Opinion of Advocate General Léger delivered on 10 June 2004

Inan Cetinkaya v Land Baden-Württemberg

Reference for a preliminary ruling: Verwaltungsgericht Stuttgart - Germany

EEC-Turkey Association Agreement - Freedom of movement for workers - Articles 7, first indent, and 14(1) of Decision No 1/80 of the Association Council - Right of residence of the child of a Turkish worker after he has attained his majority - Conditions of an expulsion order - Criminal convictions

Case C-467/02

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1. The background to the present case is a dispute in which the son of a Turkish worker, who was born and has always lived in Germany, is challenging the expulsion procedure instituted against him by the authorities of that Member State following the custodial sentences which he received inter alia for dealing in illicit drugs. The case therefore concerns the interpretation of Decision No 1/80 of 19 September 1980 on the development of the Association, (2) adopted by the Association Council set up by the Agreement establishing an Association between the European Economic Community and Turkey. (3)

2. The Verwaltungsgericht (Administrative Court) Stuttgart (Germany) has therefore referred for a preliminary ruling a number of questions regarding the scope of Decision No 1/80, the circumstances in which the rights it confers may be forfeited following a custodial sentence and whether the court hearing the appeal against an expulsion order may take into account favourable changes in the behaviour of the person concerned since that order was issued.

I – Community law

3. The aim of the Association Agreement is to promote the continuous and balanced strengthening of trade and economic relations between the European Community and Turkey to improve the level of employment and the living conditions of the Turkish people. (4) According to the preamble to that agreement, the support given thereby to the efforts of the Turkish people to improve their standard of living will facilitate the accession of Turkey to the Community at a later date.

4. In order to attain those objectives, the Association Agreement made provision, in particular, for progressively securing freedom of movement for workers and abolishing restrictions on freedom of establishment and freedom to provide services. (5) Article 12 of that agreement provides that the Contracting Parties agree 'to be guided by Articles 48, [(6)] 49 [(7)] and 50 [(8)] of the Treaty establishing the Community' for the purpose of progressively securing freedom of movement for workers between them. This was due to take place between the end of the 12th and the 22nd year after the entry into force of the Association Agreement, according to a procedure decided by the Association Council. (9)

5. The Association Council therefore adopted, first, Decision No 2/76 of 20 December 1976, which was regarded as a first stage and which provided, for workers, a progressive right of access to employment in the host Member States and, for children of such workers, the right of access to general educational courses in that State. (10)

6. It went on to adopt Decision No 1/80, the objective of which, according to the third recital in the preamble to the decision, was to improve in the social field the legal position of workers and their families in relation to the arrangements introduced by Decision No 2/76. The provisions applying to Turkish workers and member of their families are laid down in Articles 6 and 7, respectively, of that decision.

7. Article 6 of Decision No 1/80 provides:

'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.

...'

8. Article 7 of Decision No 1/80 provides:

'The members of the family of a Turkish worker duly registered as belonging to the labour force of a Member State, who have been authorised to join him:
–shall be entitled – subject to the priority to be given to workers of Member States of the Community – to respond to any offer of employment after they have been legally resident for at least three years in that Member State;
–shall enjoy free access to any paid employment of their choice provided they have been legally resident there for at least five years.
Children of Turkish workers who have completed a course of vocational training in the host country may respond to any offer of employment there, irrespective of the length of time they have been resident in that Member State, provided one of their parents has been legally employed in the Member State concerned for at least three years.'

9. Article 14 of Decision No 1/80 sets out the limitations that may be imposed on the exercise of those rights. Article 14(1) provides:
'The provisions of this section shall be applied subject to limitations justified on grounds of public policy, public security or public health.'

II – Facts and procedure

10. Inan Cetinkaya is a Turkish national who was born in Germany in 1979 and has always lived in that Member State. He left secondary school in July 1995 after he had passed his final exams. From 1996 to December 1999 he worked in several jobs with various employers for brief periods. Since 9 March 1995 he has had an unlimited German residence permit. His parents and his sisters also live in that Member State, where his father was employed until he retired.

11. From 1996 to 2000 Mr Cetinkaya was convicted on five occasions, four of his convictions entailed custodial sentences. His last sentence, on 26 September 2000, was a three-year 'juvenile sentence' for dealing in illicit drugs.

12. Mr Cetinkaya was detained from 7 January 2000 until 22 January 2001, when he was released so that he could undergo treatment for drug addiction. He completed this successfully during the summer of 2002. Since August 2002 he has resumed his studies and is working part-time. By decision of 20 August 2002 the Amtsgericht (Local Court) Schwäbisch Hall (Germany) suspended the remainder of his custodial sentence.

13. On 3 November 2000 the Regierungspräsidium Stuttgart (the German administrative authority responsible for expulsion matters) ordered Mr Cetinkaya's immediate expulsion from Germany. The authority stated that the expulsion was required because there were serious grounds relating to public safety and public policy giving rise to a statutory presumption in favour of expulsion. Expulsion was therefore necessary on specific and general preventive grounds. Moreover, Mr Cetinkaya could no longer rely on his right of residence under the first paragraph of Article 7 of Decision No 1/80 because, as a result of his detention and the drug rehabilitation treatment he was due to undergo, he was not available for employment. Mr Cetinkaya appealed against that decision on 8 December 2000. On 3 September 2002 the Regierungspräsidium Stuttgart amended its order of 3 November 2000 to allow Mr Cetinkaya to leave the country voluntarily any time up to 4 October 2002. Mr Cetinkaya also appealed against that amendment. The Verwaltungsgericht joined the two sets of proceedings brought by Mr Cetinkaya.

III – The questions referred for a preliminary ruling

14. In its order for reference the Verwaltungsgericht states that if Mr Cetinkaya does not fall within the scope of Decision No 1/80, his appeal against the decision of 3 November 2000, as amended on 3 September 2002, must be dismissed under the national law applying to aliens. According to the national court, on the one hand, it is clear from the settled case-law of the Bundesverwaltungsgericht (Federal Administrative Court) (Germany) that the favourable changes in Mr Cetinkaya's behaviour after 3 November 2000, the date on which the expulsion order was issued, cannot be taken into account. The date of 3 November 2000 is the point in time which that court should take into account when assessing Mr Cetinkaya's factual and legal position. On the other hand, Mr Cetinkaya's expulsion does not seem to be a disproportionate measure in the light of the case-law of the European Court of Human Rights, although he was born in Germany and his parents and sisters also live there. He has an adequate knowledge of the Turkish language, he is an adult, is not married and has no children and the European Court of Human Rights attaches great importance to combating drug-related crime.

15. However, in the view of the national court, if Mr Cetinkaya falls within the scope of Decision No 1/80 and if Article 14 of that decision is to be interpreted as meaning that the relevant point in time for assessing his factual or legal position is the time of the oral hearing, his appeal should most probably be granted. Indeed, following the order of 3 November 2000, the remainder of Mr Cetinkaya's custodial sentence was suspended, which appears to indicate that he no longer poses a present and specific threat to one of the fundamental interests of society.

