OPINION OF ADVOCATE GENERAL LÉGER

delivered on 25 April 2002 [1]

1. In the present case the Verwaltungsgericht (Administrative Court) Karlsruhe (Germany) has referred five questions on the interpretation and effects of Articles 6 and 7 of Decision No 1/80 of 19 September 1980 on the development of the Association, [2] adopted by the Association Council established by the Association Agreement between the European Economic Community and Turkey. [3]

2. In essence the Verwaltungsgericht Karlsruhe is asking whether, and to what extent, a Turkish national in the particular situation of the plaintiff in the main proceedings may enjoy the rights conferred on Turkish workers under Article 6 of Decision No 1/80 or on the children of Turkish workers under Article 7 of that decision.

I — Relevant Community provisions

3. Under Article 12 of the Agreement, the Contracting Parties agreed progressively to secure freedom of movement for workers between them and for that purpose to be guided by Articles 48 and 49 of the EC Treaty (now, after amendment, Articles 39 EC and 40 EC) and Article 50 of the EC Treaty (now Article 41 EC).

4. In Article 36 of the Additional Protocol to the Agreement, [4] they provided that freedom of movement for workers between the Member States of the Community and Turkey was to be secured by progressive stages in accordance with the principles set out in Article 12 of the Agreement, between the end of the 12th and the 22nd year following the entry into force of the Agreement, [5] and that the Association Council would decide on the necessary rules.

1 — Original language: French.

2 — Hereinafter 'Decision No 1/80'. Decision No 1/80, which entered into force on 1 July 1980, was not published in the *Official Journal of the European Communities*. It is to be found in *EEC-Turkey Association Agreement and Protocols and other basic texts*, Office for Official Publications of the European Communities, Brussels, 1992.

3 — Agreement 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. 2) (hereinafter 'the Agreement').

4 — Additional Protocol signed at Brussels on 23 November 1970 in order to lay down the conditions, arrangements and timetables for implementing the transitional stage and concluded, approved and confirmed on behalf of the Community by Council Regulation (EEC) No 2760/72 of 19 December 1972 (OJ 1973 C 113, p. 18).

5 — The Agreement entered into force on 1 December 1964, in accordance with Article 32 thereof.

5. Decision No 1/80, adopted pursuant to the Additional Protocol, seeks to improve, in the social field, the treatment accorded to workers and members of their families in relation to the arrangements introduced by Decision No 2/76 of the Association Council of 20 December 1976. [6]

6. Decision No 1/80 confers upon Turkish nationals, in their capacity as workers or as members of the family of a worker, rights of access to employment in the host country which become progressively more extensive and which have as their corollary the right to reside in that country. [7]

7. Article 6(1) of Decision No 1/80 sets out the conditions which a Turkish national must fulfil in order to enjoy such rights in his capacity as a worker. It reads as follows:

'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.'

8. Article 7 of Decision No 1/80, which deals with members of the family of a Turkish worker, provides in its second paragraph that '[c]hildren 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

6 — Hereinafter 'Decision No 2/76'; see the third recital in the preamble to Decision No 1/80.

7 — Section 1 (Questions relating to employment and the free movement of workers) of Chapter II (Social provisions).

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'.

II — Facts and procedure

9. Mr Kurz, the plaintiff in the main proceedings, was born in Germany in 1977 as the illegitimate child of a Turkish migrant worker, Mr Yüce, who was legally employed in that State from 1969 to 1983.

10. From 1978 to 1984 he was placed with German foster parents, Mr and Mrs Kurz. In 1984 he accompanied his father back to the latter's country of origin, Turkey, under a repatriation assistance programme.

11. In 1992 Mr Kurz was permitted to return to Germany in order to pursue vocational training there. That condition was stated on his entry visa and on his temporary residence authorisation. Mr Kurz's residence authorisation was last extended to 15 July 1997.

