Opinion of Advocate General Ruiz-Jarabo Colomer delivered on 6 September 2005

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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1. The Bundesverwaltungsgericht (Federal Administrative Court) has referred two questions to the Court of Justice under Article 234 EC for a preliminary ruling on the interpretation of Article 6 of Decision No 1/80 of the Association Council of 19 September 1980 on the development of the association established between the European Community and Turkey. (2)

2. That provision confers certain rights on Turkish workers, varying in extent depending on the length of their employment in one of the Member States.

3. The doubts of the referring court relate to the effect of a number of interruptions in the working life of a seaman on the calculation of the periods of work necessary for entitlement to free access to any paid employment.

I – The applicable provisions

4. Relations between Turkey and the European Union vary according to the political and economic juncture, (3) but the legal framework does not change. (4)

A – The Association Agreement

5. The agreement establishing an association between the European Economic Community and Turkey, approved and confirmed on behalf of the Community by Council Decision 64/732/EEC of 23 December 1963, (5) (hereinafter 'the Association Agreement') was signed in Ankara on 12 September 1963.

6. As I previously stated in my Opinion in *Öztürk*, (6) the agreement sets out to promote the continuous and balanced strengthening of trade and economic relations between both Parties, to ensure the accelerated development of the Turkish economy and to improve the level of employment and living conditions in that country. The preamble acknowledges that the support given by the Community to the efforts of the Turkish people to improve their standard of living will ultimately facilitate the accession of that State at a later date. (7)

7. In order to realise those aspirations, the Parties devised a preparatory stage, to enable the Republic of Turkey to strengthen its economy with aid from the Community (Article 3), a transitional stage, aiming at the progressive establishment of a customs union, (8) with the alignment of economic policies (Article 4), and a further, final, stage, designed to achieve closer coordination of the foregoing policies (Article 5).

8. In order to ensure the progressive development of the system, the signatories meet as a Council which acts within the powers conferred on it by the Association Agreement (Article 6), and which has, in order to achieve the objectives set, the power to take decisions in the cases provided for in the agreement (Article 22).

9. The second stage involved examination of the progressive liberalisation of movement for workers, (9) to which end the Contracting Parties drew on Articles 48 and 49 (now, after amendment, Articles 39 EC and 40 EC) and Article 50 of the EEC Treaty (now Article 41 EC) (Article 12). (10)

B – The Additional Protocol

10. The provisional stage reached its conclusion in 1970 with the insertion into the Association Agreement of an Additional Protocol, (11) in force since 1973 (Article 62), with the intention of defining the conditions, detailed arrangements and timescales for implementing the following stage (Article 1).

11. Title II governs the movement of persons and services, and addresses workers in Chapter 1, which includes Article 36, under which freedom of movement for workers 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. (12) The Association Council is to decide on the rules necessary to that end.

12. Under Article 37 Turkish nationals employed in the Community are to receive the same treatment as regards conditions of work and remuneration as nationals of the Member States.

C – Decision No 1/80

13. On 19 September 1980, following the precedent of Decision No 2/76 of 20 December 1976 on the implementation of Article 12 of the Association Agreement, the Association Council adopted Decision No 1/80. (13)

14. Article 6 appears in Chapter II, which bears the heading 'Social Provisions', Section 1, 'Questions relating to employment and the free movement of workers'. It reads:

'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 the 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.

...'

II – The facts, the main proceedings and the questions referred for a preliminary ruling

15. Mr Sedef, a Turkish national born in 1952, worked from 1977 on as a seaman for various German employers, for which he did not require a work permit but did need a residence permit, which he was granted on successive occasions, since each was limited in validity to a single employment relationship. From 18 January 1993 he was certified as unfit to pursue that occupation on health grounds.

16. The time from the start of his employment to his becoming unfit can be classified in four categories, as the referring court did:

1 employment, including annual holiday, with the observation that on several occasions he worked for the same employer for more than a year, although never for as many as three; (14)

2 unemployment, which takes into account only the periods certified by the authorities, which vary from one month and a few days to almost eight months; (15)

3 sick leave, which includes short absences and longer periods which, in one instance, exceeded a year; (16) and

4 other periods, which covers 17 periods which Mr Sedef himself describes as 'unpaid holiday', lasting from between 1 and 70 days, which – over approximately 15 years – represent nearly 13 months (7.2%). (17)

17. In 1992, in order to seek paid employment on land, he applied for a residence permit not limited to employment in maritime shipping, which the Freie und Hansestadt Hamburg refused.

18. The Verwaltungsgericht Hamburg (Administrative Court, Hamburg), to which Mr Sedef then applied, ordered that the permit should be granted, referring to Article 6 of Decision No 1/80.

