

JUDGMENT OF THE COURT (First Chamber)

14 January 2015 (*)

(Request for a preliminary ruling — EEC-Turkey Association Agreement — Social security for migrant workers — Waiver of residence clauses — Supplementary benefits granted under national legislation — Residence requirement — Application to Turkish former workers — Turkish nationals having acquired the nationality of the host Member State)

In Case C-171/13,

REQUEST for a preliminary ruling under Article 267 TFEU from the Centrale Raad van Beroep (Netherlands), made by decision of 2 April 2013, received at the Court on 8 April 2013, in the proceedings

Raad van bestuur van het Uitvoeringsinstituut werknemersverzekeringen (Uwv)

v

M.S. Demirci,

D. Cetin,

A.I. Önder,

R. Keskin,

M. Tüle,

A. Taskin,

THE COURT (First Chamber),

composed of A. Tizzano, President of the Chamber, S. Rodin, A. Borg Barthet, E. Levits (Rapporteur) and M. Berger, Judges,

Advocate General: N. Wahl,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 14 May 2014,

after considering the observations submitted on behalf of:

- the Raad van bestuur van het Uitvoeringsinstituut werknemersverzekeringen (Uwv), by I. Eijkhout, acting as Agent,

- Mr Demirci, by F. Kiliç, advocaat,
- Messrs Cetin and Önder, by N. Türkkol, advocaat,
- Mr Keskin, by D. Schaap, advocaat,
- the Netherlands Government, by J. Langer, M. Bulterman and B. Koopman, acting as Agents,
- the European Commission, by M. van Beek, acting as Agent,

after hearing the Opinion of the Advocate General at the sitting on 10 July 2014,
gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 6 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) ('Decision No 3/80'), read in conjunction with Article 59 of the Additional Protocol, signed on 23 November 1970 in Brussels 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. 60) ('the Additional Protocol'). 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, of the one part, and by the Member States of the EEC and the Community, of the other part, and concluded, approved and confirmed on behalf of the Community by Council Decision 64/732/EEC of 23 December 1963 (OJ 1973 C 113, p. 1) ('the Association Agreement').
- 2 The request has been made in proceedings between the Raad van bestuur van het Uitvoeringsinstituut werknemersverzekeringen (Management Board of the Employee Insurance Schemes Implementing Body; 'the Uvw') and former Turkish migrant workers, all of whom have acquired Netherlands nationality, concerning the decision of the Uvw to phase out gradually a supplement to their work disability pension due to their changing their domicile from the Netherlands to Turkey.

Legal context

EU law

The Association Agreement

3 Under Article 12 of the Association Agreement:

‘The Contracting Parties agree to be guided by Articles [39 EC], [40 EC] and [41 EC] for the purpose of progressively securing freedom of movement for workers between them.’

The Additional Protocol

4 The Additional Protocol — which, in accordance with Article 62 thereof, forms an integral part of the Association Agreement — lays down, as is stated in Article 1, the conditions, arrangements and timetables for implementing the transitional stage referred to in Article 4 of the Association Agreement.

5 The Additional Protocol contains a Title II, headed ‘Movement of persons and services’, Chapter I of which relates to ‘Workers’.

6 Article 36 of the Additional Protocol, which is part of Chapter I, provides that freedom of movement for workers between Member States of the Community and Turkey is to be secured by progressive stages in accordance with the principles set out in Article 12 of the Association Agreement between the end of the 12th and the 22nd year after the entry into force of that agreement and that the Association Council is to decide on the rules necessary to that end.

7 Article 39 of the Additional Protocol is worded as follows:

‘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.

4. It must be possible to transfer to Turkey old-age pensions, death benefits and invalidity pensions obtained under the measures adopted pursuant to paragraph 2.

5. The measures provided for in this Article shall not affect the rights and obligations arising from bilateral agreements between Turkey and Member States

of the Community, in so far as these agreements provide more favourable arrangements for Turkish nationals.’

8 Article 59 of the Additional Protocol provides:

‘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 [EC Treaty].’

