannot be regarded as having been secure in view of the fact that, during the periods in question, the person concerned was not legally entitled to a residence permit (see, in particular, Case C-285/95 *Kol* [1997] ECR I-3069, paragraph 27, and Case C-37/98 *Savas* [2000] ECR I-2927, paragraph 61).

55 The employment of a Turkish national under a residence permit issued as a result of fraudulent conduct which has led to a conviction, cannot give rise to any rights in favour of the Turkish worker, or arouse any legitimate expectation on his part (*Kol*, paragraph 28).

56 Furthermore, given the connection which exists between the rights which the Turkish worker has by virtue of Decision No 1/80 and those on which his family members who

have been allowed to join him may rely on the basis of Article 7 thereof, such fraudulent conduct by that worker is capable of having effects as regards legal rights of his family members.

57 Those effects must, however, be determined with regard to the date on which the national authorities of the host Member State adopted a decision to withdraw the residence permit of that worker.

58 If, on the date on which the residence permit of a Turkish worker is withdrawn, the rights of his family members are inchoate in so far as the condition relating to the period of actual cohabitation with the worker laid down by the first paragraph of Article 7 of Decision No 1/80 has not yet been fulfilled, the Member States are entitled to draw the appropriate conclusions from the fraudulent conduct of that worker with respect to his family members.

59 However, if the latter have acquired an autonomous right of access to the employment market of the host Member State and, as a corollary, a right of residence there, those rights may no longer be called into question on account of irregularities which, in the past, affected the Turkish worker's right of residence.

60 Any other solution would be contrary to the principle of legal certainty which, as is clear from settled case-law, requires, particularly, that rules of law be clear, precise and predictable in their effects, in particular where they may have negative consequences on individuals (see, to that effect, Case C-143/93 *Van Es Douane Agenten* [1996] ECR I-431, paragraph 27, and Case C-158/07 *Förster* [2008] ECR I-8507, paragraph 67).

- 61 The right of family members of a Turkish worker to take up employment pursuant to the first paragraph of Article 7 of Decision No 1/80 would, furthermore, be rendered wholly meaningless if the competent national authorities were able to impose conditions or restrictions of any sort on the application of the specific rights conferred on Turkish migrants by that decision (see *Ergat*, paragraph 41, and Case C-453/07 *Er* [2008] ECR I-7299, paragraph 27).
- 62 There can be only two kinds of restrictions on the rights conferred by the first paragraph of Article 7 of Decision No 1/80 on members of a Turkish worker's family who fulfil the conditions laid down in that paragraph, namely, either a restriction based on the presence of the Turkish migrant in the host Member State where he constitutes, on account of his own conduct, a genuine and serious threat to public policy, public security or public health, in accordance with Article 14(1) of that decision, or a restriction based on the fact that the person concerned has left the territory of that State for a significant length of time without legitimate reason (see, in particular, *Cetinkaya*, paragraphs 36 and 38 and *Er*, paragraph 30).
- 63 The exhaustive nature of the restrictions set out in the preceding paragraph would be undermined if the national authorities were able to make subject to conditions, limit or disregard the autonomous rights acquired by the family members of migrant workers by means of a re-examination or a fresh assessment of the circumstances in which the right to enter and right of residence were granted to the latter.
- 64 Therefore, the answer to the fourth and fifth questions must be that the first paragraph of Article 7 of Decision No 1/80 is to be interpreted as meaning that when a Turkish worker has obtained the status of political refugee on the basis of false statements, the rights that a member of his family derives from that provision cannot be called into question if the latter, on the date on which the residence permit issued to that worker is withdrawn, fulfils the conditions laid down therein.

Costs

65 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 (Third Chamber) hereby rules:

- 1. The first indent of the first paragraph of Article 7 of Decision No 1/80 of 19 September 1980 on the development of the Association set up by the Agreement establishing an Association between the European Economic Community and Turkey is to be interpreted as meaning that the child of a Turkish worker may enjoy rights arising by virtue of that provision where, during the three-year period when the child was cohabiting with that worker, the latter was working for two and a half years before being unemployed for the following six months.**
- 2. The fact that a Turkish worker has obtained the right of residence in a Member State and, accordingly, the right of access to the labour market of that State as a political refugee does not prevent a member of his family from enjoying the rights arising under the first paragraph of Article 7 of Decision No 1/80.**

- 3. The first paragraph of Article 7 of Decision No 1/80 is to be interpreted as meaning that when a Turkish worker has obtained the status of political refugee on the basis of false statements, the rights that a member of his family derives from that provision cannot be called into question if the latter, on the date on which the residence permit issued to that worker is withdrawn, fulfils the conditions laid down therein.**

[Signatures]