16. The Verwaltungsgericht Stuttgart is inclined to believe that, contrary to what the competent administrative authority decided, Mr Cetinkaya does in fact fall within Decision No 1/80 and that it should be possible to take the favourable changes in his behaviour into account. That court is, however, uncertain as to the interpretation that should be given to the relevant provisions of Decision No 1/80. It was in the light of those considerations that it decided to stay proceedings and refer the following questions to the Court of Justice:
'1.Does a child born in Germany to a Turkish worker who belongs to the regular labour force fall within the scope of Article 7(1) of [Decision No 1/80] where from his birth to at least the time he attained the age of majority his residence was permitted initially solely for the reason of family unity or, where his residence permit was temporary, was not terminated solely for that reason?
2.Is Article 14 of Decision No 1/80 the only basis upon which the right of a family member to access to the employment market and to an extension of residence under the second indent of Article 7(1) may be limited?

3.Does the imposition of three years' juvenile sentence constitute the definitive removal of the person concerned from the labour force such that he loses his rights under the second indent of Article 7(1) even if there is a real possibility that only part of the sentence will require to be served, albeit that if released early on licence the person will be required to submit to treatment for drug abuse and during the period of that treatment will not be available for employment on the market?
4.Where it results from a short period of imprisonment which is not suspended for probation, does the loss of a job or, where the person concerned is unemployed, the impossibility of applying for a job constitute voluntary unemployment within the meaning of the second sentence of Article 6(2) of Decision No 1/80 and therefore not prevent the loss of the rights conferred by Article 6(1) and Article 7(1) of Decision No 1/80?
5.Does this apply also where it may be assumed that the person will be released after an insignificant, reasonable time, but must then submit to treatment for drug abuse and will not be able to take up employment until he has completed additional school education?
6.Is Article 14 of Decision No 1/80 to be interpreted as meaning that the court requires to take into account a change in circumstances which occurs after the most recent administrative decision and which is favourable to the person concerned such that it would preclude the application of any of the limitations in Article 14 of Decision No 1/80?'

IV – Assessment

A – The first question

17. By its first question, the national court seeks to ascertain whether Mr Cetinkaya falls within the provisons of the first paragraph of Article 7 of Decision No 1/80. It has referred this question to the Court because, contrary to what that provision states, Mr Cetinkaya was not authorised, within the strict meaning of the term, to join his parents in Germany since he was born in that State. It is therefore asking in essence whether the first paragraph of Article 7 of Decision No 1/80 should be interpreted to mean that an adult who was a child born in the host Member State to a Turkish worker duly registered as belonging to the labour force of that Member State falls within the scope of that provision.

18. Before answering that question specifically, it must first be noted that, according to the case-law of the Court, the first paragraph of Article 7 of Decision No 1/80 has direct effect in the Member States, so that Turkish nationals fulfilling the conditions which it lays down may directly rely before the national court on the rights conferred on them by that provision. (11) Also, as we saw above, the first paragraph of Article 7 confers on all the members of the family of a Turkish worker duly registered as belonging to the labour force of a Member State who have been authorised to join him the right of free access to any paid employment of their choice in that State after three years' legal residence there, subject to priority being given to workers who are Community nationals, and without that reservation after five years' legal residence. It has also been held that the effectiveness of the right of free access to employment conferred by that provision necessarily implied a concomitant right of residence. (12)

19. The right of access to employment and the right of residence conferred by the first paragraph of Article 7 of Decision No 1/80 are therefore subject to four conditions: first, that the person concerned should be a member of the family of a Turkish worker; second that the latter should be a Turkish worker duly registered as belonging to the workforce of the host Member State; third that the family member should have been authorised to join that worker, and, fourth, that he should have been legally resident in that State for at least three years. In order to provide a useful answer to the national court I shall consider each of those conditions in turn.

20. As regards the first condition, it is not disputed, and appears to be indisputable, that the child of a Turkish worker is a member of his family within the meaning of the first paragraph of Article 7 of Decision No 1/80. Also, in *Ergat*, the Court held that the child of a Turkish worker retains that status within the meaning of the aforementioned provision when he becomes an adult even if he leads a life in the host Member State independent of his parents. (13) Mr Cetinkaya, in his capacity as the child of a Turkish worker, is therefore a member of the latter's family within the meaning of the first paragraph of Article 7 of Decision No 1/80.

21. However, the German Government casts doubts on whether Mr Cetinkaya fulfils the second condition, namely to be the child of a Turkish worker who is 'duly registered as belonging to the labour force'. The German Government contends that if Mr Cetinkaya's father had exercised his right to retire before the expulsion order was issued on 3 November 2000 he would no longer have been duly registered as belonging to the labour force. His son could therefore no longer be considered, at the date that order was issued, to fall within the provisions of the first paragraph of Article 7 of Decision No 1/80. According to the German Government, the conditions laid down in that provision are stricter than those contained in the second paragraph of Article 7 concerning children of Turkish workers who have completed a course of vocational training in the host State. The position adopted by the Court in *Akman*, (14) in which it held that the child of a Turkish worker who has completed a course of vocational training in the host State may exercise the rights conferred under the second paragraph of Article 7 of Decision No 1/80 even if the worker under whom he derives those rights is no longer duly registered as belonging to the labour force of that State, is not transposable in the context of the first paragraph of Article 7 of that decision. It is clear from this that the Turkish worker must still be duly registered as belonging to the labour force of the host State at the time when members of his family intend to avail themselves of the rights conferred by that first paragraph of Article 7.

22. I do not share this view. It is true that the phrase 'duly registered as belonging to the labour force', contained in the first paragraph of Article 7 of Decision No 1/80 refers to a present situation, as is clear from the use of the present participle 'appartenant' in the French text. The same formulation also appears in the majority of other languages in which Decision No 1/80 was drafted. (15) It is also common ground that the condition relating to the worker having been legally employed, laid down in the second paragraph of Article 7 of Decision No 1/80, as interpreted by the Court in *Akman*, is in the past tense. (16) However, the express wording of the contested condition contained in the first paragraph of Article 7 does not make it clear that the rights which that provision confers on members of a Turkish worker's family are dependent on that worker being employed in the

host State and that those rights no longer exist once the worker concerned finally ceases employment there for good. It is also clear from the settled practice of the Court that in order to interpret a provision of Decision No 1/80 it is necessary to take into account not only the wording of the provision in question but also its context and the objectives of that decision. (17) The German Government's interpretation of the contested condition, in my view, conflicts with the meaning and objectives of the first paragraph of Article 7, as they have been stated in case-law.

23. Thus, in *Kadiman*, the Court held that the first paragraph of Article 7 of Decision No 1/80 has a dual objective. First that provision seeks to favour employment and residence of Turkish workers duly registered as belonging to the labour force of a Member State by ensuring that their family links are maintained there. (18) According to the Court, it is from this perspective that that provision provides, for the initial stage, that family members of that Turkish worker may join him so as to enable the family to be together. (19) The Court infers from the meaning and purpose of that provision that the family member must in principle reside continuously with the Turkish worker during those first three years, by actually living together in the same domestic situation. (20) Second, in order to further integrate that worker into the host State, that provision seeks to consolidate the position of his family members by then granting them the right of access to employment in that State. (21) Thus that right of access to employment is first open to them after three years' legal residence, subject to the priority to be given to nationals of other Member States, then after five years without that proviso. Clearly, in order for it to be exercised, the right of access to employment necessarily involves entitlement to reside in the host State.