Decision No 1/80

9 Article 6(1) of Decision No 1/80 of the Association Council of 19 September 1980 on the development of the Association provides:

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

- shall be entitled in that Member State, after one year’s legal employment, to the renewal of his permit to work for the same employer, if a job is available;
- shall be entitled in that Member State, after three years of legal employment and subject to the priority to be given to workers of Member States of the Community, to respond to another offer of employment, with an employer of his choice, made under normal conditions and registered with the employment services of that State, for the same occupation;
- shall enjoy free access in that Member State to any paid employment of his choice, after four years of legal employment.’

10 Article 7 of that decision provides:

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

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

Decision No 3/80

11 The purpose of Decision No 3/80, adopted on the basis of Article 39 of the Additional Protocol, is to coordinate the social security systems of the Member

States so as to enable Turkish workers working or having worked in one or more Member States of the Community, members of those workers' families and survivors of such workers to enjoy benefits in the traditional branches of social security.

12 According 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.'

13 Article 3(1) of Decision No 3/80, headed 'Equality of treatment', which repeats the text of Article 3(1) of Regulation (EEC) No 1408/71 of the Council 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, as amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996 (OJ 1997 L 28, p.1) ('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.'

14 Article 4 of Decision No 3/80, entitled 'Matters covered' provides, in paragraphs 1 and 2:

'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.

2. This Decision shall apply to all general and special social security schemes, whether contributory or non-contributory ...'

15 The first subparagraph of Article 6(1) of Decision No 3/80, headed 'Waiving of residence clause ...', is worded as follows:

'Save as otherwise provided in this Decision, invalidity, old-age or survivors' cash benefits and pensions for accidents at work or occupational diseases, acquired under the legislation of one or more Member States, shall not be subject to any reduction, modification, suspension, withdrawal or confiscation by reason of the fact that the recipient resides in Turkey or in the territory of a Member State other than that in which the institution responsible for payment is situated.'

16 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 relating, among other things, to invalidity, old-age and death benefits (pensions).

Regulation No 1408/71

17 Regulation No 1408/71 comprises an Article 3, headed 'Equality of treatment', paragraph 1 of which provides:

'Subject to the special provisions of this Regulation, persons resident in the territory of one of the Member States to whom this Regulation applies shall be subject to the same obligations and enjoy the same benefits under the legislation of any Member State as the nationals of the State.'

18 Article 4(1) and (2) of that regulation defines the scope *ratione materiae* of that regulation in the following terms:

'1. This Regulation 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.

2. This Regulation shall apply to all general and special social security schemes, whether contributory or non-contributory ...'

19 Article 1(2) of Council Regulation (EEC) No 1247/92 of 30 April 1992 amending Regulation No 1408/71 (OJ 1992 L 136, p. 1), which entered into force on 1 June 1992, added paragraph 2a to Article 4 of the latter, worded as follows:

'This Regulation shall also apply to special non-contributory benefits which are provided under legislation or schemes other than those referred to in paragraph 1 or excluded by virtue of paragraph 4, where such benefits are intended:

- (a) either to provide supplementary, substitute or ancillary cover against the risks covered by the branches of social security referred to in paragraph 1(a) to (h), or
- (b) solely as specific protection for the disabled.'

20 After being amended by Regulation (EC) No 647/2005 of the European Parliament and of the Council of 13 April 2005 (OJ 2005 L 117, p. 1), Article 4(2a) henceforth provides:

'This Article shall apply to special non-contributory cash benefits which are provided under legislation which, because of its personal scope, objectives and/or conditions for entitlement has characteristics both of the social security legislation referred to in paragraph 1 and of social assistance.'

