Judgment of the Court (Second Chamber) of 10 January 2006

Mehmet Sedef v Freie und Hansestadt Hamburg

Reference for a preliminary ruling: Bundesverwaltungsgericht - Germany

EEC-Turkey Association - Freedom of movement for workers - Article 6 of Decision No 1/80 of the Association Council - Right to the extension of a residence permit - Conditions - Turkish national who was employed in the maritime shipping industry of a Member State for 15 years - Same employer for more than one year without interruption, but not up to the end of a period of three years - Periods of employment interrupted 17 times on account of the nature of the occupation

Case C-230/03

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In Case C-230/03,

REFERENCE for a preliminary ruling under Article 234 EC from the Bundesverwaltungsgericht (Germany), made by decision of 18 March 2003, received at the Court on 26 May 2003, in the proceedings
Mehmet Sedef
v
Freie und Hansestadt Hamburg,
intervener:
Vertreter des Bundesinteresses beim Bundesverwaltungsgericht,

THE COURT (Second Chamber),
composed of C.W.A. Timmermans, President of the Chamber, C. Gulmann, R. Schintgen (Rapporteur), G. Arestis and J. Klučka, Judges,
Advocate General: D. Ruiz-Jarabo Colomer,
Registrar: K. Sztranc, Administrator,
having regard to the written procedure and further to the hearing on 30 June 2005,
after considering the observations submitted on behalf of:

- Mr Sedef, by U. Jacob, Rechtsanwalt,
- Freie und Hansestadt Hamburg, by A. Feil, acting as Agent,
- the German Government, by W.-D. Plessing and A. Tiemann, acting as Agents,
- the Commission of the European Communities, by D. Martin and B. Martenczuk, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 6 September 2005,
gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 6(1) and (2) of Decision No 1/80 of the Association Council of 19 September 1980 on the development of the Association (hereinafter 'Decision No 1/80'). The Association Council was created by the agreement establishing an association between the European Economic Community and Turkey which was signed in Ankara on 12 September 1963 by the Republic of Turkey on the one hand and 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 (JO 1964 217, p. 3685) (hereinafter 'the Association Agreement').

2 The reference has been made in the course of proceedings between Mr Sedef, a Turkish national, and Freie und Hansestadt Hamburg regarding the latter's decisions refusing to grant him an extension of his residence permit for Germany and ordering his removal from the territory of that Member State.

Legal context

3 Under Article 6(1) and (2) of Decision No 1/80:

'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.'

The main proceedings and the questions referred for a preliminary ruling

4 It is apparent from the documents sent to the Court by the national court that Mr Sedef, who was born in Turkey in 1952, has been in Germany lawfully since 1977 although his wife and three children continue to reside in Turkey.

5 From August 1977 until September 1992 he was employed as a seaman on various ships flying the German flag and for that purpose obtained successive residence permits, granted for a limited period of time and restricted to employment in the merchant navy or, if necessary, to the grant of unemployment benefits, the last of those residence permits having ceased to be valid on 9 September 1993. No work permit was required for that paid employment.

6 During that period of more than fifteen years, the claimant actually worked for more than eight and a half years in total, not counting interruptions in the periods of employment for reasons of sickness and involuntary unemployment duly certified by the relevant authorities.

7 It is common ground that Mr Sedef's periods of employment have been interrupted 17 times, for periods of between 1 and 70 days amounting in total to around 13 months, for reasons other than an annual holiday, an absence due to sickness or a period of unemployment duly certified in the host Member State. The claimant terms these breaks as periods of 'unpaid holiday'. According to him, during those breaks of unequal length between individual fixed-term contracts of employment in the merchant navy, he either remained in Germany, in the case of short breaks, to await the (sometimes delayed) arrival of a vessel on which he already had new employment, so that he considered it pointless to take steps to register himself as unemployed, or he used the longer breaks in excess of roughly three weeks to visit his family who remained in Turkey. According to the national court, breaks of that kind are typical of employment in maritime shipping.

8 Following an accident at work which took place on a ship in 1979, Mr Sedef had to undergo several operations which resulted in some long and some short periods of incapacity for work.