24. In *Ergat*, the Court defined the scope of those rights conferred on family members. (22) It held that from the time when a Turkish national covered by the first paragraph of Article 7 enjoys, after five years' legal residence, the right of free access to employment in the host Member State under the second indent of that provision, not only does the direct effect of that provision mean that the person concerned derives an individual employment right directly from Decision No 1/80 but also the effectiveness of that right necessarily implies a concomitant right of residence which is also founded on Community law and is *independent of the continuing existence of the conditions for access to those rights*. (23) The Court added that the objective of Decision No 1/80 would not be attained if restrictions imposed by a Member State could have the effect of depriving the family members of the benefit of the rights which the first paragraph of Article 7 of that decision confers on them, precisely at the time when, by virtue of access to employment of their choice, they have the prospect of becoming permanently integrated in the host Member State. (24) In order to confirm its interpretation the Court referred to*Akman*, in which it ruled that once a child has completed his education and acquired the right, conferred directly by Decision No 1/80, of access to the labour market of the host Member State and, as a result, the right to obtain a residence permit there for that purpose, it is not necessary for the parent of that child still to have the status of worker, or to continue to reside in that State. It concluded from this that Member States are no longer entitled to attach conditions to the residence of a member of a Turkish worker's family after that period of three years, (25) and even less after five years' legal residence, since, under the second indent of the first paragraph of Article 7, the priority to be given to workers of Member States can no longer be invoked to exclude the person concerned from employment.

25. In my view, it follows from this that the right of access to employment and the right of residence conferred by the first paragraph of Article 7 of Decision No 1/80 on family members in order to consolidate their own integration into the host State must be recognised as being autonomous in relation to the position of the Turkish worker under whom they originally derived their rights. Those rights must still be capable of being exercised where the family member fulfils the conditions laid down in the first paragraph of Article 7 even if the worker under whom that member derives his rights is no longer duly registered as belonging to the labour force of that State. Otherwise there could be no question of a genuine opportunity for integrating such family members, because their right of access to employment, since it would always depend on the fate of the Turkish worker, would remain insecure or temporary. Thus, the implication of the German Government's argument would be that the child of a Turkish worker who, like Mr Cetinkaya, has begun working in the host State, would be likely subsequently to lose his right of access to employment from the day on which his father exercises his right to retire. It seems to me that that argument cannot be upheld. I think that, in the light of the meaning and objectives of the first paragraph of Article 7 of Decision No 1/80, the condition that the worker must be duly registered as belonging to the labour force of the host State can apply only during the three years in which the family member is required to reside with him continuously, and before the expiry of which the family member concerned does not yet have the rights conferred directly by the first paragraph of Article 7. It cannot apply beyond that period without calling into question the scope of those rights. I infer from this that the first paragraph of Article 7 of Decision No 1/80 does not require the Turkish worker still to be duly registered as belonging to the labour force of the Member State in question when, after three years' legal residence in that State, the family member also intends to become a member of the same labour force and claim a right of residence.

26. A Turkish national who, like Mr Cetinkaya, was born and has always lived in Germany where his father was formerly in paid employment for more than three years should, in my view, be regarded as the child of a Turkish worker duly registered as belonging to the labour force within the meaning of the first paragraph of Article 7 of Decision No 1/80 even if, when the expulsion order was issued on 3 November 2000, his father had exercised his right to retire.

27. It is appropriate to consider now the third condition, which requires the family member to have been authorised to join the Turkish worker in the host State. Like the national court and all the intervening parties, I consider that it cannot be interpreted as seeking to exclude from the scope of the first paragraph of Article 7 of Decision No 1/80 members of the family of that worker who were born in the territory of that State. First, there is nothing in the wording of the first paragraph of Article 7 to indicate that that condition was laid down in order to be relied upon against members of the family of a Turkish worker who were born in the territory of the Member State in question and who, by definition, have not needed to be 'authorised to join him'. Second, such a

restrictive interpretation of the contested condition would not accord either with the legal context in which it stands or, especially, with the objective pursued by the first paragraph of Article 7 of Decision No 1/80.

28. It is clear from the content of Articles 6 and 7 of Decision No 1/80 that that decision does not affect the right of Member States to regulate access by Turkish nationals to their territory and also by members of their families. (26) Thus, the first paragraph of Article 7 of Decision 1/80 provides that the members of the family of a Turkish worker are entitled to take up employment in that country after being legally resident there for a specified period, without thereby affecting the power of the Member State concerned to authorise any such persons to join the Turkish worker legally employed there. (27)The penalty for failure to comply with the rules of the host State is, according to case-law, that in order to give rise to any rights to employment the residence permit in that State must not have been obtained as a result of fraudulent conduct. (28)

29. I infer from this that the condition that members of a Turkish worker's family must have been 'authorised to join him' must be interpreted as excluding from the scope of the first paragraph of Article 7 of Decision No 1/80 any family members who have entered the host State in breach of the laws of that State. That condition can therefore be relied upon only against persons who were not resident in the territory of the Member State in which the Turkish worker was situated and who were required to obtain authorisation from the competent authorities of that State to enter it in order to join that worker there. It cannot therefore be relied upon against a member of that worker's family who, having been born in the territory of the State in question, had no need to obtain such authorisation.

30. In addition, exclusion of members of the family of the Turkish worker, particularly his children born in the territory of the host State, from the scope of the first paragraph of Article 7 of Decision No 1/80 would manifestly conflict with the objective of that decision. It is settled case-law that the objective of the first paragraph of Article 7 is to enable the family to be together in the host State. As I stated above, the Court has ruled that the purpose of that article is to favour employment and residence of Turkish workers duly registered as belonging to the labour force of a Member State by ensuring that their family links are maintained there. (29) It was in view of that objective that the Court held, in *Kadiman*, that the family members should live with the worker in question continuously during the three years referred to in the first paragraph of Article 7. As the national court itself states, (30) it would therefore be 'illogical and incompatible' with that objective to exclude from the scope of that provision members of a Turkish worker's family, in particular his children, who were born in the territory of the host State, when their birth in that State actually contributes to attainment of the objective sought by that provision.

31. Therefore, the fact that Mr Cetinkaya was born in Germany and has not formally been authorised to join his father there does not preclude him from falling within the scope of the first paragraph of Article 7 of Decision No 1/80.

32. Lastly, with regard to the fourth condition, it is established that by the date on which his expulsion was ordered Mr Cetinkaya had been legally resident in Germany for over five years. It is clear from the information supplied by the national court that Mr Cetinkaya had lived in that State continuously since birth. He had also obtained an unlimited residence permit on 9 March 1995. He is therefore entitled to fall within the scope of the second indent of the first paragraph of Article 7 of Decision No 1/80, under which he enjoys free access in Germany to any paid employment of his choice.

33. It follows that a Turkish national who is in Mr Cetinkaya's position does fall within the provisions of the first indent of the first paragraph of Article 7 of Decision No 1/80. I therefore propose that the Court's answer to the first question should be that the first paragraph of Article 7 of Decision No 1/80 should be interpreted as meaning that a child of full age, born in the host Member State, of a Turkish worker who is or has been duly registered as belonging to the labour force of that State, falls within the scope of that provision.

B – The second question referred for a preliminary ruling

34. By its second question, the national court seeks to ascertain whether, on account of his detention and his treatment for drug addiction, Mr Cetinkaya has forfeited his rights under the first paragraph of Article 7 of Decision No 1/80. It states that according to its national case-law the principles laid down in Article 6 of Decision No 1/80, under which extended absence from the labour force may lead to the loss of the rights conferred by that article, are to be applied under Article 7 of that decision. It adds, however, that that approach is not supported either by the wording or the objectives of Article 7. Nor is that approach in accordance with the case-law of the Court, which, in *Ergat*, suggests that the rights conferred by the first paragraph of Article 7 of Decision No 1/80 may be withdrawn only under Article 14 of that decision.