"Special non-contributory cash benefits" means those:

- (a) which are intended to provide either:
 - (i) supplementary, substitute or ancillary cover against the risks covered by the branches of social security referred to in paragraph 1, and which guarantee the persons concerned a minimum subsistence income having regard to the economic and social situation in the Member State concerned; or
 - (ii) solely specific protection for the disabled, closely linked to the said person's social environment in the Member State concerned; and
- (b) where the financing exclusively derives from compulsory taxation intended to cover general public expenditure and the conditions for providing and for calculating the benefits are not dependent on any contribution in respect of the

beneficiary. However, benefits provided to supplement a contributory benefit shall not be considered to be contributory benefits for this reason alone; and

(c) which are listed in Annex IIa.’

21 Under the first subparagraph of Article 10(1) of Regulation No 1408/71:

‘Save as otherwise provided in this Regulation, invalidity, old-age or survivors’ cash benefits, pension for accidents at work or occupational diseases and death grants acquired under the legislation of one or more Member States shall not be subject to any reduction, modification, suspension, withdrawal or confiscation by reason of the fact that the recipient resides in the territory of a Member State other than that in which the institution responsible for payment is situated.’

22 Article 10a(1) of Regulation No 1408/71, inserted by Regulation No 1247/92, was worded as follows:

‘Notwithstanding the provisions of Article 10 and Title III, persons to whom this Regulation applies shall be granted the special non-contributory cash benefits referred to in Article 4(2a) exclusively in the territory of the Member State in which they reside, in accordance with the legislation of that State, provided that such benefits are listed in Annex IIa. Such benefits shall be granted by and at the expense of the institution of the place of residence.’

23 Article 10a(1) of Regulation No 1408/71, as amended by Regulation No 647/2005, henceforth provides:

‘The provisions of Article 10 and of Title III shall not apply to the special non-contributory cash benefits referred to in Article 4(2a). The persons to whom this Regulation applies shall receive these benefits exclusively in the territory of the Member State in which they reside and under the legislation of that State, in so far as these benefits are mentioned in Annex IIa. Benefits shall be paid by, and at the expense of, the institution of the place of residence.’

Netherlands law

24 In the Netherlands, the Law on insurance against incapacity for work (Wet op de arbeidsongeschiktheidsverzekering) (‘the WAO’), in force since 1966, provides insurance for employed persons against incapacity for work.

25 The Law on supplementary benefits (Toeslagenwet) (‘the TW’) of 6 November 1986, which entered into force on 1 January 1987 aims to award to persons receiving, under an employees’ insurance scheme such as that implemented by the WAO (on the same basis as, in particular, insurance against unemployment, sickness and industrial accidents), a loss-of-earnings benefit which amounts to less than the minimum wage, a supplementary benefit which raises their income to a level that, at the maximum, is equal to the minimum wage applicable in the

Netherlands ('the supplementary benefit'). At the material time, the supplementary benefit amounted to a maximum of 30% of the minimum wage, so that those entitled to a benefit of less than 70% of the minimum wage had an income lower than that wage. The UvV determines, at the request of the person concerned, whether there is entitlement to the supplementary benefit under the TW.

- 26 The Law on the restriction of the payment abroad of social security benefits (Wet beperking export uitkeringen) ('the BEU') of 27 May 1999 inserted a new Article 4a into the TW, paragraph 1 of which provides that persons who satisfy the conditions to receive benefit under the latter law are not entitled to the supplementary benefit during periods when they are not resident in the Netherlands. It states that payment outside the Netherlands of the benefit is not possible unless the proper application of the Netherlands legislation is ensured by means of a treaty with the State in which the person concerned is resident.
- 27 As is apparent from the grounds for the BEU, that amendment to the TW sought to substitute the territoriality principle for the personality principle in order to improve the systems for monitoring benefit paid to recipients resident outside the Netherlands. In that context, in support of that amendment, the Netherlands legislature also referred to the nature of the supplementary benefit intended to provide a minimum standard of living in the Netherlands and the fact that it is financed by the State budget.
- 28 The abovementioned amendment to the TW entered into force on 1 January 2000.
- 29 Transitional rules were, however, introduced, by virtue of which persons who, on the date preceding that of entry into force of the new rules, were entitled to benefits under the TW and who, on that date, did not reside in the Netherlands:
- '...
1. shall receive payment [in full] of the sum to which they would be entitled if they lived in the Netherlands during the first year after entry into force of that Law [namely during 2000];
 2. shall receive payment of two thirds of the sum to which they would be entitled if they lived in the Netherlands during the second year after entry into force of that Law [namely during 2001];
 3. shall receive payment of one third of the sum to which they would have been entitled if they lived in the Netherlands during the third year after entry into force of that Law [namely during 2002].'
- 30 The benefit is withdrawn in full for the subsequent years from persons who do not live in the Netherlands.