9 Since 18 January 1993, Mr Sedef has been pronounced unfit to work on ships on health grounds, although not wholly incapacitated from engaging in gainful employment. It is apparent from his medical certificates that he is able to engage in employment on land as long as that does not demand physical effort which is too sustained.

10 On 22 January 1992, Mr Sedef applied to be granted a residence permit which was not restricted to employment as a seaman, so as to be able to take paid employment on land. For that purpose he claimed, first, that he fulfilled the conditions laid down in the third indent of Article 6(1) of Decision No 1/80 on account of the fact that he had been employed for more than four years on ships flying the German flag and, secondly, that his situation constituted a hardship case, as his state of health no longer allowed him to continue working as a seaman. He added that he had not been able to act on offers of employment on land which had been made to him as he did not hold the requisite residence permit.

11 Both that application and Mr Sedef's subsequent objection were rejected by Freie und Hansestadt Hamburg, which threatened him with removal if he had not left Germany by the end of a period of three weeks. Implementation of the decision to remove him has, however, been stayed so that the claimant is still lawfully residing in Germany.

12 On 10 December 1996, the Verwaltungsgericht Hamburg (Administrative Court, Hamburg) held Mr Sedef's action to be well founded and ordered Freie and Hansestadt Hamburg to grant him the residence permit applied for.

13 According to that court, Mr Sedef enjoys free access to any paid employment of his choice under the third indent of Article 6(1) of Decision No 1/80, so that the host Member State is no longer entitled to make the claimant's access to employment nor such employment subject to conditions. The various breaks which had marked his employment record could not be prejudicial to him in so far as, under Article 6(2) of Decision No 1/80, annual holidays and absences for reasons of an accident at work or short periods of sickness are to be treated as periods of employment, whilst periods of involuntary unemployment, in respect of which, moreover, Mr Sedef received unemployment benefits, and long absences on account of sickness are not to affect rights acquired as the result of the preceding period of employment. As regards brief periods of inactivity between individual contracts of employment, they must dealt with in the same way as legal or contractual holidays, on the ground that they are typical of employment in maritime shipping.

14 Freie and Hansestadt Hamburg appealed against that judgment to the Hamburgisches Oberverwaltungsgericht (Higher Administrative Court, Hamburg), claiming that the four-year period of legal employment referred to in the third indent of Article 6(1) of Decision No 1/80 must be uninterrupted, whereas the contracts of employment successively entered into by Mr Sedef do not make up such a continuous period.

15 The Hamburgisches Oberverwaltungsgericht, in its judgment of 13 December 2000, overturned the judgment of the first-instance court, holding that Mr Sedef could not rely on the third indent of Article 6(1) as he could not prove the four years of uninterrupted employment required under that provision. The breaks in his employment relationships in the present case constitute neither holidays nor periods of unemployment within the meaning of paragraph 2 of that article which constitutes, according to that court, an exhaustive list of the grounds of which an employment relationship may be interrupted. Those breaks thus lead to the entitlement already acquired being lost, as the claimant was without work although not registered as a job-seeker. Any other interpretation risks giving rise to abuse. Furthermore, German legislation sufficiently takes into account the specific nature of seamen's employment.

16 Seised of an appeal on a point of law brought by Mr Sedef, the Bundesverwaltungsgericht (Federal Administrative Court) decided that the refusal to renew his residence permit was in accordance with German law, but was unsure whether an outcome more favourable to the claimant could not be inferred from the third indent of Article 6(1) of Decision No 1/80.

17 In this respect, that court made the following findings in the order for reference:

– Mr Sedef was engaged, for more than 15 years, in legal employment within the meaning of Article 6(1) through his work in the shipping industry of a Member State and he thus forms part of the duly-registered labour force of the host Member State for the purposes of that provision;

– he has several times been in such legal employment continuously with the same employer for more than one year, so that he fulfils the conditions of the first indent of that provision;

– the claimant is now unfit to work on ships on health grounds, but continues to be duly registered as belonging to the labour force in Germany, given that the accident which he suffered at work did not result in his becoming totally incapacitated for employment (see, to that effect, Case C-434/93 *Bozkurt* [1995] ECR I-1475, paragraphs 37 to 40) and that he is available to the employment services for the employment on land sought. The fact that he has not worked since 1993 is due, at least in part, to his lack of a residence permit and that cannot be held against him.