35. The national court is therefore asking in essence whether the first paragraph of Article 7 of Decision No 1/80 should be interpreted as meaning that, after a custodial sentence followed by treatment for drug addiction, the rights which that article confers on a Turkish national in Mr Cetinkaya's position may be restricted only under Article 14 of Decision No 1/80, or whether they may also be restricted on account of extended absence from the labour force.

36. In order to understand the purport of that question, it is appropriate to recall the circumstances in which case-law states that a Turkish national forfeits the rights conferred on him by Decision No 1/80 in the event of extended absence from the labour force. That case-law was established in the context of the interpretation of Article 6 of that decision, which applies to Turkish workers who have entered into an employment relationship in a Member State and who are duly registered as belonging to the labour force of that State. In order to exercise that right of access to employment the person concerned must enjoy a right of residence. (31) The sole purpose of the right of residence is therefore to ensure the effectiveness of the right of access to employment. The Court inferred from this, in *Bozkurt*, that a Turkish national can no longer claim a right of residence in the territory of the host Member State on the basis of Article 6 of Decision No 1/80 if he has reached retirement age or has suffered an accident at work which totally and permanently excludes him from subsequent paid employment. In the view of the Court, in such a case the worker is regarded as having definitively ceased to belong to the labour force of that Member State and the right of residence which he seeks has therefore no connection with paid employment, even in the future. (32) Then in *Tetik*, the Court held that a Turkish worker forfeits the rights

conferred on him by Article 6 if he decides to leave his job and does not take all the necessary steps within a reasonable period to enter into a new employment relationship. (33) It confirmed that view in *Nazli and Others*. (34) The question referred by the national court therefore seeks to ascertain whether that case-law can be applied by analogy in the case of a Turkish national falling within the provisions of the first paragraph of Article 7 of Decision No 1/80 who finds himself in Mr Cetinkaya's position.

37. Like the Commission, I think that the answer to that question can be inferred from the judgment in *Ergat*. That judgment, as we saw above, concerned a child of Turkish workers who had been authorised at the age of eight to join his parents in Germany, where he had worked in several jobs himself, and who was refused an extension of his residence permit by the competent authorities because his application had reached them too late. We saw above that the Court has defined the scope of the rights which the first paragraph of Article 7 of Decision No 1/80 confers directly on members of the family of a Turkish worker. As I have stated, the Court expressly held that States are no longer entitled to attach conditions to the residence of a member of a Turkish worker's family after the three-year period laid down in that provision is ended, and *a fortiori* where the worker, after five years' legal residence, fulfils the conditions laid down in the second indent of the first paragraph of Article 7 of that decision. (35) It held that, although the Member States have retained the power to regulate both the entry into their territory of a member of the Turkish worker's family and the conditions of his residence during the initial three-year period, it is, on the other hand, no longer open to them to adopt measures relating to residence which are such as to impede the exercise of the rights expressly conferred by Decision No 1/80 on a person who satisfies the conditions it lays down and who is *therefore already legally integrated into the host Member State*, given that the right of residence is essential to access to and the pursuit of any paid employment. (36)

38. The Court also made clear in the same judgment the circumstances in which a member of the family of a Turkish worker falling within the first paragraph of Article 7 of Decision No 1/80 forfeits the rights conferred on him by that provision. In his Opinion in that case Advocate General Mischo expressed the view that a child of full age of a Turkish worker falling within the first paragraph of Article 7 of Decision No 1/80, once he has reached the stage where he is entitled to free access to any paid employment, should be subject to the same rules as a Turkish worker who has come to reside in a Member State as an adult. The child therefore forfeits his rights if he is voluntarily unemployed for an extended period. (37) I expressed a similar view in my Opinion in *Akman*, with regard to a child who had completed his vocational training in the host country and who derived his rights from the second paragraph of Article 7 of Decision No 1/80. I argued that, for the sake of consistency, where a child of a Turkish worker is free to respond to any offer of employment after completing his vocational training and has a corresponding right of residence, he must exercise that right within a reasonable period. (38)However, the Court did not adopt that requirement in *Akman*. Moreover, in *Ergat*, it held that in only two cases can the rights conferred on family members by the first paragraph of Article 7 of Decision No 1/80 be restricted: first, where Article 14 of that decision is applied and, second, where the family member concerned leaves the territory of the host State for a significant length of time without legitimate reason. (39) The Court did not therefore apply the restriction to the third case suggested by Advocate General Mischo, that of voluntary unemployment for an extended period.

39. It may therefore be inferred from *Ergat*, that unless an expulsion on order is adopted by the Member State under Article 14 of Decision No 1/80, it is only if the person concerned has himself chosen to break off his ties with that State by leaving it for a long period without legitimate reason that he forfeits the right of access to employment and the right to residence conferred on him by the first paragraph of Article 7 of that decision. On the other hand, where the family member has not broken off ties with the host State he only forfeits those rights where Article 14 is applied.

40. That approach should be taken *a fortiori* in the case of a child of full age of a Turkish worker who, like Mr Cetinkaya, was born in the Member State and has lived there with his parents all his life. We saw above that the first paragraph of Article 7 of Decision No 1/80 pursues the dual objectives of enabling the Turkish worker to become integrated into the host State by facilitating the maintenance of his family relationships and of consolidating the position of members of his family by enabling them after a certain period to have access themselves to the labour market. In *Ergat*, as I pointed out, the Court held that States were no longer entitled to adopt measures that would impede the right of residence of family members who fulfilled the conditions laid down in the first paragraph of Article 7 of Decision No 1/80 because the latter were, as a result of this, already legally integrated into the host State. The same reasoning should apply *a fortiori* to the child of a Turkish worker who is born in the host State, has completed his schooling there and has always lived there. It seems indisputable that that Turkish national would be already integrated into the Member State. The rights he derives from the second indent of the first paragraph of Article 7 of Decision No 1/80 cannot therefore be more limited than those of a family member who has joined the worker in the host State during his lifetime. Also, it should be pointed out that Mr Cetinkaya, like Mr Ergat, has exercised his right of access to employment in the host State, since he was employed in various jobs between 1996 and December 1999, which was almost until the time he was taken into detention, which lends all the more support to the view that the position adopted by the Court in *Ergat* should be applied by analogy in the present case.

41. We could therefore argue on that basis that a Turkish national who was born in the host State and who has never broken off links with that State cannot be deprived of the rights directly conferred on him by the first paragraph of Article 7 of Decision No 1/80 except under Article 14(1) of that decision, that is to say, on grounds of public policy, public security or public health. That view would be in accordance with the integration objectives pursued by the said first paragraph of Article 7. The integration of Turkish workers would be facilitated all the more if the rights of their children born in the host State are enhanced. Integration of family members would be better consolidated since the right of residence of children of the second generation born in the host State and who have never broken off their links with that State, as it is no longer dependent on the exercise of economic activity, would no longer be temporary or insecure for any of the generations. If the contrary view were taken and if the limits contained in Article 6 of Decision No 1/80 were applied by analogy to such children this would mean that, following an accident that left them permanently unfit for work or where they exercised their right to

retire, under that decision they would no longer have the right to reside in that State even if they had always lived there.