- 31 Regulation No 647/2005 added the TW, as amended on 1 January 2000 by the BEU, to the list in Annex IIa to Regulation No 1408/71, as amended by Regulation No 1247/92, of special non-contributory benefits, to which the requirement of exportability laid down in Article 10 thereof does not apply, in accordance with Article 10a thereof.
- 32 Subsequently, a new transitional provision was added to the TW, with effect from 7 December 2006, for the benefit of persons not resident in the Netherlands but in another Member State of the European Union, a State of the European Economic Area or in Switzerland, by virtue of which those persons, provided they were entitled, on the day preceding the entry into force of Regulation No 647/2005, to benefits under Article 10(1) of Regulation No 1408/71:
- ‘...’
- are to receive, during 2007, payment in full of the sum to which they would be entitled if they lived in the Netherlands;
 - are to receive, during 2008, payment of two thirds of the sum to which they would be entitled if they lived in the Netherlands;
 - are to receive, during 2009, payment of one third of the sum to which they would be entitled if they lived in the Netherlands.’
- 33 The benefit is withdrawn in full from those persons with effect from 1 January 2010.

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

- 34 The respondents in the main proceedings are former Turkish workers who were previously duly registered as belonging to the Netherlands labour force within the meaning of Article 6 of Decision No 1/80.
- 35 Having become incapacitated for work, they applied for and obtained, before 2000, the award of a benefit under the WAO paid by the Netherlands State.
- 36 Since the amount of that benefit was lower than the minimum wage, the respondents in the main proceedings also obtained, pursuant to the TW in the version in force before 1 January 2000, payment of the supplementary benefit, which was intended to ensure that they had an income of a level as close as possible to the minimum wage.
- 37 The respondents in the main proceedings returned to their families in Turkey, after obtaining Netherlands nationality whilst retaining their Turkish nationality. They

continued to receive the benefit under the WAO as well as the supplementary benefit under Article 39(4) of the Additional Protocol.

- 38 Following the amendment of the TW by the BEU, which entered into force on 1 January 2000, the competent Netherlands authorities decided, under the transitional system referred to in paragraph 29 of this judgment, on the progressive withdrawal, by one third per year with effect from 1 January 2001, of the supplementary benefit paid to them up to that date, so that they were no longer receiving the benefit at all as from 1 July 2003.
- 39 The respondents in the main proceedings brought challenges against those decisions of the Uvw.
- 40 After the Rechtbank Amsterdam (Amsterdam District Court) annulled those decisions by judgments of 19 March and 23 August 2004, the Uvw appealed against those judgments before the Centrale Raad van Beroep (Higher Social Security Court). In the proceedings before it, that court referred questions to this Court for a preliminary ruling and decided to stay the proceedings pending an answer from this Court. During that time, the Uvw took new decisions in respect of each of the respondents in the main proceedings, under which they were each awarded the supplementary benefit (full rate) as from 1 July 2003, until it was gradually phased out, which was from May 2004, June 2004 or 1 January 2007, depending on the case. The referring court also had consequential jurisdiction to hear the actions of the respondents in the main proceedings against those new decisions of the Uvw.
- 41 On 26 May 2011, in its judgment in *Akdas and Others* (C-485/07, EU:C:2011:346), the Court held, in respect of workers having received the same supplementary benefits under the TW as the respondents in the main proceedings but who, unlike them, had only Turkish nationality, that the first subparagraph of Article 6(1) of Decision No 3/80 must be interpreted, in circumstances such as those at issue in the main proceedings, as precluding legislation of a Member State, such as Article 4a of the TW, which withdraws the award of a benefit such as the supplementary benefit, made under the national legislation, from former Turkish migrant workers when they have returned to Turkey after losing their right to reside in the host Member State because they became incapacitated in that Member State.
- 42 Before the referring court, the parties to the main proceedings made their submissions as to the inferences to be drawn from that judgment for the purposes of their litigation.
- 43 In particular, the question arose as to whether the approach adopted in the judgment in *Akdas and Others* (EU:C:2011:346) is applicable in the context of the present dispute, given that the respondents in the main proceedings possess not only Turkish nationality but also Netherlands nationality.