18 However, first of all, it is not certain that the breaks which Mr Sedef terms 'unpaid holiday' had no effect on the entitlement he had already acquired under the first indent of Article 6(1) of Decision No 1/80 and that those breaks do not also preclude the acquisition of entitlement under the third indent of the same paragraph.

19 On the one hand, the Court has not yet given a specific ruling on such breaks. On the other hand, the Bundesverwaltungsgericht has until now held that the list of interruptions to employment specified in Article 6(2) of Decision No 1/80 is exhaustive.

20 It is nevertheless doubtful whether that latter view can be maintained, having regard to Case C-351/95 *Kadiman* [1997] ECR I-2133, in particular paragraphs 47 and 48, and Case C-340/97 *Nazli* [2000] ECR I-957.

21 Following the example of the cases which gave rise to those two judgments, it is possible in the present case to rely on the fact that Mr Sedef only temporarily interrupted his work in German shipping each time and never definitively left the German labour force. According to the findings of the Hamburgisches Oberverwaltungsgericht, he did, for the most part, find new work quickly and without any problem after each of those breaks.

22 In the event that it is, however, held that breaks of that kind in principle invalidate the entitlement acquired by the worker concerned, it is still necessary to establish whether exceptions to that rule should be allowed when the breaks are typical of a given occupation, such as, in this case, that of a subordinate seaman, which is different from employment on land because it implies, first, fixed term contracts with successive employers and, secondly, waiting periods or breaks as a result, for instance, of the late arrival in port of a ship on which the worker has the prospect of obtaining employment.

23 If the answer to one of the two parts of the first question is in the affirmative, the national court wishes to ascertain, secondly, whether, as the case-law of the Court appears to indicate (see Case C-171/95 *Tetik* [1997] ECR I-329, paragraph 39; Case C-386/95 *Eker* [1997] ECR I-2697, paragraphs 23 and 25; and Case C-98/96 *Ertanir* [1997] ECR I-5179, paragraphs 31 and 35), entitlement to a residence permit under the third indent of Article 6(1) of Decision No 1/80 presupposes that the worker has already satisfied the requirements of the second indent of that same paragraph.

24 It is however also possible to consider that the third indent should be viewed as a separate factual element giving rise to the entitlement of the worker concerned.

25 According to the national court, if it were decided that the third indent of Article 6(1) does not in principle confer any entitlement on Mr Sedef since he cannot claim three years of uninterrupted employment with the same employer, it is still necessary to establish whether the fact that a change of employer before the expiry of three years is typical of the occupation of seaman must, by way of exception, be taken into consideration.

26 Taking the view that in those circumstances an interpretation of Community law was necessary to enable it to reach a decision in the case before it, the Bundesverwaltungsgericht decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'1. Are the third indent of Article 6(1) and Article 6(2) of Decision No 1/80 … to be interpreted as meaning that a Turkish worker who has been legally employed by various employers in maritime shipping forming part of the duly-registered labour force of a Member State for more than 15 years since 1977 without a work permit being required and who has satisfied the requirements of the first indent of Article 6(1) of Decision No 1/80 during that time is entitled to a residence permit where – in addition to various breaks for reasons of illness and involuntary unemployment duly certified by the relevant authority – his employment in maritime shipping has undergone interruptions of between 1 and 70 days between individual employment relationships on 17 occasions (totalling approximately 13 months) and, by his own admission, the Turkish worker has spent the longer breaks with his family in Turkey without any involuntary unemployment then being certified? Does the answer depend on whether such interruptions are typical of the occupation concerned (in this case … of maritime shipping)?

2. Is entitlement to a residence permit under the third indent of Article 6(1) of Decision No 1/80 conditional on the Turkish worker already satisfying the requirements of the second indent of Article 6(1) of Decision No 1/80? Does the answer depend on whether a change of employer before the expiry of three years is typical of the occupation concerned (in this case … of maritime shipping)?'