19. The defendant authority appealed to the Oberverwaltungsgericht Hamburg (Higher Administrative Court, Hamburg), which upheld its appeal on the grounds that the requirements of that provision were not satisfied.

20. Mr Sedef brought an appeal on a point of law. Since it considered that the claimant had no entitlement to the permit under national law, (18) which could only be granted under European rules, the Bundesverwaltungsgericht stayed the proceedings in order to refer the following questions to the Court of Justice for a preliminary ruling:

'1. Are the third indent of Article 6(1) and Article 6(2) of Decision No 1/80 of 19 September 1980 of the Association Council set up by the agreement establishing an association between the European Economic Community and Turkey 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, typical 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, typical of maritime shipping)?'

III – The proceedings before the Court of Justice

21. The Freie und Hansestadt Hamburg, the German Government and the Commission submitted written observations within the time-limit prescribed by Article 20 of the Statute of the Court of Justice.

22. The representatives of Mr Sedef and of the Commission appeared at the hearing on 30 June 2005 to present their oral argument.

IV – Analysis of the questions raised for a preliminary ruling

23. Since the questions of the referring court concern Article 6 of Decision No 1/80, before examining them it is appropriate to make a number of general observations on the terms of that provision in so far as they relate to the present case. It is also necessary to address the effect of Mr Sedef's having been a seaman.

A – The legal arrangements established by Article 6 of Decision No 1/80

24. Decision No 1/80 does not put Turkish workers on the same footing as Community workers, since they do not enjoy the rights deriving from freedom of movement and are entitled neither to move freely within the Community nor to reside there. They merely benefit from certain rights in the host country whose territory they have lawfully entered and where they have been in legal employment for a specified period. (19) Nor are they in the same position as nationals of third countries. (20)

25. Article 6 of Decision No 1/80 requires that the worker be 'duly registered as belonging to the labour force of a Member State' as a precondition for entitlement to various rights, depending on the length of time he has so belonged.

1. The requirement to belong to the duly-registered labour force

26. The fundamental requirement of belonging to the duly-registered labour force involves an employment relationship located in, or at least having close links with, the Community area and must, furthermore, be 'legal' employment.

27. In ascertaining compliance with the first of those conditions, the case-law uses criteria similar to those used in connection with freedom of movement for workers, (21) and finds there to be such a link where a worker carries on a genuine and effective economic activity pursued for the benefit and under the direction of another person for remuneration. (22) The same rules also apply in order to determine the territorial link, and require examination of the place where the worker is hired and where he pursues the paid employment, and the national legislation on employment and social security. (23)

28. Duly-registered membership of the labour force presupposes a stable and secure situation, (24) that the worker has complied with the conditions laid down by law and regulation in the host Member State and that he is entitled to pursue an occupation in that country. (25)

2. The rights conferred

29. The system of gradual integration confers rights which vary according to the length of time in the job. (26)

30. The three indents of Article 6(1) of Decision No 1/80, which, according to settled case-law, has direct effect, (27) set out a like number of types of rights which a worker acquires, successively, the longer the work in the Member State lasts, and which entail a corresponding right of residence. (28)

31. If the legal employment lasts for more than a year, the worker is entitled to renew the work permit with the initial employer; when it continues for a further two years, the worker can change employer, although not occupation or country; finally, after another year, there is a right of access in that country to any paid employment.

32. Once in the last stage, workers lose the rights acquired only if they cease permanently to belong to the labour force, for whatever reason, (29) or if a temporary period without work exceeds a reasonable time-limit for entering into a new employment relationship. (30)

3. Calculation of time

33. The rights provided for under the indents of Article 6(1) of Decision No 1/80 are subject to employment for an 'uninterrupted' period of one, three or four years. Consequently, if employment ceases, the period is interrupted, so that, when work resumes, the calculation does not continue but begins again.

34. Since the above principle could give rise to injustice, Article 6(2) permits certain exceptions and distinguishes, according to the type and length of the interruptions in employment, between exceptions which have a positive effect, because the time off work is treated as a period of legal employment (holidays and absences for reasons of maternity or accidents at work or short periods of sickness), and those which prevent a negative result, since they avoid impairment of the rights previously acquired (duly certified involuntary unemployment and long absences on account of sickness).

35. In the latter situations, a person who has stopped working, for any of the reasons indicated, does not have to start calculating the period anew as if they had never worked legally in the host State. (31)

36. The special rules relating to continuity of employment cease to apply when the Turkish worker satisfies the requirements of the third indent of Article 6(1) and enjoys the unconditional right to employment which that provision confers. (32) He is furthermore entitled to suspend his participation in the labour force, since he is already duly integrated into it. (33) That scenario, in which certain periods of inactivity are irrelevant, must not be confused with the earlier situations, in which the acquisition of rights is at stake.