42. This approach would also have the advantage of taking into account a major trend in the Community in respect of the right of residence in the Member States. We know that the right of residence of Community nationals is no longer dependent on the exercise of economic activity. Since the 1990s several directives have been adopted for the benefit of persons who either are not, or are no longer, engaged in economic activity. In particular, the legislature laid down the conditions under which retired workers could be authorised to stay in the host Member State. (40) It has been given concrete expression, especially, by the introduction into the Treaty of the status of citizen of the Union by the Treaty on European Union, which henceforth confers on any person having the nationality of a Member State, by a provision having direct effect, the right to reside freely in the territory of the Member States, (41) provided that they themselves and the members of their families have sufficient resources and are covered by sickness insurance in respect of all risks in the host Member State. (42)

43. Those provisions cannot be applied by analogy to Turkish nationals falling within Decision No 1/80 and, as the case-law currently stands, the right of a Community resident to reside in a Member State under Articles 39 EC and 41 EC, which the parties to the Association Agreement agreed to be guided by for the purpose of securing freedom of movement for workers between the Member States of the Community and Turkey, remains subject to the condition that the national remains a worker or, where relevant, a person seeking employment. (43) However, it seems to me to be difficult not to take any account of that development when it comes to interpreting Decision No 1/80. It appears to me to be justified to take that development into account in view of the provisions adopted in respect of the right of residence of nationals of non-member countries in the Member States. At its special meeting at Tampere on 15 and 16 October 1999 the European Council stated that the European Union must ensure fair treatment of third-country nationals who reside legally on the territory of its Member States, and that a more vigorous integration policy should aim at granting them rights and obligations comparable to those of EU citizens. (44) Directive 2003/109/EC, (45) which was adopted as a follow-up to that statement, (46) states in particular that integration of third-country nationals who are long-term residents in the Member States is a key element in promoting economic and social cohesion, a fundamental objective of the Community stated in the Treaty. (47) It introduces long-term resident status for third-country nationals who have resided legally and continuously within the territory of a Member State for five years where they provide evidence that they have resources which are sufficient to maintain themselves and the members of their families and also sickness insurance. (48)

44. It would be inconsistent in the light of that development, and in particular the rights conferred on nationals of all third countries, if, after a certain period of legal residence in a Member State, a Turkish worker's child of full age, who was born and had always lived in that State, enjoyed under an association agreement signed over 40 years ago in order to bring Turkey closer to the European Community a right of residence which was dependent solely on engaging in economic activity. In that regard, it should also be pointed out that, at the present stage of case-law, the rights conferred on Turkish nationals by Decision No 1/80 do not entitle them to move freely within the Community and are limited to the territory of the host Member State whose territory they have lawfully entered and where they have been legally resident. (49) Acceptance that the rights conferred directly by the first paragraph of Article 7 of Decision No 1/80 on Turkish children born in the host State who have never broken off links with that State can be limited only under Article 14 of that decision thus allows them to maintain a half-way position between that of citizens of the Union and that of nationals of all other third countries, a position which is consistent with the scheme of the Association Agreement.

45. A Turkish national who, like Mr Cetinkaya, has committed offences under the drugs laws that have resulted in him being sentenced, as in the present case, to three years' detention, should therefore not be excluded from the scope of Decision No 1/80 and thereby be deprived automatically of the rights of access to employment and residence under the first paragraph of Article 7 of that decision. This conclusion does not amount to calling into question the legitimate right of Member States to order expulsion measures against nationals of other States who cause serious disturbances that are contrary to public policy. Nor would I dispute the fact that committing drugs offences constitutes a serious and genuine danger for society such as to justify special measures against foreign nationals who are guilty of such offences, as the Court has conceded on several occasions. (50) I merely wish to say that the legal basis on which Member States can take such measures against Turkish nationals who fall within the first paragraph of Article 7 of Decision No 1/80 is Article 14 of that decision, by which the Association Council sought to reserve for the States party to the Association Agreement the power to protect their legitimate interests with regard to public policy by permitting them to limit the rights conferred by that decision.

46. It is therefore on the basis of that provision that the legality of the expulsion order of 3 November 2000, as amended on 3 September 2002, should be reviewed by the national court. It should be pointed out in that regard that in *Nazli and Others*, the Court held that, when determining the scope of the public policy exception provided for by Article 14 of Decision No 1/80, reference should be made to the interpretation given to that exception in the field of freedom of movement for workers who are nationals of a Member State of the Community. (51) It is clear from case-law that the term 'public policy' used by way of justification for a derogation from the exercise of fundamental liberties guaranteed by the Treaty must be defined restrictively. (52) The concept of public policy presupposes, in addition to the disturbance of the social order which any infringement of the law involves, the existence of a genuine and sufficiently serious threat to one of the fundamental interests of society. (53) In such a case a criminal conviction can justify an expulsion only in so far as the circumstances which gave rise to that conviction are evidence of personal conduct constituting a present threat to the requirements of public policy. (54) An expulsion order cannot therefore be based on reasons of a general preventive nature, (55) as it appears to be, at least in part, in the decision being contested in the case in the main proceedings. Nor can it be issued automatically following a criminal conviction. (56) It must always follow a case-by-case assessment of the personal conduct of the individual concerned and of the danger he represents to the requirements of public policy. Also, as we shall see in the context of the consideration of the sixth question, the court to which it falls to review the legality of the expulsion must be

allowed to take into account facts that intervened after the expulsion order was issued which show that the person concerned no longer represents a threat to the requirements of public policy. Lastly, the public policy measures taken by the Member State concerned must comply with the principle of proportionality, (57) in so far as they must be appropriate for securing the attainment of the objective which they pursue and must not go beyond what is necessary in order to attain it.

47. Also, when making that assessment, the competent national authorities must take into account the protection of family life guaranteed by Article 8 of the European Convention on Human Rights. That requirement, which the Court has ruled should be taken into account in the context of freedom of movement for Community workers and members of their families, (58) must also apply when assessing the limits which can be imposed on the rights of Turkish migrant workers under Decision No 1/80. It is settled case-law that deporting a person from the country in which his close relatives live may constitute interference with the right to respect for family life and that that is one of the fundamental rights which are protected in Community law. (59) In *Orfanopoulos and Others*, the Court held that such interference should be proportionate to the aim of protection of public policy and that it was necessary, in order to assess whether it was proportionate, to take account particularly of the nature and seriousness of the offence committed by the person concerned, the length of his residence in the host Member State, the period which had elapsed since the commission of the offence, the family circumstances of the person concerned and the seriousness of the difficulties which the spouse and any of their children risk facing in the country of origin of the person concerned. (60)

48. Case-law has therefore sought to protect the rights of individuals where States are exercising their powers with regard to public policy. To accept that a Turkish national, following a custodial sentence, is automatically excluded from the scope of Decision No 1/80 because he is temporarily prevented from engaging in paid employment might also permit national authorities to circumvent the limits imposed by Community law on the powers of States in respect of public policy and thereby deprive Article 14 of Decision No 1/80 of part of its effectiveness.

49. In the light of all these factors I therefore propose that the Court's answer to the second question should be that the first paragraph of Article 7 of Decision No 1/80 must be interpreted as meaning that, after a custodial sentence, possibly followed by treatment for drug addiction, Article 14 is the only basis on which the rights that provision confers on a Turkish national in the position of Mr Cetinkaya, who was born and has always lived in the host State, may be limited.