44 In those circumstances, the Centrale Raad van Beroep decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

- ‘1. Must Article 6(1) of Decision No 3/80, having regard to Article 59 of the Additional Protocol, be interpreted as precluding a legislative provision of a Member State, such as Article 4a of the TW, which withdraws the supplementary benefit awarded on the basis of national legislation if the persons in receipt of that benefit no longer live in the territory of that State, even if those persons, while retaining Turkish nationality, have acquired the nationality of the host Member State?
2. If, in answering the first question, the Court of Justice concludes that the persons concerned may rely on Article 6(1) of Decision No 3/80, but that such reliance is restricted by the effect of Article 59 of the Additional Protocol: must Article 59 of the Additional Protocol be interpreted as precluding continuation of entitlement to the supplementary benefit for Turkish nationals [having also acquired Netherlands nationality] as from the point in time at which European Union nationals can no longer claim entitlement to that benefit on the basis of EU law, even if European Union nationals retained that benefit for a longer period of time on the basis of national law?’

Consideration of the questions referred

45 By its questions, which it is appropriate to consider together, the referring court asks, in essence, whether Netherlands nationals who have acquired Netherlands nationality after entering the labour force of that Member State in the circumstances laid down by Decision No 1/80 may, on the ground that they have retained Turkish nationality, yet rely on the provisions of Decision No 3/80 to counter the requirement of residence on the territory of that Member State imposed by the national legislation in order to receive a special non-contributory benefit within the meaning of Article 4(2) of Regulation No 1408/71, as amended by Regulation No 647/2005.

46 As a preliminary point, it should be borne in mind that Article 12 of the Association Agreement states that the contracting parties agree to be guided by Articles 30 to 41 of the EC Treaty for the purpose of progressively securing freedom of movement for workers between them. Article 36 of that protocol further provides that freedom of movement for workers between the Member States and Turkey is to be secured by progressive stages in accordance with the principles set out in Article 12 of the Association Agreement.

47 In that context, Decisions Nos 1/80 and 3/80 implement the provisions of the Association Agreement.

- 48 As regards Decision No 1/80, the Court has held that it is essentially aimed at the progressive integration of Turkish workers into the territory of the host Member State (see, to that effect, judgment in *Abatay and Others*, C-317/01 and C-369/01, EU:C:2003:572, paragraph 90).
- 49 To that end, the aim of Article 6(1) of Decision No 1/80 is to consolidate progressively the position of Turkish workers in the host Member State (judgment in *Payir and Others*, C-294/06, EU:C:2008:36, paragraph 37).
- 50 As for Decision No 3/80, Article 3(1) thereof constitutes 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 Association Agreement (judgment in *Akdas and Others*, EU:C:2011:346, paragraph 98).
- 51 It is common ground that the respondents in the main proceedings have benefited from the rights they enjoy under the EEC-Turkey Association regime as Turkish workers having been duly registered as belonging to the Netherlands labour force. As they became permanently incapacitated for work, they became eligible to receive the supplementary benefit under the terms defined by the national legislation. They also acquired Netherlands nationality whilst retaining Turkish nationality.
- 52 In such circumstances, the respondents in the main proceedings cannot rely on Decision No 3/80 to object to the residence requirement imposed by the national legislation as a condition for receiving the supplementary benefit in question.
- 53 In the first place, the fact that the respondents in the main proceedings acquired the nationality of the host Member State as Turkish workers puts them in a very specific situation, especially given the objectives of the EEC-Turkey Association regime.
- 54 On the one hand, as regards the integration objective pursued by that association regime, it must be emphasised that the acquisition of the nationality of the host Member State represents, in principle, the most accomplished level of integration of the Turkish worker in the host Member State.
- 55 On the other hand, the acquisition of the nationality of that Member State entails, for the Turkish national, the legal consequences of the regime arising not only from the possession of that nationality but also, as a corollary, from citizenship of the Union, including in particular the right to reside and move freely in the Member States.
- 56 It must also be remembered that, in contrast to nationals of Member States, Turkish workers are not entitled to move freely within the Community but benefit only from certain rights in the host Member State (see judgments in *Tetik*,