37. It should also be noted that, although the situations described call for a restrictive interpretation, (34) since otherwise the calculation would be distorted, there are occasions on which other absences, as a rule for short periods, must be taken into account. (35)

B – Interpretation of Article 6 of Decision No 1/80 and the occupation of seaman

38. At the end of each of the preliminary questions put to the Court of Justice, the referring court enquires as to the effect of the typical features of a seaman's work.

39. Shipping is characteristically a sector that, since its inception, has involved manifold dangers and great difficulties, taking place as it does in a hostile and implacable environment, (36) although the conditions in which it is pursued have varied over time. 'For us ocean-going sailors, the sea is primarily a route, it is almost nothing but a path to reach somewhere. Yet, what a path! I will never forget the first time I crossed the ocean. Sailing ships still ruled the world. What a time that was! I am not saying that the sea was better then, it was not, but it was more poetic, more mysterious, less known. Nowadays, the sea is fast becoming an industry. The seaman, in his iron ship, knows when he will sail, when he will land, he knows how many days, hours ... . It was not like that back then; one was carried by chance, good luck, a favourable wind ..., today, the sea has changed, ships have changed and the sailor too has changed.' So spoke the principal character of a well-known Spanish writer of the generation of 1898. (37)

40. Seafaring, as much now as previously, differs in striking ways from other activities. International law, (38) the law in the Member States (39) and Community law have acknowledged the rigour and special features of life and work at sea.

41. Examples in Community law are Council Directive 1999/63/EC of 21 June 1999 concerning the Agreement on the organisation of working time of seafarers, concluded by the European Community Shipowners' Association (ECSA) and the Federation of Transport Workers' Unions in the European Union (FST), (40) and Directive 1999/95/EC of the European Parliament and of the Council of 13 December 1999 concerning the enforcement of provisions in respect of seafarers' hours of work on board ships calling at Community ports. (41)

42. As occurs in other spheres, such as transport, (42) the special features of seamen's work have been reflected in the legislation, primarily in relation to health and safety.

43. Where an occupation has its own rules it is apparent that, when it has been considered appropriate, they have taken into account the special features of that occupation.

44. Decision No 1/80 does not refer to a particular category of workers, and its rules therefore apply without distinction to employees in any occupation.

45. That statement is no less true in the light of Article 12, which allows the Member States and Turkey to refrain, on a transitional basis, from automatically applying Articles 6 and 7, in the event of actual or threatened disturbances on its employment market which might seriously jeopardise the standard of living or level of employment in a particular region, branch of activity or occupation, since that reference is of a general nature and has its explanation in the fact that the situation would be temporary and exceptional.

46. Furthermore, the Court of Justice has ruled that the wording of Article 6(1) is general and unconditional, because it does not allow the Member States to deprive certain categories of Turkish workers of the rights which the provision confers directly on them. (43) That principle can be extended to all claims to have a given occupation treated as a special case.

47. Consequently, the particular features of an activity in the broad sense are of no importance for the purposes of interpreting the provision in question, the uniformity of which would be jeopardised were exceptions to be permitted and the rules to be adjusted to the work performed, since nothing would prevent other areas of employment likewise from aspiring to special treatment, resulting in a case-by-case approach in the case-law which would undermine legal certainty and the coherence of the system, although there is no bar, when the rights contained in the provision are at stake, to taking into account the specific facts of each case.

C – The first question referred for a preliminary ruling

48. The national court's principal doubt concerns the interpretation of the third indent of Article 6(1) and Article 6(2) of Decision No 1/80, as regards ascertaining the implications, for recognition of free access to employment, of interruptions not arising from duly certified unemployment or from absences on account of sickness, and the effect of the fact that changes of employer are typical of the occupation, although that latter aspect, common to both preliminary questions referred, has just been addressed.

49. In the present case, the problem has arisen because Mr Sedef worked for more than 15 years on German ships for different employers but, according to the particulars supplied by the Bundesverwaltungsgericht, without interruption only for the period necessary to acquire the right laid down in the first indent of Article 6(1), that is to renewal of his work permit with the initial employer.

50. If the calculation were to include the periods, varying between 1 and 70 days, which Mr Sedef calls 'unpaid holiday', he would reach the threshold set for entitlement to the maximum level under the third indent, but only on condition that those periods could fall within Article 6(2).

51. It is plainly inappropriate to equate them for that purpose with annual holiday or with time off due to short illnesses, which clearly do count, and such is the understanding of the referring court.

52. Nor should they be dealt with in the same way as the times he suffered longer illnesses, which have been taken into account under a different heading.