C – The third question

50. If the answer given to the preceding question is negative and the rights conferred by the first paragraph of Article 7 of Decision No 1/80 can be forfeited because the person concerned has left the labour force, the national court seeks to ascertain whether the same applies where, as in the present case, the person concerned has received a three-year juvenile sentence. In that connection it raises the question of the implications of the judgment in *Nazli and Others*, in which the Court held that a worker duly registered as belonging to the labour force did not forfeit the rights conferred on him by Article 6 of Decision No 1/80 as a result of being detained pending trial for 13 months and then being sentenced to a term of imprisonment suspended in full.

51. The national court is therefore asking in essence whether a member of a Turkish worker's family forfeits the right of access to any paid employment of his choice after five years' legal residence in the host Member State, conferred on him under the second indent of the first paragraph of Article 7 of Decision No 1/80, where he has received a three-year juvenile sentence, even though that sentence may be reduced, but where the sentence has to be followed by treatment for drug abuse during which he will still not be available for employment on the market.

52. Since I have proposed that the preceding question should be answered in the affirmative, it is only in the alternative that I will take a view on the third question. I think that the view taken by the Court in*Nazli and Others* allows this question to be answered in the negative. (61)

53. In that judgment the Court held that a temporary break in the period of active employment of a Turkish worker while he is detained pending trial is not in itself capable of causing him to forfeit the right of access to employment and the right of residence which he derives directly from Article 6 of Decision No 1/80, provided that he finds a new job within a reasonable period after his release. (62) It justified that approach by stating that a person's temporary absence as a result of detention of that kind does not in any way call into question his subsequent participation in working life. (63) It did not restrict that approach to the particular circumstances of that case, in which Mr Nazli had been detained pending trial and then sentenced to a term of imprisonment suspended in full. That approach taken in *Nazli and Others*, cited above, was later confirmed in *Orfanopoulos and Others*. (64)

54. I consider that the same approach should also be taken where the person concerned is likely to be released early on licence in order to undergo treatment for drug abuse. The purpose of such a measure is to end the dependency of the person concerned on drugs in order to bring about that person's re-socialisation, that is to say, to enable him to regain his place in society, which means he should be able to carry on a job and should not be deprived of his right of residence. It would therefore be inconsistent with those objectives to consider that serving a custodial sentence, as such, is the same as leaving the workforce, which deprives the person concerned of the right of access to the labour force and the corresponding right of residence. It would be all the more inconsistent in the present case as the objective of re-socialisation pursued by the German penal system appears to have been achieved, since the person concerned has successfully completed his treatment for drug abuse, has obtained suspension of the remainder of his term of detention, has resumed his studies and has found a part-time job. However, the facts which gave rise to the sentence that was imposed may be taken into account in the context of Article 14 of Decision No 1/80 in order to assess whether the person concerned represents a present, genuine and sufficiently serious threat to the requirements of public policy, within the meaning of case-law.

55. I conclude from this that a member of a Turkish worker's family does not forfeit the right of access to employment and the right of residence conferred on him under the second indent of the first paragraph of Article

7 of Decision No 1/80 where he has received a three-year juvenile sentence, the length of which may be reduced, but which has to be followed by treatment for drug abuse during which he will not be available for employment on the market.

D – Fourth and fifth questions

56. By its fourth and fifth questions, which should be considered together, the national court asks whether the loss of a job or the impossibility of applying for a job in the event of being sentenced to a period of detention which is not suspended for probation constitute voluntary unemployment within the meaning of the second sentence of Article 6(2) of Decision No 1/80 and therefore does not prevent the loss of the rights conferred by Article 6(1) and the first paragraph of Article 7 of Decision No 1/80. It also asks whether the fact that the person concerned may be released early, although this must first be followed by treatment for drug abuse, after which he will not be able to take up employment until he has obtained a qualification, will influence the answer to the preceding question.

57. I shall also consider these two questions in the alternative, since I have suggested that the answer to the second question should be that Article 14 is the only basis on which a Turkish national in Mr Cetinkaya's position could forfeit the rights that the first paragraph of Article 7 of Decision No 1/80 confers on him.

58. Those two questions are based on the premiss that the provisions of Article 6(2) of Decision No 1/80 can be applied by analogy as such in the context of the first paragraph of Article 7 of that decision. In company with all the intervening parties, I think that such a premiss is wrong. We have seen above that Article 6 of Decision No 1/80 covers the situation of Turkish workers. Article 6(1) gradually confers on them rights of access to employment. (65) As the Court explained in *Bozkurt*, (66) Article 6(2) is intended only to describe the consequences of certain breaks in employment for the purposes of calculating the periods of legal employment set out in Article 6(1). Accordingly, it provides that annual holidays, absences for reasons of maternity or an accident at work or short periods of sickness must be treated as periods of legal employment. It also provides, in the second sentence, that periods of involuntary unemployment and long absences on account of sickness are not to affect rights acquired by a Turkish worker under Article 6(1) of Decision No 1/80. As the Court held in *Tetik*, (67) the sole purpose of this latter provision is to prevent a Turkish worker who recommences employment after having been forced to stop working because of illness or unemployment through no fault of his own from being required, in the same way as a Turkish national who has never previously been in paid employment in the Member State in question, to recommence the periods of legal employment envisaged in Article 6(1).

59. The provisions of Article 6(2) of Decision No 1/80 do not therefore apply in the context of the first paragraph of Article 7 of that decision, which does not use the same wording and which follows a completely different scheme, since the rights conferred by that article are not dependent on the family member being in paid employment for a certain length of time, but on his actual residence with the worker for three years.

E – *The sixth question*

60. By its sixth question the national court seeks to ascertain whether it can take into account the favourable changes in Mr Cetinkaya's circumstances since the expulsion order was issued on 3 November 2000. It states that according to the settled case-law of the Bundesverwaltungsgericht, in the context of an expulsion order the *de facto* and *de jure* circumstances of the person concerned must be assessed at the time of that decision. The court cannot therefore take into account a change in the circumstances of the person concerned that has occurred since 3 November 2000. The national court points out however that, according to the case-law of the Court of Justice, expulsion of a citizen of the Union is dependent on the existence of a threat which is not only genuine but also present. (68) According to that case-law, the authorities and the national courts must consider, at each stage of the proceedings, whether the person concerned still represents a present threat to the requirements of public policy. That case-law can also be applied by analogy in the context of Article 14 of Decision No 1/80. The national court should therefore be able to take into account the circumstances of the person concerned as they are at the time of the hearing.

61. The national court is therefore asking, in essence, whether Article 14 of Decision No 1/80 must be interpreted as meaning that it precludes a national practice under which a court hearing an appeal against an expulsion order cannot take into account a change in the circumstances of the person concerned, which no longer permits a limitation of his rights under that article, that has occurred since the last decision taken by the authorities.

62. I consider that the answer to this question can be inferred from *Orfanopoulos and Others*, cited above, in which the Court ruled on a similar question in the context of an appeal against an expulsion order issued by the German administrative authority against a Community resident. (69) The question therefore concerned the interpretation of Article 3 of Directive 64/221, which sets out the circumstances in which a Member State may issue public policy measures against nationals of other Member States. That article provides, as we saw above, that measures taken on grounds of public policy or of public security are to be based exclusively on the personal conduct of the individual concerned and that previous criminal convictions do not in themselves constitute grounds for taking such measures. In *Orfanopoulos and Others*, the Court held that 'Article 3 of Directive 64/221 precludes a national practice whereby the national courts may not take into consideration, in reviewing the lawfulness of the expulsion of a national of another Member State, factual matters which occurred after the final decision of the competent authorities which may point to the cessation or the substantial diminution of the present threat which the conduct of the person concerned constitutes to the requirements of public policy'. (70) It held that that is so, above all, if a lengthy period has elapsed between the date of the expulsion order and that of the review of that decision by the competent court.