12. Mr Kurz trained as a plumber, under conditions set out in a contract dated 16 November 1992. The training took place from 1 October 1992 to 5 May 1997. It comprised theoretical instruction, provided at a vocational training establishment, and practical training with the company Herbert Schulz GmbH. Mr Kurz received monthly remuneration from that company of DEM 780 during the first year, and DEM 840, DEM 940 and DEM 1 030 the following years.

13. In February 1997 Mr Kurz passed the practical part of the final apprenticeship examination. He terminated his training on 6 May of that year without having passed the theoretical part of his examination.

14. In July 1997 Mr Kurz applied for a permit allowing him to reside permanently in Germany.

15. In May 1998 he was adopted by Mr and Mrs Kurz, with whom he had resided since 1992. Under the relevant national law, adoption conferred on him the surname of his adoptive parents. It is clear from the order for reference that the adoption also severed his ties with his family of birth. However, according to the Verwaltungsgericht Karlsruhe, adoption does not entitle him either to German nationality or to authorisation to reside in Germany permanently. [8]

8 — See order for reference, pp. 10 and 18 of the English translation.

16. By decision of 18 August 1998, the competent national authorities rejected Mr Kurz's application for a residence permit and ordered him to leave Germany. He was deported in January 1999.

17. His appeal against the decision of 18 August 1998 was dismissed by the Regierungspräsidium Karlsruhe by decision of 16 June 1999 on the following grounds:

— he was not duly registered as belonging to the labour force of a Member State, for the purposes of Article 6(1) of Decision No 1/80, during his vocational training and during that time his position was only temporary because his residence authorisation was limited as regards its duration and purpose;

— nor did he fulfil the conditions laid down in the second paragraph of Article 7 of that decision, for the following three reasons:

— his adoption by German nationals had taken away his status as child of a Turkish worker;

— his natural father had left Germany for good when he began his vocational training;

— he had not completed his training in the host Member State because he did not pass the theoretical part of his examination.

18. Mr Kurz brought an action challenging that decision before the Verwaltungsgericht Karlsruhe.

III — The questions

19. Since the Verwaltungsgericht Karlsruhe considered that an interpretation of the abovementioned provisions of Decision No 1/80 was required in order to decide the case, it referred the following questions for a preliminary ruling:

'(1) Does a Turkish national who, with the approval of the competent authority for aliens, entered the country with a visa "valid only for the purpose of vocational training" issued by the Consulate General and who subsequently held a temporary residence authori-

sation restricted to vocational training activity with a specific employer fulfil the requirements of the first, second or third indent of Article 6(1) of Decision [No 1/80] if, from 1 October 1992 to 5 May 1997, he was in the training relationship in question and received for that a monthly training remuneration?

(2) Does a Turkish national who is the child by birth of former Turkish workers in the host country fulfil the requirements of the second paragraph of Article 7 of Decision [No 1/80] if he was adopted as an adult by German nationals with the effects of adoption of a minor and his kinship with his natural parents has thereby ceased to exist? Is it sufficient in that respect that he was the child of Turkish workers at the time of his parents' legal employment and at the start of his vocational training?

(3) Does a Turkish national fulfil the requirements of the second paragraph of Article 7 of Decision [No 1/80] if, eight years after leaving the host country together with his parents who at that time were leaving definitively, he re-entered the country (without his parents) for the purpose of vocational training?

(4) Does a Turkish national fulfil the requirements of the second paragraph of Article 7 of Decision [No 1/80] if he did not take the last part of the final examination in the host country, but in his country of origin before the host country's examining board which had travelled there?

(5) Is it compatible with Article 6 or the second paragraph of Article 7 of Decision [No 1/80] that, in a case where deportation has taken place, residence authorisation must be refused, by virtue of the prohibitive effect of Paragraph 8(2) of the Ausländergesetz, until a time-limit has, upon application, been placed on the effects of the deportation?'