The questions referred for a preliminary ruling

Initial observations

27 It must be observed that the main proceedings concern the situation of a Turkish national who has, for a long period of time, been legally employed in a Member State and seeks the extension of his residence permit there by relying on the right of free access to any paid employment of his choice conferred by the third indent of Article 6(1) of Decision No 1/80, on the ground that the aggregate of the periods of employment prior to his application represents a period of more than four years.

28 The national court has stated in that regard that Mr Sedef had several times worked continuously for the same employer for more than a year and that he therefore fufilled the conditions laid down in the first indent of Article 6(1) of that decision.

29 On the other hand, in the second question referred, the national court raises the question of whether the claimant can validly rely on the third indent of that provision on account of the fact that he has never worked for the same employer for an uninterrupted period of three years as laid down by the second indent of the same provision.

30 Furthermore, by its first question, that court seeks to ascertain the effect of certain breaks in the periods of work completed by Mr Sedef if he did not register as a job-seeker during those breaks.

31 It must also be stated that it is not disputed that, in the circumstances of this case, Mr Sedef is a worker duly registered as belonging to the labour force of the host Member State and has been legally employed there within the meaning of Article 6(1) of Decision No 1/80.

32 The only questions which remain in issue are thus whether the claimant's periods of employment fulfil the conditions as to length laid down in Article 6(1) of Decision No 1/80 and, in particular, whether the breaks referred to in the order for reference affect those periods and what the appropriate criteria are for the purposes of interpreting that article in a situation such as that in the case in the main proceedings.

33 Before considering those three aspects in turn, it must be borne in mind that, following Decision No 2/76 on the implementation of Article 12 of the Association Agreement, adopted by the Association Council on 20 December 1976, the provisions with a social purpose in Decision No 1/80 constitute a further stage in gradually securing freedom of movement for Turkish workers in the European Community. In particular, Article 6(1) of the latter decision grants Turkish migrant workers meeting its conditions clear rights as regards taking up employment. It is established case-law that that provision, which has been recognised as having direct effect, confers an individual right as regards employment and a concomitant right of residence on the persons concerned (see Case C-136/03 *Dörr and Ünal* [2005] ECR I-0000, paragraph 66, and the case-law cited).

The requirements of the system for gradually integrating Turkish workers into the labour force of the host Member State

34 The Court has repeatedly held, first, that the employment rights and, accordingly, the rights of residence which are conferred on Turkish workers by the provisions set out in the three indents of Article 6(1) of Decision No 1/80 are progressively extended in proportion to the duration of lawful paid employment and are intended to consolidate progressively the position of the persons concerned in the host Member State. Secondly, the Court has also consistently held that the national authorities have no option to attach conditions to or restrict the application of such rights, as they would otherwise undermine the effect of that decision (see Case C-36/96 *Günaydin* [1997] ECR I-5143, paragraphs 37 to 40 and paragraph 50; Case C-1/97 *Birden* [1998] ECR I-7747, paragraph 19; Case C-188/00 *Kurz* [2002] ECR I-10691, paragraph 26; and Joined Cases C-317/01 and C-369/01 *Abatayand Others* [2003] ECR I-12301, paragraph 78).

35 More specifically, as is clear from the actual wording of the three indents of Article 6(1) of Decision No 1/80, the rights on which Turkish workers can rely under those provisions vary themselves and are subject to conditions which differ according to the duration of the legal employment in the host Member State (see Case C-355/93 *Eroglu* [1994] ECR I-5113, paragraph 12: *Tetik*, paragraph 23: *Eker*, paragraph 21: *Günaydin*, paragraph 25; and *Ertanir*, paragraph 25).

36 Thus, it is evident from those provisions that, after one year's legal employment, a Turkish worker is entitled to continue in the employment of the same employer (first indent). After three years of legal employment and subject to the priority to be given to workers from the Member States, he has the right to respond to another offer of employment made by an employer of his choice for the same occupation (second indent). After four years of legal employment he enjoys the unconditional right to seek and take up any employment freely chosen (third indent) (see *Eroglu*, paragraph 12; *Tetik*, paragraph 26; and *Nazli*, paragraph 27).