63. That answer can be applied by analogy in the context of Article 14 of Decision No 1/80. On the one hand, that article, like Article 3 of Directive 64/221, contains no indication of the date which must be taken as the point in time for assessing the present nature of the threat to the requirements of public policy posed by the conduct of the Turkish national against whom an expulsion order has been issued. On the other hand, the Court has

based its interpretation of Article 3 of that directive on its case-law which states that derogations on grounds of public policy from the principle of freedom of movement for workers must be interpreted strictly. (71) We also know that the principles enshrined in the Treaty articles relating to freedom of movement for workers must be extended, as far as possible, to Turkish nationals who enjoy the rights conferred by Decision No 1/80 and that, when determining the scope of the public policy exception provided for by Article 14 of Decision No 1/80, reference should be made to the interpretation given to that exception in the field of freedom of movement for workers who are nationals of a Member State of the Community. (72) It follows that the concept of 'the present nature of the threat to the requirements of public policy' which must be posed by the conduct of the person who is the subject of the expulsion order must, under Article 14 of Decision No 1/80, have the same scope as that specified by the Court in respect of Article 3 of Directive 64/221, applying to nationals of the Member States.

64. I therefore propose that the answer the Court should give to the sixth question should be that Article 14 of Decision No 1/80 must be interpreted as meaning that it precludes a national practice under which a court hearing an appeal against an expulsion order cannot take into account a change in the circumstances of the person concerned which occurs after the most recent administrative decision has been taken by the authorities and which would preclude a limitation on the rights of that person for the purposes of that article.

V – Conclusion

65. In the light of the foregoing I propose that the Court should answer the questions referred by the Verwaltungsgericht Stuttgart as follows:

'(1)The first paragraph of Article 7 of Decision No 1/80 of 19 September 1980 on the development of the Association, adopted by the Association Council set up by the Agreement establishing an Association between the European Economic Community and Turkey, should be interpreted as meaning that a child of full age, born in the host Member State, of a Turkish worker who is or has been duly registered as belonging to the labour force of that State, falls within the scope of that provision.

(2)That provision must be interpreted as meaning that, after a custodial sentence, possibly followed by treatment for drug addiction, Article 14 of Decision No 1/80 is the only basis on which the rights that provision confers on a Turkish national in the position of Mr Cetinkaya, who was born and has always lived in the host State, may be limited.

(3)Article 14 of that decision must be interpreted as meaning that it precludes a national practice under which a court hearing an appeal against an expulsion order cannot take into account a change in the circumstances of the person concerned which occurs after the most recent administrative decision has been taken by the authorities and which would preclude a limitation on the rights of that person for the purposes of that article.'

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1 –Original language: French.

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2 –Decision No 1/80, which entered into force on 1 July 1980, can be found in *EEC-Turkey Association Agreement and Protocols and other Basic Texts*, Office for Official Publications of the European Communities, Brussels, 1992.

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3 –The Agreement establishing an Association between the European Economic Community and Turkey, signed at Ankara on 12 September 1963 by the Republic of Turkey and by the Member States of the EEC and the Community, and concluded, approved and confirmed on behalf of the Community by Council Decision 64/732/EEC of 23 December 1963 (OJ 1973 C 113, p. 1, 'the Agreement').

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4 –Article 2.

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5 –Articles 12 to 14.

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6 –Now, after amendment, Article 39 EC.

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7 –Now, after amendment, Article 40 EC.

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8 –Now Article 41 EC.

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9 –Article 36 of the Additional Protocol, signed in Brussels on 23 November 1970 and concluded, approved and confirmed on behalf of the Community by Council Regulation (EEC) No 2760/72 of 19 September 1972 (for French text see JO 1972 L 293, p. 1).

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10 –Articles 2 and 3 of Decision No 2/76.

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11 –Case C-351/95 *Kadiman* [1997] ECR I-2133, paragraph 28; Case C-329/97 *Ergat* [2000] ECR I-1487, paragraph 34; and Case C-65/98 *Eyüp* [2000] ECR I-4747, paragraph 25.

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12 –.*Ergat*, cited above (paragraph 40).

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13 –
Paragraph 27.

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14 –Case C-210/97 [1998] ECR I-7519. In that case Mr Akman had been authorised in 1980 to enter Germany, where his father was legally employed, in order to study engineering. Having successfully completed his course of study in 1993 he applied for an unlimited residence permit. He was refused such a permit because his father had returned to Turkey in 1986. The Court considered, however, that Mr Akman met the two conditions laid down in the second paragraph of Article 7 of Decision No 1/80 since he had completed his course of study in Germany and his father had been legally employed there for over three years.

15 –'Die Familienangehörigen eines dem regulären Arbeitsmarkt eines Mitgliedstaates angehörenden türkischen Arbeitnehmers', in the German version, 'I familiari che sono stati autorizzati a raggiungere un lavoratore turco inserito nel regolare mercato del lavoro di uno Stato membro' in the Italian version, or 'Gezinsleden van een tot de legale arbeidsmarkt van een lidstaat behorende Turkse werknemer, die toestemming hebben gekregen om zich bij hem te voegen' in the Dutch version.

16 –'[P]rovided one of their parents has been legally employed in the Member State concerned'.

17 –.*Kadiman*, cited above (paragraph 37) and *Akman*, cited above (paragraph 32). Case C-171/01 *Wählergruppe Gemeinsam* [2003] ECR I-4301, paragraph 78, and Joined Cases C-317/01 and C-369/01 *Abatay and Others* [2003] ECR I-12301, paragraph 90.

18 –Paragraph 34.

19 –Ibid. (paragraph 35).

20 –Ibid. (paragraphs 41 and 47). The Court held, however that that interpretation 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, since such interruptions are not intended to detract from residence with that worker in the host Member State (paragraph 48).

21 –Ibid. (paragraph 36).

22 –The background to that case was the refusal by the German authorities to extend the residence permit of Mr Ergat, a Turkish national born in 1967 who had been authorised in 1975 to enter Germany in order to join his parents, both of whom were in paid employment, and who had worked in several jobs with some interruptions, on the ground that the competent aliens department received his application for extension late, in July 1991. The Court asked whether a Turkish national who was authorised to enter a Member State for the purpose of re-uniting the family of a Turkish worker duly registered as belonging to the labour force of that State, had been legally resident there for more than five years and had been in legal employment of various kinds, with interruptions, lost entitlement to the rights conferred on him by the second indent of the first paragraph of Article 7 of Decision No 1/80 and, in particular, the right to extend his residence permit in the host Member State, where his residence permit had expired before the date on which he lodged an application to extend it which was refused by the competent national authorities.

23 –Ibid. (paragraph 40, emphasis added).

24 –Ibid. (paragraph 43).

25 –.*Ergat*, cited above (paragraph 38).