IV — Preliminary observations

20. It is clear from the grounds of the order for reference that the national court considers that the decision refusing to issue Mr Kurz a residence permit is in accordance with German law. However, it wonders whether an outcome more favourable to Mr Kurz might not be found under Articles 6 and 7 of Decision No 1/80.

21. It should be remembered that the Court has consistently held that both Article 6(1) and the second paragraph of Article 7 of Decision No 1/80 have direct effect in the Member States of the Community, [9] so that nationals fulfilling the conditions laid down in those provisions may rely directly on the rights which they confer.

22. I shall consider first of all whether Mr Kurz fulfils the conditions laid down in Article 6(1) of Decision No 1/80 so that he may be regarded as a Turkish worker for the purposes of that provision.

V — Interpretation of Article 6(1) of Decision No 1/80

23. In its first question the national court is asking in essence whether Article 6(1) of Decision No 1/80 must be interpreted as meaning that a Turkish national who has been permitted to enter the territory of a Member State and then to reside there in order to pursue vocational training and who, in the course of that training, has provided, over more than four years with the same employer, services for which he has received remuneration, meets the conditions laid down in Article 6(1) of Decision No 1/80.

24. The answer to that question involves consideration as to whether the three conditions laid down in Article 6(1) of Decision No 1/80 are fulfilled, that is to say, whether the plaintiff in the main proceedings can be regarded as a worker, whether he is duly registered as belonging to the labour force and whether he has been in legal employment.

A — *The status of worker*

25. The question which arises in this case is whether an apprentice such as Mr Kurz can be regarded as a worker.

26. The Court has consistently inferred from the wording of Article 12 of the Agreement and Article 36 of the Additional Protocol as well as from the objective of Decision No 1/80 that the principles enshrined in Articles 48, 49 and 50 of the Treaty must be extended, so far as possible,

9 — See, as regards Article 6(1) of Decision No 1/80, Case C-192/89 *Sevince* [1990] ECR I-3461, paragraph 26, and, as regards the second paragraph of Article 7 of that decision, Case C-355/93 *Eroglu* [1994] ECR I-5113, paragraph 17.

to Turkish nationals who enjoy the rights conferred by Decision No 1/80. [10]

27. In Case C-1/97 *Birden*, [11] the Court analysed for the first time in a distinct and autonomous way the concept of worker used in Article 6(1) of Decision No 1/80. It held that, in order to determine its scope, reference should be made to the interpretation of the concept of worker within the meaning of Article 48 of the Treaty. [12]

28. That concept has been considered in many cases.

29. Faced with the diversity of national law on this matter, the Court has consistently held since 1964 [13] that, since freedom of movement for workers is one of the fundamental principles of the Community, the concept of worker, within the meaning of Article 48 of the Treaty, has a specific Community meaning and must not be interpreted restrictively. It must be defined in accordance with objective criteria which distinguish the employment relationship by reference to the rights and duties of the persons concerned. [14]

30. The Court has clarified that definition in cases relating to activities which, as in the present case, were pursued in the context of vocational training. They are, in particular, Case 66/85 *Lawrie-Blum*, [15] Case 197/86 *Brown* [16] and Case C-27/91 *Le Manoir*. [17] The Court was asked in those cases to determine whether nationals of a Member State who have been gainfully employed in another State of the Community as part of vocational training are to be regarded as workers within the meaning of Article 48 of the Treaty. [18]

31. The Court has consistently held that the essential feature of an employment relationship is that for a certain period of time a person performs services for and

10 — Case C-434/93 *Bozkurt* [1995] ECR I-1475, paragraph 20; Case C-171/95 *Tetik* [1997] ECR I-329, paragraphs 20 and 28; Case C-36/96 *Günaydin* [1997] ECR I-5143, paragraph 21; and Case C-98/96 *Ertanir* [1997] ECR I-5179, paragraph 21.

11 — [1998] ECR I-7747.

12 — Ibid., paragraph 24.

13 — Case 75/63 *Hoekstra* [1964] ECR 177, 184 and 185.