53. As regards treating them as involuntary unemployment, the provision mentions only unemployment duly certified by the competent authorities. That certification must be construed in accordance with its purpose, that of preventing fraud, by facilitating State control over workers, since failure officially to register as unemployed would affect the legality of the situation. (44)

54. It is apparent from the information in the Bundesverwaltungsgericht's order for reference that Mr Sedef could legitimately decline to register as seeking employment given his prospects of rapidly finding work, (45) as happened many times. It is likewise clear that he usually obtained paid employment without difficulty after returning to Germany (46) where, furthermore, it is not necessary to have a work permit, merely a residence permit, in order to be a seaman.

55. Accordingly, there are grounds for equating short interruptions with periods of duly certified involuntary unemployment, since to do so neither compromises the requirement of belonging to the labour market of a Member State nor distorts the purpose of official unemployment certification. (47)

56. That view is also justified because, as stated previously, the purpose of Article 6 of Decision No 1/80 is the free movement of workers, and presupposes the assiduous legal exercise of an occupation, a circumstance sufficiently proven in relation to Mr Sedef.

57. It is also supported by *Kadiman*, (48) which the Commission cites in its written observations. Although the judgment refers to Article 7 of Decision No 1/80, the purpose of which is to reunite the Turkish worker with members of his family, when they have lived 'uninterruptedly' in the host Member State for three years, it was stated that that does not mean that 'the person concerned may not be absent from the family residence for a reasonable period and for legitimate reasons, for example in order to take holidays or visit his family in his country of origin' (paragraph 48).

58. A number of the periods in issue would be covered by that case, but not those which were excessively long because there was a delay in the offer of employment materialising or because the family visit lasted longer than was reasonable.

59. In any event, it is not the task of the Court of Justice to define the situations which must be equated with those in Article 6(2) of Decision No 1/80, since that would be impinging on the jurisdiction of the national court. It must, accordingly, confine itself to supplying the guidance necessary in order for Community law to be properly applied in the main proceedings.

60. The foregoing considerations lead me to suggest that the response to the first question referred for a preliminary ruling should be that Article 6(2) of Decision No 1/80 covers interruptions in the employment relationship such as those in the present case, with the exception of those which were excessively long because there was a delay in the offer of work materialising or because visits to the family lasted longer than was reasonable, and that it is for the national court to classify such interruptions.

D – The second question referred for a preliminary ruling

61. The Bundesverwaltungsgericht also wishes to know whether acquisition of the right under the third indent of Article 6(1) of Decision No 1/80 is conditional upon the worker satisfying the requirements set out in the second indent.

62. The indents of Article 6 confer, successively, increasingly broad rights to free access to employment, depending on the length of legal employment. Looking solely at the duration of the employment relationship, the requirements corresponding to each phase can be assessed independently, in the sense that the higher level encompasses the preceding levels – four years and three years encompass three years and one year, respectively.

63. The difficulty arises when the question whether the employment was with one employer or several is examined, since it is only on completion of three years of legal employment that the worker qualifies under the second indent and is entitled, from that time, to respond to offers from employers other than the first.

64. The system of gradual integration under Article 6(1) of Decision No 1/80 means that, in order to reach the upper threshold of entitlement, the worker must climb each of the different levels one by one, and there is, accordingly, no possibility of leapfrogging to the last step.

65. In graphic terms, one can imagine four concentric circles. In the smallest there are mere expectations, yet, if a person works for one year for the same employer, he enters the second, and then enjoys the option to renew his work permit. Where three years elapse in the job – by implication with the first employer – the worker reaches the third circle which, if the occupation remains the same, allows a change of employer. Once four years have passed in an identical occupation, in addition to being free to work for the employer of his choice, the worker can choose any other type of work.

66. In that regard, it is necessary to bring into the equation the judgment in *Eroglu*, which states that the first indent of Article 6(1) of Decision No 1/80 applies if a worker wishes to extend his work permit 'in order to continue working for the same employer after the initial period of one year's legal employment' (paragraph 13), but that the permit should not be extended in order to change employer 'before the expiry of the three years prescribed in the second indent', which would, furthermore, 'deprive workers of the Member States of the priority conferred on them pursuant to that indent when a Turkish worker changes employers' (paragraph 14).

67. In the same vein, *Eker* (49) provides that '[t]he coherence of the system of gradual integration ... would be disrupted if the worker had the right to enter the service of another employer even before satisfying the condition of one year's legal employment specified in the first indent of Article 6(1) ... it is only after three years of legal employment in the Member State concerned that a Turkish worker is entitled to take up work with a different employer ...' (paragraph 23).

68. The above grounds constitute a starting point for responding to the question referred, but should not be construed in a mechanical way, ignoring other circumstances, the significance of which the Member State expressly took into consideration in determining the applications of the Turkish worker. To overlook those specific features would be to apply the provision according to its letter, heedless of its guiding spirit and purpose, and dispensing with any resemblance to the notion of justice, which can, however, be attained by a teleological and systematic interpretation of its terms.