26 –Case C-37/98 *Savas* [2000] ECR I-2927, paragraph 58, and *Abatay and Others*, cited above, paragraph 63. See, as regards Article 6 of Decision No 1/80, Case C-237/91 *Kus* [1992] ECR I-6781, paragraph 25, and Case C-171/95 *Tetik* [1997] ECR I-329, paragraph 21.

27 –.*Kadiman*, cited above (paragraphs 32 and 51).

28 –See Case C-285/95 *Kol* [1997] ECR I-3069, paragraph 27. See also to this effect Case C-192/89 *Sevince* [1990] ECR I-3461, paragraph 30; *Kus*, cited above, paragraphs 12 and 22; Case C-434/93 *Bozkurt* [1995] ECR I-1475, paragraph 26, and Case C-1/97 *Birden* [1998] ECR I-7747, paragraphs 55 to 59.

29 –.*Kadiman*, cited above (paragraph 34).

30 –Order for reference, p. 11 of French text.

31 –.*Sevince*, cited above (paragraphs 29 and 31); *Kus*, cited above (paragraph 33) and *Tetik*, cited above (paragraphs 26, 30 and 31). See, also, Case C-340/97 *Nazli and Others* [2000] ECR I-957, paragraph 28.

32 –.*Bozkurt*, cited above (paragraphs 39 and 40).

33 –Paragraphs 41, 42 and 46.

34 –Paragraphs 44 and 49.

35 –.*Ergat*, cited above (paragraphs 39 and 40).

36 –Ibid. (paragraph 42, emphasis added).

37 –Ibid. (paragraphs 65 and 66 of the Opinion).

38 –Paragraph 61 of my Opinion in *Akman*, cited above.

39 –Paragraphs 45 to 50.

40 –Council Directive 90/365/EEC of 28 June 1990 on the right of residence for employees and self-employed persons who have ceased their occupational activity (OJ 1990 L 180, p. 28). See also Council Directive 90/364/EEC of 28 June 1990 on the right of residence (OJ 1990 L 180, p. 26).

41 –Case C-413/99 *Baumbast and R* [2002] ECR I-7091, paragraph 84.

42 –I shall also mention that the directive in the process of adoption, which will consolidate and revise the existing regulations and directives in the light of the new status of citizen of the Union, provides that after they have resided legally for a period of five years in the territory of a Member State citizens of the Union and their family members will enjoy in that State a right of residence which will not be subject to conditions [Recital 17 in the preamble to, and Article 16 of, Common Position (EC) No 6/2004 adopted by the Council on 5 December 2003 with a view to adopting Directive 2004/…/EC of the European Parliament and of the Council of … on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2003 C 54 E, p. 12)].

43 –Joined Cases C-482/01 and C-493/01 *Orfanopoulos and Others* [2004] ECR I-5257, paragraph 49.

44 –Article 18 of the Presidency Conclusions.

45 –Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents (OJ 2004 L 16, p. 44). That directive applies without prejudice to more favourable provisions of bilateral and multilateral agreements between the Community or the Community and its Member States, on the one hand, and third countries, on the other (Article 3(3)). Member States must adopt the measures required in order to comply with that directive by 23 January 2006 at the latest (Article 26).

46 –Recital 2 in the preamble to Directive 2003/109.

47 –Recital 4 in the preamble to Directive 2003/109.

48 –Articles 4 and 5 of Directive 2003/109.

49 –.*Tetik*, cited above (paragraph 29) and *Kadiman*, cited above (paragraph 30). See also Case C-36/96 *Günaydin and Others* [1997] ECR I-5143, paragraph 23, and Case C-98/96 *Ertanir* [1997] ECR I-5179, paragraph 22.

50 –Case C-348/96 *Calfa* [1999] ECR I-11, paragraphs 22 to 24; *Nazli and Others*, cited above (paragraph 58) and *Orfanopoulos and Others* (paragraph 65).

51 –Paragraph 56.

52 –Case 36/75 *Rutili* [1975] ECR 1219, paragraph 27, and *Nazli and Others*, cited above (paragraph 58).

53 –Case 30/77 *Bouchereau* [1977] ECR 1999, paragraph 35.

54 –.*Calfa*, cited above, paragraph 24. That judgment is based on Council Directive 64/221/EEC of 25 February 1964 on the co-ordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health (OJ, English Special Edition 1963-1964, p. 117), Article 3 of which provides that '[m]easures taken on grounds of public policy or of public security shall be based exclusively on the personal conduct of the individual concerned' and that '[p]revious criminal convictions shall not in themselves constitute grounds for the taking of such measures'.

55 –Case 67/74 *Bonsignore* [1975] ECR 297, paragraph 7.

56 –In *Calfa*, cited above, the Court held that the fundamental liberties the Treaty, laid down in Articles 39 EC, 52 EC and 59 EC and Article 3 of Directive 64/221 preclude national legislation which requires a court automatically to order expulsion for life from its territory of nationals of other Member States found guilty of offences under drugs laws. In *Nazli and Others*, the Court concluded in the light of the case-law on expulsion measures taken against Community nationals that Article 14(1) of Decision No 1/80 precludes national legislation according to which aliens are in principle to be expelled when they commit offences under the national law on narcotics, where the competent authorities have no discretion. Very recently, in *Orfanopoulos and Others* the

Court held that those provisions preclude national legislation which, like the German legislation applicable to aliens, requires national authorities to expel nationals of other Member States who have been finally sentenced to a term of youth custody of at least two years or to a custodial sentence for an offence against the law on narcotics, where the sentence has not been suspended.

57 –Case C-100/01 *Olazabal* [2002] ECR I-10981, paragraph 43.

58 –Case C-249/86 *Commission* v *Germany* [1989] ECR 1263, paragraph 10.

59 –Case C-60/00 *Carpenter* [2002] ECR I-6279, paragraph 41. See also Case C-459/99 *MRAX* [2002] ECR I-6591, paragraph 53.

60 –Paragraph 99.

61 –In *Nazli and Others*, cited above, the question referred to the Court was whether a Turkish national who had been in legal employment in a Member State for a continuous period of four years had ceased to belong to the labour force of that State and had lost the rights conferred on him under Article 6(1), third indent, of Decision No 1/80 because he was detained pending trial for more than a year and then sentenced to a term of imprisonment suspended in full.

62 –Ibid. (paragraph 41).

63 –Ibid. (paragraph 42).

64 –Ibid., paragraph 50.

65 –Article 6(1) of Decision No 1/80 provides that, after one year's legal employment, a Turkish worker is entitled to the renewal of his permit to work for the same employer. After three years of legal employment and subject to the priority to be given to workers of Member States of the Community he is entitled to respond to another offer of employment for the same occupation. Finally, after four years of legal employment, he enjoys free access in the host State to any paid employment of his choice.

66 –Paragraph 38.

67 –Paragraph 39.

68 –The judgments concerned are those in *Bouchereau* and *Calfa*, cited above.

69 –The question was referred in Case C-493/01, the background to which was an appeal brought by Mr Oliveri, an Italian national, against the decision taken in August 2000 by the Regierungspräsidium Stuttgart ordering his expulsion following a number of convictions for drug offences. The national court sought to ascertain whether it could take into account the fact that Mr Oliveri was not likely to re-offend after the deportation order was issued since he was suffering from AIDS and was seriously ill.

70 –Ibid., paragraph 3 of the operative part.

71 –.*Organopoulos and Others*, cited above (paragraph 79).

72 –.*Nazli and Others*, cited above (paragraphs 55 and 56).