14 — See, for a recent application, Case C-176/96 *Lehtonen and Castors Braine* [2000] ECR I-2681, paragraph 45.

15 — [1986] ECR 2121.

16 — [1988] ECR 3205.

17 — [1991] ECR I-5531.

18 — *Lawrie-Blum* concerned a trainee teacher who had completed, under the direction and supervision of the public education authorities, a paid training period in preparation for a career in education, during which she gave lessons for up to 11 hours a week. *Brown* concerned a student who had for approximately eight months been in paid employment with a company, described as 'pre-university industrial training'. *Le Manoir* concerned a student at a technical college who had completed a paid six-month practical training period in hotel management.

under the direction of another person in return for which he receives remuneration. [19]

32. It has invariably dismissed objections based on the low productivity of the trainee or the small number of hours worked by him, the legal nature of the contract entered into with the employer or the origin of the funds from which his remuneration is paid. It has stated repeatedly that any person who pursues an activity which is effective and genuine, to the exclusion of activities on such a small scale as to be regarded as purely marginal and ancillary, meets the definition of a 'worker'. [20]

33. In Case C-3/90 *Bernini* [21] the Court added that since a training period completed in the context of vocational training is intended above all to develop vocational aptitude, the national court is entitled, when assessing whether the services in question are genuine and effective, to examine whether in all the circumstances the person concerned has completed a sufficient number of hours in order to familiarise himself with the work.

34. Any person, therefore, who in the course of training, whatever its legal context, pursues an activity which is effective and genuine for and under the direction of an employer and receives remuneration which can be perceived as the consideration for such work must be regarded as a worker within the meaning of Article 48 of the Treaty.

35. In the light of the principles set out above, it should be considered whether Mr Kurz can be regarded as a worker.

36. It is clear from the findings of fact made by the national court and also from the file that from 1 October 1992 to 5 May 1997 Mr Kurz was pursuing an effective and genuine activity for and under the direction of another person. It is also common ground that Mr Kurz received by way of consideration for that work monthly remuneration which increased from DEM 780 in the first year to DEM 1 030 in the fourth year. [22]

37. In accordance with the view expressed by the Court in *Birden*, cited above, Mr Kurz must therefore be described as a worker within the meaning of Article 6(1) of Decision No 1/80.

19 — *Lawrie-Blum*, paragraphs 16 and 17, *Brown*, paragraph 21, and *Le Manoir*, paragraph 7.

20 — *Lawrie-Blum*, paragraphs 18 to 21, *Brown*, paragraph 22, and *Le Manoir*, paragraph 8. See also Case 344/87 *Bettray* [1989] ECR 1621, paragraph 16, and Case C-357/89 *Raulin* [1992] ECR I-1027, paragraph 10.

21 — [1992] ECR I-1071, paragraph 16.

22 — See point 12 of this Opinion.

38. I will now consider the extent to which Mr Kurz may be regarded as being duly registered as belonging to the labour force of the host Member State.

B — *The concept of being duly registered as belonging to the labour force of a Member State*

39. In order to be duly registered as belonging to the labour force of a Member State two conditions must be met. According to settled case-law,[23] that concept requires, first of all, that the legal relationship of employment of the person concerned be located within the territory of a Member State or retain a sufficiently close link with that territory.

40. This condition is clearly met in the present case. Mr Kurz was recruited and carried out his apprenticeship in Germany and he was subject to the relevant national provisions of employment and social security law.[24]

41. In addition, the person concerned must be 'duly registered as belonging to the labour force' of the host Member State.

42. As the Court held in *Birden*, that concept applies to 'all workers who have complied with the requirements laid down by law and regulation in the Member State concerned and are thus entitled to pursue an occupation in its territory'.[25]

43. Unlike the Commission of the European Communities, I think that that interpretation of the concept of being duly registered as belonging to the labour force of a Member State does not relate solely to the circumstances in *Birden*,[26] and is not intended solely to preclude jobs sponsored by public funds from being excluded from the scope of the concept.