37 It is apparent from the broad logic and practical effect of the system for gradually integrating Turkish workers into the labour force of the host Member State established in Article 6(1) of Decision No 1/80 that the conditions laid down in the three indents of that provision must be fulfilled in turn by the persons concerned. Any other approach would be likely to undermine the coherence of the system set up by the Association Council with a view to gradually consolidating the position of Turkish workers in the host Member State.

38 That interpretation follows, moreover, from the settled case-law of the Court.

39 In paragraphs 13 to 15 of *Eroglu*, the Court considered that the aim of the first indent of Article 6(1) of Decision No 1/80 is solely to ensure continuity of employment with the same employer and that, accordingly, that provision did not apply to the situation of a Turkish worker who, after one year's legal employment, changed employer and sought an extension of her work permit in order to work for her first employer again.

40 Similarly, in paragraphs 30 and 31 of *Eker*, the Court held that that provision confers no entitlement on a Turkish worker who has changed employer before the end of the first year of employment in the host Member State and applies for an extension of his residence permit in order to continue working for his new employer before even completing one year's legal employment with that employer.

41 That interpretation of the first indent of Article 6(1) of Decision No 1/80 was confirmed again in Case C-285/95 *Kol* [1997] ECR I-3069, paragraphs 19 and 20, and *Birden*, paragraphs 44, 62 and 69.

42 For reasons identical to those explained in paragraphs 39 to 41 of this judgment, those same considerations must apply as regards the interpretation of the second indent of Article 6(1) of that decision.

43 Accordingly, enjoyment of the entitlement conferred on a Turkish worker by the third indent of Article 6(1) of Decision No 1/80 in principle presupposes that the person concerned has already fulfilled the conditions set out in the second indent of that paragraph.

44 In those circumstances, a Turkish migrant worker cannot, as a general rule, rely on entitlement under the third indent of Article 6(1) of Decision No 1/80 merely on account of having been in legal employment in the host Member State for more than four years if he has not initially worked for more than one year for the same employer and subsequently worked for him for two further years.

The breaks in the periods of legal employment completed by the Turkish worker

45 In this connection, according to settled case-law, a fundamental distinction must be made between, first, the phase in which rights are acquired on an incremental basis in accordance with the length of the paid legal employment as set out in the three indents of Article 6(1) of Decision No 1/80 and, secondly, the case where the Turkish worker has already satisfied those successive requirements and therefore, at the end of the four-year period referred to in the third indent of that provision, enjoys the right of free access to any paid employment of his choice (*Tetik*, paragraph 26; *Nazli*, paragraph 27; and Case C-383/03 *Dogan* [2005] ECR I-0000, paragraph 13).

46 Thus, the position of a Turkish worker who has, in the past, satisfied the conditions laid down in the third indent of Article 6(1) of that decision is no longer dependent on the continuing existence of the conditions for access to the rights laid down in the three indents of that paragraph. Such a worker must be regarded as being sufficiently integrated in the host Member State to be able temporarily to interrupt his employment relationship. Any other interpretation would deprive of its substance that worker's right of free access to any paid employment of his choice (see *Tetik*, paragraph 31, and *Dogan*, paragraphs 14, 18 and 19).

47 By contrast, a Turkish worker who does not yet enjoy the right provided for in the third indent must be engaged in legal employment for one, three or four years respectively, in principle without any interruption (see *Dogan*, paragraph 18).

48 It is in order to temper the severity of the latter rule that Article 6(2) of Decision No 1/80 sets out certain legitimate causes of interruption to employment for the purpose of calculating the different periods of legal employment required for the acquisition, on an incremental basis, of the rights provided for in the first to third indents of paragraph 1 of that article (*Bozkurt*, paragraph 38; *Tetik*, paragraph 36; *Nazli*, paragraph 40; and *Dogan*, paragraph 15).

49 Article 6(2) makes a distinction on the basis of the type and length of the periods in which a Turkish worker was not working.