69. Indeed, the information in the case-file reveals that the German authorities granted Mr Sedef, with no objection whatsoever, the residence permits he needed to work as a seaman, even when he applied for them in order to enter into employment with different shipowners, despite the fact that he at no time stayed in the same employment for more than three years – and only a few times for more than a year. (50) Those authorities therefore departed from the strict letter of the provision, weighing up the totality of the relevant factors, to fit the spirit of the rule to the specific facts of Mr Sedef's case. Only now, when he seeks to work on land, is he required to comply strictly with the indents of Article 6(1). (51)

70. To that effect, *Ertanir*, to which the Commission likewise referred in its written observations, requires account to be taken of 'short periods during which the Turkish worker did not hold a valid residence or work permit in the host Member State and which are not covered by Article 6(2) of that decision, where the competent authorities of the host Member State have not called in question on that ground the legality of the residence of the worker in the country but have, on the contrary, issued him with a new residence or work permit' (paragraph 69).

71. In the light of that case-law, it must be concluded that, in circumstances such as those described, the conduct of the national authorities, over more than 16 years, gave the impression that the situation of the party concerned was lawful, with a flexible interpretation of the requirements under the indents of Article 6(1) of Decision No 1/80. That is borne out by the fact that, although he had only attained the right under the first indent, which entitled him to continue working for the initial employer, the national authorities repeatedly granted him successive permits to work for other undertakings in the sector, a right contained in the second indent and which requires an employment relationship of more than three years with the same shipowner.

72. In addition to those facts, there is the finding that he belonged to the duly-registered German labour force and had stable employment from the time he began work as a seaman in 1977 until it became impossible for him to do that work in 1993. (52)

73. The characteristics of the present case, the practical effect which the Court of Justice has attributed to Decision No 1/80, (53) and the underlying purpose of the Association Agreement, considered in conjunction with the other applicable provisions, which is the progressive introduction of freedom of movement for workers, suggest that, in circumstances such as those described, the requirements under the third indent of Article 6(1) of Decision No 1/80 should be examined independently, without previously assessing those under the second indent.

V – Conclusion

74. In view of all the foregoing, I propose that the Court of Justice should reply as follows to the questions referred for a preliminary ruling by the Bundesverwaltungsgericht:

(1) Article 6(2) of Decision No 1/80 of the Association Council of 19 September 1980 on the development of the association established between the European Economic Community and Turkey covers interruptions in the employment relationship such as those in the present case, with the exception of those which were excessively long because there was a delay in the offer of work materialising or because visits to the family lasted longer than was reasonable, and it is for the national court to classify such interruptions.

(2) The grant of a residence permit in accordance with the third indent of Article 6(1) of Decision No 1/80 is conditional on prior compliance with the requirements of the second indent of that provision, but in exceptional circumstances, such as those concerning the employment contracts in the case in issue, the terms of the third indent may be assessed independently.

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1 – Original language: Spanish.

2 – In the absence of an official publication, the text of the decision can be found in *EEC-Turkey Association Agreement and Protocols and Other Basic Texts*, Council of the European Communities, Brussels, 1992, p. 327 et seq. On the negotiations and drafting process of the agreement, see Ananiades, L.C., *L'Association aux Communautés européennes*, Librairie générale de droit et jurisprudence, Paris, 1967, pp. 50-59, and Lesort, G., 'L'Association avec la Turquie', *L'Association à la Communauté Économique Européenne. Aspects juridiques*, Presses Universitaires de Bruxelles, Brussels, 1970, pp. 89 -111.

3 – Núñez Villaverde, J.A., 'Turquía y la UE: una carrera de obstáculos sin fin', *Política Exterior*, No 63, 1998, p. 65 et seq.

4 – Olesti Rayo, A., 'El Acuerdo de Asociación con Turquía y el régimen jurídico de los trabajadores de nacionalidad turca en la Unión Europea', *Revista de Derecho Comunitario Europeo*, No 7, January/June 2000, p. 51.

5 – JO 1964 217, p. 3685.

6 – Case C-373/02 [2004] ECR I-3605.

7 – According to Article 28, when the operation of the association makes it possible to envisage Turkey's full assumption of the obligations deriving from the EC Treaty, the Contracting Parties will examine the possibility of its accession.

8 – Hartler, C. and Laura, S., 'The EU model and Turkey. A case for Thanksgiving', *Journal of World Trade*, No 3, 1999, p. 147 et seq.

9 – The exchange of letters of 12 September 1963 between the Presidents of the two delegations (JO 1964 217, p. 3701) empowered the Association Council to examine issues relating to manpower in Turkey even in the first stage.

10 – In the same way that Articles 52 to 56 and Article 58 of the EEC Treaty (now Articles 43 EC to 46 EC and Article 48 EC) promote the gradual introduction of the right of establishment (Article 13), and Articles 55, 56 and 58 to 65 of the EEC Treaty (now Articles 45 EC, 46 EC and 48 EC to 54 EC) the introduction of freedom to provide services.