44. First, the very narrow reading of *Birden* adopted by the Commission is inconsistent with the grounds of that judgment.

23 — *Bozkurt*, cited above, paragraphs 22 and 23, *Günaydin*, cited above, paragraph 29, and *Ertanir*, cited above, paragraph 39.

24 — As Land Baden-Württemberg also states in its observations (p. 2).

25 — Paragraph 51.

26 — In that case, the Court had to decide whether a Turkish worker employed under a special support scheme of public utility work, subsidised from public funds and intended to enable him to be covered by social security and improve his chances of finding other employment, is duly registered as belonging to the labour force of the Member State.

45. The Court justified its interpretation by an analysis of the various language versions. [27] It also stated that its interpretation is confirmed by the objective of Decision No 1/80 which, according to the third recital in its preamble, seeks to improve, in the social field, the treatment accorded to workers and members of their families in relation to the arrangements introduced by Decision No 2/76. It observed that the provisions of Section 1 of Chapter II of Decision No 1/80, of which Article 6 forms part, thus constitute a further stage in securing freedom of movement for workers on the basis of Articles 48, 49 and 50 of the Treaty. [28]

46. It explained that in view of that objective and the fact that Decision No 2/76 refers only to legal employment, the concept of being duly registered as belonging to the labour force of a Member State, used in Decision No 1/80 together with that of legal employment, cannot be interpreted as further restricting the rights derived by workers from Article 6(1) of Decision No 1/80 on the ground that it sets out an additional condition, different from the condition that the person concerned be in legal employment for a certain period. On the contrary, that newly-introduced concept merely clarifies the requirement of the same nature already used in Decision No 2/76. [29]

47. Second, the interpretation given in *Birden* was expressly confirmed in Case C-340/97 *Nazli*, [30] which related to a very different legal and factual context. [31]

48. Lastly, that interpretation was consistent with the view expressed by Advocate

27 — *Birden*, paragraphs 47 to 50.

28 — Ibid., paragraph 52, and the case-law cited.

29 — Ibid., paragraph 53. The criterion of legality defined by the Court in that judgment corresponds, moreover, to that contained in a large number of association agreements between the European Communities and their Member States, of the one part, and non-member countries, of the other part, under which rights conferred in respect of the movement of workers are subject to the condition that they should be 'legally employed' in the territory of a Member State. See, for example, the agreements entered into with the Republic of Hungary (OJ 1993 L 347, p. 2, Articles 37 and 38); the Republic of Poland (OJ 1993 L 348, p. 2, Article 37); Romania (OJ 1994 L 357, p. 2, Articles 38 and 39); the Republic of Bulgaria (OJ 1994 L 358, p. 3, Articles 38 and 39); the Slovak Republic (OJ 1994 L 359, p. 2, Articles 38 and 39); the Czech Republic (OJ 1994 L 360, p. 2, Articles 38 and 39); the Republic of Latvia (OJ 1998 L 26, p. 3, Articles 37 and 38); the Republic of Lithuania (OJ 1998 L 51, p. 3, Articles 37 and 38); the Republic of Estonia (OJ 1998 L 68, p. 3, Articles 36 and 37); the Republic of Tunisia (OJ 1998 L 97, p. 2, Articles 64 and 66); the Republic of Slovenia (OJ 1999 L 51, p. 3, Articles 38 and 39); the Kingdom of Morocco (OJ 2000 L 70, p. 2, Articles 64 and 66); and the State of Israel (OJ 2000 L 147, p. 3, Article 64).

30 — [2000] ECR I-957. The Court held in paragraph 31 of the judgment 'that, as is apparent from the case-law, the concept of being "duly registered as belonging to the labour force" referred to in Article 6(1) of Decision No 1/80 must be regarded as applying to all workers who have complied with the conditions laid down by law and regulation in the host Member State and are thus entitled to pursue an occupation in its territory (*Birden*, cited above, paragraph 51)'.