50 Thus, the first sentence of that provision relates to periods of inactivity involving generally only a brief cessation of work, such as absences for annual holiday, maternity leave, an accident at work or a short period of sickness, which constitute events which must be regarded as a normal part of any employment relationship. Absences of that kind on the part of the worker are, consequently, treated wholly as periods of legal employment within the meaning of Article 6(1) of Decision No 1/80.

51 The second sentence of Article 6(2) relates to periods of inactivity due to long-term sickness or involuntary unemployment. That provision provides that periods of inactivity of that type, which result in a longer absence or one the length of which is not predictable, while they cannot be treated as periods of legal employment, cannot however result in the Turkish worker losing the rights which he has already acquired as the result of preceding periods of legal employment.

52 That provision is therefore intended to avoid a situation where a Turkish worker returning to work after having been compelled to cease work temporarily for a legitimate reason was required, in the same way as a Turkish national who had not yet been in paid employment in the Member State concerned, to recommence the periods of legal employment laid down in the first to third indents of Article 6(1) of Decision No 1/80.

53 It is evident from the foregoing that a Turkish worker who does not yet enjoy the right of free access to any paid employment of his choice under the third indent of Article 6(1) of Decision No 1/80 is, in principle, required to be in legal employment without interruption in the host Member State for the period required unless he has a legitimate reason for interrupting his periods of employment, such as those laid down in Article 6(2).

54 By contrast, provided the Turkish worker has satisfied the conditions laid down in the third indent of Article 6(1) of Decision No 1/80, the practical effect of the unconditional right granted to him by that provision of free access to any paid employment of his choice necessarily implies that that worker is entitled temporarily to cease working in one job and, for a reasonable period of time, to seek other employment, so that Article 6(2) is no longer applicable in such a situation (see *Dogan*, paragraphs 16, 18 and 19).

55 As regards more specifically the 17 breaks in Mr Sedef's employment relationship as described in detail by the national court in its first question, it does not appear possible to treat them as legitimate causes of interruption to periods of employment of the same kind as those laid down in the first sentence of Article 6(2) of Decision No 1/80.

56 However, having regard to the specific factual circumstances of the case in the main proceedings as set out in the order for reference, there is nothing to preclude the national court from regarding those breaks as periods of involuntary unemployment within the meaning of the second sentence of Article 6(2) of that decision, even though the claimant did not register as a job-seeker as is required in principle by that provision.

57 As the Advocate General observes in points 53 to 56 of his Opinion, in a case like Mr Sedef's it is apparent that such interruptions were beyond his control, given that he was engaged only by way of successive fixed-term contracts.

58 Furthermore, the fact that Mr Sedef made the most of the longer breaks – of the order of several weeks – in his work to visit his close family, who continue to reside in Turkey, cannot be regarded as a circumstance materially affecting his position under the provisions of Article 6(1) of Decision No 1/80, since it is established that such temporary absences from the territory of the host Member State are for a legitimate reason and their duration remained reasonable in nature.

59 The Court has, moreover, already held, with regard to the first indent of the first paragraph of Article 7 of Decision No 1/80 which lays down a condition of legal residence of a certain duration similar to the condition concerning legal employment laid down in Article 6(1) of the same decision, that the obligation on a member of a Turkish worker's family to reside in principle with him for the first three years without interruption does not preclude the person concerned from being absent from the family residence for a reasonable period and for legitimate reasons, for example in order to visit his family in his country of origin (see *Kadiman*, paragraphs 47 and 48).

60 In addition, it is apparent from the documents sent to the Court by the national court that Mr Sedef's absences did not have the effect of calling into question his integration in the labour force of the host Member State. On the contrary, after his trips to Turkey, Mr Sedef returned each time to Germany to resume his work there.

61 The fact that the breaks in the employment relationship were not duly certified as periods of unemployment by the relevant authorities of the host Member State is irrelevant in the circumstances of this case. The claimant could reasonably regard himself as exempt from carrying out the necessary formalities to make himself available to the national employment services, since it is apparent from the documents before the Court that more often than not Mr Sedef already held a new contract of employment, which was to take effect, however, only at a later date, or, at the very least, that he had real prospects of being re-employed; he did in fact always resume working shortly after he had completed his previous contract. Consequently, it does not appear that it would have been of much use to register Mr Sedef as a job-seeker in such circumstances given his situation, which was characterised by repeated but short breaks in his employment.