11 – Signed in Brussels on 23 November 1970 and approved and confirmed on behalf of the Community by Council Regulation (EEC) No 2760/72 of 19 December 1972 (OJ 1972 L 293, p. 1). A Financial Protocol annexed to the Association Agreement was signed on the same date.

12 – As is clear from Case 12/86 *Demirel* [1987] ECR 3719, paragraph 23, neither Article 12 of the Association Agreement nor Article 36 of the protocol have direct effect; however, since Case C-192/89 *Sevince* [1990] ECR I-3461, paragraph 22; Case C-1/97 *Birden* [1998] ECR I-7747, paragraph 52; and Case C-171/01 *Wählergruppe Gemeinsam* [2003] ECR I-4301, paragraph 64, that fact does not prevent decisions of the Association Council, which give effect in specific respects to the programmes envisaged in that agreement, from having direct effect.

13 – As stated in Case C-434/93 *Bozkurt* [1995] ECR I-1475, paragraph 14, Decision No 2/76 constituted a first stage in securing freedom of movement for workers, and Decision No 1/80 constituted a further stage. In the same vein, in addition to *Birden*, paragraph 52, are Case C-171/95 *Tetik* [1997] ECR I-329, paragraph 20; Case C-36/96 *Günaydin and Others* [1997] ECR I-5143, paragraphs 20 and 21; Case C-98/96 *Ertanir* [1997] ECR I-5179, paragraphs 20 and 21; Case C-340/97 *Nazli* [2000] ECR I-957, paragraph 52; Case C-188/00 *Kurz* [2002] ECR I-10691, paragraph 40; and Case C-136/03 *Dörr and Ünal* [2005] ECR I-0000, paragraph 66.

14 – Specifically: from 31.8.1977 to 20.11.1977; from 28.11.1977 to 10.2.1978; from 7.3.1978 to 12.9.1978; from 17.11.1978 to 14.6.1979; from 16.8.1979 to 21.6.1980; from 27.7.1980 to 9.11.1981; from 4.12.1981 to 13.4.1982; from 7.8.1982 to 27.10.1983; from 2.11.1983 to 18.5.1984; from 16.7.1984 to 23.7.1985; from 21.10.1986 to 22.2.1987; from 22.11.1988 to 14.3.1989; from 14.4.1989 to 24.6.1989; from 3.7.1989 to 23.9.1989; from 2.1.1990 to 31.1.1990; from 7.2.1990 to 26.2.1991, and from 15.2.1992 to 10.9.1992.

15 – From 23.6.1982 to 6.8.1982; from 13.6.1984 to 14.7.1984; from 1.8.1986 to 20.10.1986; from 7.4.1987 to 20.6.1988; from 18.8.1988 to 21.11.1988; from 3.4.1991 to 30.11.1991, and from 2.12.1991 to 13.1.1992.

16 – From 11.2.1978 to 23.2.1978; from 19.6.1980 to 6.7.1980; from 13.6.1985 to 31.7.1986; from 16.2.1987 to 31.3.1987; from 24.9.1989 to 1.1.1990; from 27.2.1991 to 2.4.1991, and from 11.9.1992 to 18.1.1993.

17 – From 21.11.1977 to 27.11.1977; from 24.2.1978 to 6.3.1978; from 13.9.1978 to 16.11.1978; from 15.6.1979 to 15.8.1979; from 7.7.1980 to 26.7.1980; from 10.11.1981 to 3.12.1981; from 14.4.1982 to 22.6.1982; from 28.10.1983 to 1.11.1983; from 19.5.1984 to 12.6.1984; 15.7.1984; from 1.4.1987 to 6.4.1987; from 21.6.1988 to 17.8.1988; from 15.3.1989 to 13.4.1989; from 25.6.1989 to 2.7.1989; from 1.2.1990 to 6.2.1990; 1.12.1991, and from 14.1.1992 to 14.2.1992.

18 – Paragraph 10 of the Ausländergesetz (German Law on Aliens) of 9 July 1990 (BGBl. I, p. 1354), in conjunction with the Arbeitsaufenthaltsverordnung (regulation on residence for work) of 18 December 1990 (BGBl. I, p. 2994).

19 – *Tetik*, paragraph 29, and *Günaydin and Others*, paragraph 22. Legal academic writers draw a distinction, on the basis of their content, between 'association freedom of movement' and 'Community freedom of movement': Krück, H., 'Die Freizügigkeit der Arbeitnehmer nach dem Assoziierungsabkommen EG/Türkei', *EuR*, 1984, p. 292 et seq., and Rumpf, C., 'La libre circulation des travailleurs turcs et l'association entre la Communauté européenne et la Turquie: de Demirel à Kus en passant par Sevince', *Actualités du droit*, No 2, 1994, p. 271.