31 — That case concerned whether a Turkish national who, after being in legal employment in a Member State for over four years, was detained pending trial and ultimately sentenced to a suspended term of imprisonment, continued to be duly registered as belonging to the labour force during his detention.

General Fennelly in his Opinion in *Birden*, [32] which was not based solely on the circumstances of that case, and had already been put forward by Advocate General Darmon in *Eroglu*, cited above. [33]

49. According to the interpretation given by the Court in *Birden* and *Nazli*, an apprentice such as Mr Kurz, who has complied with the law of the host Member State regarding entry into and residence in its territory and its employment law, must be regarded as being duly registered as belonging to the labour force of that State.

50. The Commission, the German Government and Land Baden-Württemberg challenge that analysis on the grounds that a contract of employment such as the one entered into by Mr Kurz is special in nature in that its main object is the training of that person. They submit that under that type of contract the person concerned does not pursue a genuine and effective economic activity and his remuneration does not constitute consideration for his services but a training allowance. They infer from this that an apprentice is not duly registered as belonging to the labour force and rely on *Günaydin* in support of their view.

51. In that case the Court was called upon to decide whether a Turkish national who had been authorised to pursue paid employment temporarily for the purpose of becoming acquainted with and preparing for work with a subsidiary company of his employer in Turkey was duly registered as belonging to the labour force of a Member State.

52. The Court ruled that Article 6(1) of Decision No 1/80 is to be interpreted as meaning that a Turkish national who has been lawfully employed in a Member State for an uninterrupted period of more than three years in a genuine and effective activity for the same employer and whose employment status is not objectively different to that of other employees employed by the same employer or in the sector concerned and exercising identical or comparable duties, is duly registered as belonging to the labour force and is legally employed within the meaning of that provision. [34]

32 — The Advocate General stated, in particular, that '[i]n the light of the scheme of the Decision and of the case-law, the essential element of the criterion of being "duly registered as belonging to the [regular or legal] labour force" is, in my view, that the worker in question be employed or available for employment, and that he have completed the applicable formalities required by national law' (point 29).

33 — The Advocate General stated that '[t]o be duly registered as belonging to the labour force, it is therefore necessary, first, to have an undisputed right of residence' and '[w]hat matters, therefore, is that the worker's position should be "in order" as regards the laws of the host Member State' (points 38 and 41).

34 — The first sentence of paragraph 1 of the operative part. In his Opinion in that case, Advocate General Elmer suggested that a distinction should be drawn between work and training. He considered that the concept of being duly registered as belonging to the labour force of a Member State covers work which includes elements of training but not work performed in the context of a training course in the strict sense. He mentioned as an example of the latter type of situation a period of work experience in the course of formal training 'which also, and perhaps primarily, includes educational (theoretical) components outside the workplace of the person concerned' (point 22). He considered that the case in question did not lend itself to a more thorough examination by the Court of the treatment which should be reserved for certain other intermediate forms, for example apprentice training. He concluded, however, that 'the answer to the first question must therefore be that Article 6(1) of Decision No 1/80 is to be interpreted as meaning that a Turkish national who is in paid employment under normal conditions and in receipt of normal pay with an employer in a Member State and who is not subject to any special rule of employment as an apprentice or under a similar scheme must be regarded as being employed as a duly registered member of the labour force of the Member State concerned ...' (point 32).

53. In *Günaydin* the Court made being duly registered as belonging to the labour force subject to two conditions. First, it ascertained whether the legal relationship of employment of the person concerned could be located within the territory of a Member State or retained a link with that territory. [35] It stated, second, that that employment relationship must have certain features corresponding to those of the concept of worker under Community law, but in a more restrictive sense. It considered that it should be 'ascertained whether the worker is bound by an employment relationship covering a genuine and effective economic activity pursued for the benefit and under the direction of another person for remuneration'. [36] It added that that condition was not met by a Turkish national who had been permitted to enter and reside in a Member State only in order to follow 'specific vocational training, in particular in the context of a contract of apprenticeship'. [37]

54. It considered that a national employed on the basis of national legislation derogating from the generally applicable law and intended specifically to integrate him into the labour force was not yet duly registered as belonging to the labour force and that he could not begin to acquire rights under Article 6(1) of Decision No 1/80 until his training was completed. [38]

55. I consider that that narrow interpretation of the concept of being duly registered as belonging to the labour force of a Member State cannot be accepted in the present case for two reasons.