C-171/95, EU:C:1997:31, paragraph 29, and *Derin*, C-325/05, EU:C:2007:442, paragraph 66).

- 57 There is accordingly nothing justifying the proposition that a Turkish national, whose legal regime has necessarily changed at the time of acquisition of the nationality of the host Member State, should not be treated by that State exclusively as one of its own nationals for the purposes of paying out a benefit such as that at issue in the main proceedings.
- 58 In the second place, such a conclusion is all the more compelling since waiving, on the basis of Decision No 3/80, the requirement of residence as a condition for receiving the supplementary benefit for nationals of a Member State who have acquired that nationality after having been hosted as Turkish workers whilst retaining Turkish nationality would give rise to a twofold, unjustifiable difference in treatment.
- 59 Thus, persons in the situation of the respondents in the main proceedings would be treated more favourably than Turkish workers who do not possess the nationality of the host Member State and who, since they are no longer duly registered as belonging to the labour force of that State, no longer enjoy a right to reside there. Moreover, those persons would also be in a more favourable position than nationals of the host Member State or another Member State who would, admittedly, enjoy favourable terms of right to reside and free movement within the Union, but who remain subject to the requirement to reside in the territory of the Kingdom of the Netherlands in order to receive the supplementary benefit.
- 60 Therefore, nationals of a Member State who, like the respondents in the main proceedings, acquired the nationality of that State after entering the labour force of that State as Turkish workers within the meaning of Article 6 of Decision No 1/80 whilst retaining Turkish nationality cannot rely on the provisions of Decision No 3/80 in order to counter the residence requirement provided for by the legislation of that State as a condition for receiving a benefit such as that at issue in the main proceedings.
- 61 In that respect, the main proceedings in this case must be distinguished from those which gave rise to the judgment in *Akdas and Others* (EU:C:2011:346).
- 62 That judgment concerns Turkish nationals having been duly registered as belonging to the labour force of the Netherlands who were required to transfer their residence to Turkey due to a permanent incapacity for work.
- 63 The Court observed that, as a Turkish national who has been duly registered as belonging to the legitimate labour force of a Member State within the meaning of Article 6 of Decision No 1/80 could not be entitled under that decision to remain in the territory of that State following an accident at work, that person cannot, therefore, be considered to have left the territory of the host Member State of his

own volition (see, to that effect, judgment in *Akdas and Others*, EU:C:2011:346, paragraphs 93 and 94).