20 – According to Article 8(1) of Decision No 1/80, Turkish workers are to have priority over those of other non-member States when an offer of employment is not met by calling on the labour available in the Member States.

21 – Because the principles contained in Articles 39 EC, 40 EC and 41 EC apply to Turkish nationals enjoying the rights conferred by Decision No 1/80 (*Birden*, paragraph 23, and *Kurz*, paragraphs 30 and 31).

22 – *Günaydin and Others*, paragraph 31, and *Ertanir*, paragraph 43.

23 – *Bozkurt*, paragraph 23; *Günaydin and Others*, paragraph 29; *Ertanir*, paragraph 39; *Birden*, paragraph 33; and *Kurz*, paragraph 37.

24 – *Sevince*, paragraph 30, and *Bozkurt*, paragraph 26.

25 – *Birden*, paragraph 51; *Nazli*, paragraphs 31 and 32; and *Kurz*, paragraph 39. Similarly, although on the sets of facts under examination it was found that there was no legal employment, Case C-237/91 *Kus* [1992] ECR I-6781, paragraph 18; Case C-285/95 *Kol* [1997] ECR I-3069, paragraph 29; and *Sevince*, paragraph 31. See also Gutmann, R., 'Die aufenthaltsrechtliche Bedeutung des Beschlusses Nr. 1/80 des Assoziationsrats EWG-Türkei',*Assoziierungsabkommen der EU mit Drittstaaten*, Vienna, 1998, p. 66.

26 – Case C-355/93 *Eroglu* [1994] ECR I-5113, paragraph 12; *Tetik*, paragraph 23; *Günaydin and Others*, paragraph 25; and *Ertanir*, paragraph 25.

27 – *Sevince*, paragraph 26; *Eroglu*, paragraph 11; *Tetik*, paragraph 22; *Günaydin and Others*, paragraph 24; and *Kurz*, paragraph 26.

28 – Case C-37/98 *Savas* [2000] ECR I-2927, paragraph 60; *Sevince*, paragraph 29; *Kus*, paragraph 33; *Eroglu*, paragraph 20; *Bozkurt*, paragraph 28; *Günaydin and Others*, paragraph 26; *Ertanir*, paragraph 26; *Nazli*, paragraph 28; *Kurz*, paragraph 27; and *Dörr and Ünal*, paragraph 66.

29 – *Bozkurt*, paragraph 39.

30 – *Nazli*, paragraph 44.

31 – *Tetik*, paragraphs 39 and 40.

32 – *Nazli*, paragraph 35, and Case C-383/03 *Dogan* [2005] ECR I-0000, paragraph 16. The case-law has established, similarly, that not every absence automatically entails loss of the rights acquired under Article 6(1) of Decision No 1/80 since, for that to occur, the inactive status must be permanent (*Nazli*, paragraphs 36 to 39).

33 – *Nazli*, paragraph 40. The same criterion operates, for example, in relation to the one-year period, in *Birden*, paragraphs 37 and 64 and operative part; *Ertanir*, paragraph 62 and operative part; and *Günaydin and Others*, paragraph 55 and operative part; and, again, *Ertanir*, paragraph 38, in relation to the period of three years.

34 – Rumpf., O., 'Wann erlischt das Aufenthaltsrecht nach Art. 6 I des Beschlusses Nr. 1/80 des Assoziationsrates EWG-Türkei?', *Neue Zeitschrift für Verwaltungrecht*, 1994, p. 1189, is of the view that the situations in Article 6(2) are exhaustive and that even short interruptions would extinguish the rights acquired. The Bundesverwaltungsgericht, in the order for reference, also admits that its case-law has, until now, regarded the list as exhaustive.

35 – *Ertanir*, paragraph 69.

36 – According to the statistics presented at the 1996 Maritime Session of the International Labour Conference, between 1994 and 1996, 180 vessels of over 500 tonnes were wrecked, with the loss of more than 1 200 lives, between passengers and crew.

37 – Baroja, P., *Las inquietudes de Shanti Andía*, collection Austral, Espasa Calpe, 8th ed., Madrid, 1970, pp. 13 and 15. The Commission too has voiced that reality, stating that '[y]oung people are increasingly unwilling to spend long periods of time at sea, far away from their relatives, children and friends. Even the more attractive sides of the job, such as the possibility of exploring the world and visiting exotic places, seem to have disappeared as a result of modern navigational practices, whereby ships only stay in port for short periods, or remain outside the harbour for their commercial operations. Moreover, modern ships only have small crews, very often of different nationalities and speaking different languages, which can lead to social isolation', Section 1.2.2 of the communication from the Commission to the Council and the European Parliament on the training and recruitment of seafarers (COM(2001) 188 final).