56. First, it was clearly rejected in *Birden* and *Nazli*.

57. Second, inasmuch as that interpretation means that an apprentice like Mr Kurz cannot be duly registered as belonging to the labour force of a Member State, it is, in my view, contrary to the objective and scheme of Decision No 1/80.

58. That decision is intended to enable Turkish nationals to have access to the labour market of the host Member State. [39] Vocational training for learning a trade is also designed to enable the person concerned to become integrated into the labour force. It would therefore be paradoxical, in my view, to deny such access to a Turkish worker who has pursued a genuine and effective economic activity in the service of the same employer for over four years on the grounds that that activity was pursued in the course of training intended, precisely, to integrate him into the labour force.

35 — See point 39 of the present Opinion.
36 — *Günaydin*, paragraph 31.
37 — Ibid., paragraph 32.
38 — Ibid., paragraphs 33 and 34.
39 — See the Opinion of Advocate General Darmon in *Eroglu*, point 29.

59. The argument put forward by the Commission that training contracts such as that of the plaintiff in the main proceedings come under development policy does not affect that analysis. While the Agreement states in its preamble that the parties are resolved to ensure a continuous improvement in living conditions in Turkey, such a development policy can be implemented only in accordance with the other objectives and provisions of the Agreement, in particular Article 12, under which the parties agreed to secure progressively freedom of movement for workers between them.

60. It is also clear from the scheme of Article 6(1) of Decision No 1/80 that access by Turkish nationals to the labour market of the host Member State is granted and extended gradually on the basis of two criteria, work and time. The authors of that decision thus considered that legal employment in the service of the same employer enables a Turkish national to be sufficiently integrated to be entitled, after one year, to the renewal of his permit to work for the same employer, if a job is available, and, after three years, to access to any job in the same occupation, subject to the priority to be given to workers of Member States. After four years of legal employment a Turkish worker may engage in any paid employment of his choice in the host Member State.

61. I infer from this that, so far as the authors of Decision No 1/80 are concerned, legal employment is in itself a particularly important factor for integrating Turkish workers within Member States. In addition, continuity of the employment relationship with the same employer is regarded as a factor which both strengthens a worker's integration and shows his capacity to integrate.

62. In the light of those considerations, I think that there is no justification for distinguishing between work carried out in the course of an apprenticeship and that carried out as a trainee or worker. An apprentice who, as in the present case, has pursued a genuine and effective activity in the service of the same employer for an uninterrupted period of four years in consideration for which he has received remuneration is, to my mind, just as integrated as a worker who has worked for the same employer for an equivalent period.

63. It remains to be determined whether Mr Kurz was in legal employment within the meaning of Article 6(1) of Decision No 1/80.

C — *Legal employment*

64. Contrary to the Commission's submissions, and as Advocate General Fennelly

has stated,[40] I consider that even though this final condition may in some cases overlap with the concept just considered, it none the less has a separate meaning.[41]

65. The Court has consistently held that in order for employment to be regarded as legal so that it may be taken into account and confer the progressive rights referred to in Article 6(1) of Decision No 1/80, a Turkish national must be in a stable and secure situation.[42]

66. In the present case Mr Kurz's right to reside in the host Member State cannot be regarded as insecure within the meaning of the case-law referred to in the point above. His situation could not be called into question at any moment. He was given permission to enter Germany and reside there in order to pursue training and to that end he obtained a visa valid from 21 September to 20 December 1992, followed by a temporary residence authorisation valid from 3 March 1993, which was extended until 15 July 1997.