- 64 It is common ground that a Turkish national's right of residence, as implicitly but necessarily guaranteed by Article 6 of Decision No 1/80 as a corollary of legal employment, ceases to exist if the person concerned becomes totally and permanently incapacitated for work (judgment in *Bozkurt*, C-434/93, EU:C:1995:168, paragraph 40).
- 65 Yet in the circumstances of the present case, the respondents in the main proceedings, having acquired the nationality of the host Member State, are no longer subject, in terms of their right to reside, to Article 6 of Decision No 1/80. They therefore remain eligible to receive the supplementary benefit provided they satisfy the conditions imposed by national law, in particular the residence requirement.
- 66 This conclusion is not called into question by the principles to be gleaned from the judgment in *Kahveci and Inan* (C-7/10 and C-9/10, EU:C:2012:180), given the specific facts which gave rise to the judgment in that case, which are quite different from the facts in the main proceedings of the present case.
- 67 Thus, Article 7 of Decision No 1/80, concerning family reunification, which was at issue in that case, seeks to enable family members to be with a migrant worker, with a view to thus furthering, by means of family reunification, the employment and residence of the Turkish worker who is already legally integrated in the host Member State (*Kahveci and Inan*, EU:C:2012:180, paragraph 32). That provision also seeks to deepen the lasting integration of the Turkish migrant worker's family in the host Member State by granting to the family member concerned, after three years of legal residence, the possibility of himself gaining access to the labour force (*Kahveci and Inan*, EU:C:2012:180, paragraph 33).
- 68 It is in the light of that purpose that the Court held, in paragraph 35 of the judgment in *Kahveci and Inan* (EU:C:2012:180), that acquisition of the nationality of the host Member State could not require a Turkish national to forego the benefit of the conditions on family reunification provided for in Decision No 1/80.
- 69 In the circumstances of the present case, however, the respondents in the main proceedings have not been required to forego the supplementary benefit, since they maintain their residence in the territory of the Kingdom of the Netherlands, which they are free to do, in particular by virtue of the fact that they possess Netherlands nationality.
- 70 Moreover, in *Kahveci and Inan* (EU:C:2012:180), the applicants were seeking to rely on the provisions of Decision No 1/80 in order to benefit their family members, who were Turkish nationals. In the present case, by contrast, the

respondents in the main proceedings are relying on the provisions of Decision No 3/80 on their own behalf and in their own interest.

- 71 That being said, even if the principles to be gleaned from the judgment in *Kahveci and Inan* (EU:C:2012:180), as referred to in paragraph 68 above may be applied to the present case and the respondents in the main proceedings, having acquired the nationality of the host Member State whilst retaining Turkish nationality, may therefore receive the supplementary benefit in question, the fact remains that the residence requirement imposed by the national legislation to receive the benefit remains applicable to them.
- 72 If persons such as the respondents in the main proceedings who, as Netherlands citizens, retain a right to reside in the Netherlands and are thus in a comparable situation to that of citizens of the Union, are able to receive that benefit on the basis of Article 6(1) without having to comply with the requirement to reside in that Member State, this will give rise to more favourable treatment of them as compared to other citizens of the Union, a result precluded by Article 59 of the Additional Protocol.
- 73 Consequently, it follows from all the foregoing considerations that the provisions of Decision No 3/80, viewed also in the light of Article 59 of the Additional Protocol, must be interpreted as meaning that nationals of a Member State who have been duly registered as belonging to the labour force of that Member State as Turkish workers cannot, on the ground that they have retained Turkish nationality, rely on Article 6 of Decision No 3/80 to object to a residence requirement provided for by the legislation of that Member State in order to receive a special non-contributory benefit within the meaning of Article 4(2) of Regulation No 1408/71, as amended by Regulation No 647/2005.

Costs

- 74 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 (First Chamber) hereby rules:

The 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, viewed also in the light of Article 59 of the Additional Protocol signed on 23 November 1970 in Brussels and concluded, approved and confirmed on behalf of the Community by Council Regulation (EEC) No 2760/72 of 19 December 1972, must be interpreted as meaning that nationals of a

Member State who have been duly registered as belonging to the labour force of that Member State as Turkish workers cannot, on the ground that they have retained Turkish nationality, rely on Article 6 of Decision No 3/80 to object to a residence requirement provided for by the legislation of that Member State in order to receive a special non-contributory benefit within the meaning of Article 4(2) of Regulation (EEC) No 1408/71 of the Council 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, as amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996, as amended by Regulation (EC) No 647/2005 of the European Parliament and the Council of 13 April 2005.

[Signatures]

* Language of the case: Dutch.