38 – Particularly the many and varied Conventions concerning 'seafarers', entered into under the auspices of the International Labour Organisation: Nos 7 and 58, on the minimum age (sea), 1920 and 1936; No 8, on unemployment indemnity (shipwreck), 1920; No 9, on the placing of seamen, 1920; No 16, on the medical examination of young persons (sea), 1921; No 22, on seamen's articles of agreement, 1926; No 23, on repatriation of seamen, 1926; Nos 54 and 72, on holidays with pay (sea), 1936 and 1946; No 55, on shipowners' liability (sick and injured seamen), 1936; No 56, on sickness insurance (seafarers), 1936; No 57, on hours of work and manning (sea), 1936; No 68, on food and catering (ships' crews), 1946; No 70, on social security (seafarers), 1946; No 71, on seafarers' pensions, 1946; Nos 76, 93 and 109, on wages, hours of work and manning (sea), 1946, 1949 and 1958; No 134, on the prevention of accidents (seafarers), 1970; No 145, on continuity of employment (seafarers), 1976; No 147, on merchant shipping (minimum standards), 1976; No 163, concerning seafarers' welfare, 1987; No 166, on repatriation of seafarers, 1987; No 179, on the recruitment and replacement of seafarers, 1996; and No 180, on seafarers' hours of work and the manning of ships, 1996, amongst others. In the ambit of the United Nations also there are a number of normative instruments such as the 1982 Convention on the Law of the Sea.

39 – In Spain, Decree 2864/1974 of 30 August 1974 approved the current text of Ley 116/1969 of 30 December 1969 and Ley 24/1972 of 21 June 1972 (Laws governing the Special Social Security Arrangements for Seafarers) (BOE No 243 of 10 October 1972); Real Decreto 1561/1995 (Royal Decree of 21 September 1995 on special working time as regards work at sea) (BOE No 230 of 26 September 1995), as amended by Real Decreto 285/2002 of 22 March 2002 (BOE No 82 of 5 April 2002); or Real Decreto 258/1999 of 12 February 1999 (Royal Decree establishing minimum health conditions and medical care for seafarers) (BOE No 47 of 24 February 1999).

40 – OJ 1999 L 167, p. 33.

41 – OJ 2000 L 14, p. 29.

42 – Directive 2002/15/EC of the European Parliament and of the Council of 11 March 2002 on the organisation of the working time of persons performing mobile road transport activities (OJ 2002 L 80, p. 35).

43 – *Ertanir*, paragraph 33. Tezcan, E., 'Le droit du travail et le droit de séjour des travailleurs turcs dans l'Union européenne à la lumière des arrêts récents de la Cour de Justice des Communautés Européennes', *Revue du Marché commun et de l'Union européenne*, No 445, February 2001, pp. 124 and 125.

44 – *Tetik*, paragraph 41, upholds that view in relation to a worker legally employed for more than four years, since duly-registered participation in the labour market is only attained, in principle, 'in so far as the person who finds himself without employment satisfies all the formalities that may be required in the Member State in question, for instance by registering as a person seeking employment and remaining available to the employment authorities of that State for the requisite period'.

45 – As that order states, a seaman who has been offered new employment on a vessel which has not yet arrived in port and which, furthermore, may well arrive late is entitled to dispense with registration as unemployed.

46 – The same order acknowledges that Mr Sedef 'did, for the most part, immediately enter into new employment relationships without any problem following his periods of "unpaid holiday"'.

47 – That was the situation, for example, between 23 June 1982 and 20 June 1988, in which 'unpaid holiday' included the periods from 28 October to 1 November 1983 and from 19 May to 12 June 1984 – a period of unemployment began the following 13 June – 15 July 1984 and the period from 1 to 6 April 1987.

48 – Case C-351/95 [1997] ECR I-2133.

49 – Case C-386/95 [1997] ECR I-2697.

50 – Judgment of the Verwaltungsgericht Hamburg of 10 December 1996, p. 4 et seq.

51 – It could be argued that the change in attitude is due to the fact that, according to the German rules, in order to take up employment as a seaman it is sufficient to have a residence permit, and there is no requirement for a work permit, which the worker does need in order to work on land. However, that interpretation is irrelevant for the purposes of Decision No 1/80, in which what matters is, on the one hand, that the worker belongs to the duly-registered labour force and, on the other, that he has legally carried on an occupation, irrespective of whether he needs any particular type of entitlement to do so.

52 – Most striking in graphic terms is the table which Germany annexed to its written observations, in which there is a column for each year showing, with different colours, the periods of employment, sickness, duly certified unemployment and 'unpaid holiday'.

53 – *Tetik*, paragraph 31; *Günaydin and Others*, paragraph 38; *Bi*