62 In those circumstances, breaks in the employment relationship such as those described by the order for reference in the first question cannot be regarded, for the purpose of calculating the periods of legal employment referred to in Article 6(1) of Decision No 1/80, as having led to the loss of rights acquired by the Turkish national concerned by virtue of earlier periods of legal employment.

63 It must be added that the Court has, on several occasions, found it necessary to take into account the conduct of the relevant national authorities for the purpose of interpreting the provisions with a social purpose in Decision No 1/80, relying in particular on the fact that those authorities had not called into question the legality of the residence of the Turkish national concerned in the territory of the host Member State (see, to that effect, as regards Article 6(1) of Decision No 1/80, *Ertanir*, paragraphs 67 and 69 and also, by analogy, as regards the first paragraph of Article 7 of the same decision, *Kadiman*, paragrahs 52 and 54; Case C-329/97 *Ergat* [2000] ECR I-1487, paragraph 51; and Case C-65/98 *Eyüp* [2000] ECR I-4747, paragraphs 35 and 36).

64 It is apparent from the documents concerning the main proceedings that the relevant national authorities repeatedly and without interruption issued residence permits to Mr Sedef for more than 15 years.

65 According to the information in the order for reference, it was only when the Turkish national concerned applied for authorisation to work on land that those same authorities altered their position.

66 In view of those particular circumstances, the national authorities cannot be entitled to call into question ex post facto Mr Sedef's status in the host Member State.

67 Such an approach would appear to be all the more justified in this case as Mr Sedef now finds himself required to apply for a residence permit in order to work on land solely because he is unable to continue working at sea following an accident at work suffered on a ship.

68 In those circumstances, Article 6(2) of Decision No 1/80 covers interruptions, such as those at issue in the main proceedings, in the periods of legal employment completed by the Turkish worker concerned and the relevant national authorities are not entitled to call into question the residence of the person concerned in the host Member State. That worker can, therefore, validly rely on the third indent of Article 6(1) of that decision to obtain an extension of his residence permit in order to continue in paid employment in that Member State.

69 In light of all the foregoing considerations, the reply to the questions raised should be that Article 6 of Decision No 1/80 is to be interpreted as meaning that:

– enjoyment of the rights conferred on a Turkish worker by the third indent of paragraph 1 of that article presupposes in principle that the person concerned has already fulfilled the conditions set out in the second indent of that paragraph;

– a Turkish worker who does not yet enjoy the right of free access to any paid employment of his choice under that third indent must be in legal employment without interruption in the host Member State unless he can rely on a legitimate reason of the type laid down in Article 6(2) to justify his temporary absence from the labour force;

– Article 6(2) covers interruptions in periods of legal employment, such as those at issue in the main proceedings, and the relevant national authorities cannot, in this case, dispute the right of the Turkish worker concerned to reside in the host Member State.

Costs

70 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 (Second Chamber) hereby rules:

Article 6 of Decision No 1/80 of 19 September 1980 on the development of the Association, adopted by the Association Council created by the agreement establishing an association between the European Economic Community and Turkey, is to be interpreted as meaning that:

– enjoyment of the rights conferred on a Turkish worker by the third indent of paragraph 1 of that article presupposes in principle that the person concerned has already fulfilled the conditions set out in the second indent of that paragraph;

– a Turkish worker who does not yet enjoy the right of free access to any paid employment of his choice under that third indent must be in legal employment without interruption in the host Member State unless he can rely on a legitimate reason of the type laid down in Article 6(2) to justify his temporary absence from the labour force;

– Article 6(2) of Decision No 1/80 covers interruptions in periods of legal employment, such as those at issue in the main proceedings, and the relevant national authorities cannot, in this case, dispute the right of the Turkish worker concerned to reside in the host Member State.

[Signatures]

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* Language of the case: German.