67. It cannot be argued in this connection that the residence authorisation which the worker concerned had obtained in the host Member State was only temporary and limited to a specific purpose, that of pursuing training.

68. As regards the temporary nature of the residence authorisation of the person concerned, it is clear from case-law that rights conferred on Turkish workers by Article 6(1) of Decision No 1/80 are accorded irrespective of whether or not the authorities of the host Member State have issued a specific administrative document, such as a work permit or residence permit.[43] The Court has held that if the fact that a Member State makes the rights of a Turkish national as regards residence or work subject to certain conditions were sufficient to raise doubts as to whether the employment of the person concerned is in fact legal, Member States would be able

40 — See point 24 of his Opinion in *Birden*.

41 — In Case C-285/95 *Kol* [1997] ECR I-3069, at paragraph 27, the Court held that periods in which a Turkish national has been employed under a residence permit obtained only by means of fraudulent conduct which has led to a conviction are not based on a stable situation and such employment cannot be regarded as having been secure in view of the fact that, during the periods in question, the person concerned was not legally entitled to a residence permit. In that case I think that the person concerned cannot claim to be duly registered as belonging to the labour force of a Member State either.

42 — In *Sevince*, cited above, at paragraph 31, the Court held that a Turkish worker is not in a stable and secure situation on the labour market of a Member State during a period in which he benefits from the suspensory effect deriving from an appeal against a decision refusing him a right of residence and is authorised, on a provisional basis pending the outcome of the dispute, to reside and be employed in the Member State in question. Similarly, in Case C-237/91 *Kus* [1992] ECR I-6781, at paragraph 13, the Court held that this stability condition is not fulfilled by a worker who was granted a right of residence only by the operation of national legislation permitting residence in the host country pending the completion of the procedure for the grant of a residence permit, on the ground that the person concerned obtained the right to remain and work in that country only on a provisional basis pending a final decision on his right of residence.

43 — *Günaydin*, paragraph 49, and *Birden*, paragraph 65 and the case-law cited.

wrongly to deprive Turkish migrant workers whom they permitted to enter their territory and who have lawfully pursued an economic activity there for an uninterrupted period of more than three years of the rights on which they are entitled to rely directly under Article 6(1) of Decision No 1/80. [44]

69. As to the fact that the plaintiff's residence was permitted only in order for him to pursue training, according to settled case-law Article 6(1) of Decision No 1/80 does not make the recognition of the rights it confers on Turkish workers subject to any condition connected with the reasons for which the right to enter, work or reside was initially granted. [45]

70. A Turkish worker such as Mr Kurz must consequently be regarded as having been in legal employment in the host Member State for the purposes of Article 6(1) of Decision No 1/80.

71. For all those reasons, I propose that the Court's answer to the first question should be that Article 6(1) of Decision No 1/80 must be interpreted as meaning that a Turkish national who entered the territory of a Member State with a visa 'valid only for the purpose of vocational training' and has subsequently held a temporary residence authorisation restricted to vocational training activity with a specific employer, in which context he has, for an uninterrupted period of more than four years, lawfully pursued a genuine and effective activity for that employer and received remuneration in return, is a worker duly registered as belonging to the labour force of that Member State who has been in legal employment there within the meaning of the said provision.

VI — The questions relating to the second paragraph of Article 7 of Decision No 1/80

72. The second paragraph of Article 7 of Decision No 1/80 could not confer on Mr Kurz any more rights than the third indent of Article 6(1) of that decision. In view of the answer that I have suggested in point 71 of this Opinion, the questions relating to the second paragraph of Article 7 of Decision No 1/80 are redundant as regards the main proceedings. I consider that there is therefore no need to answer them.

44 — *Günaydin*, paragraph 50, and *Birden*, paragraph 64.

45 — *Kus*, cited above, paragraphs 22 and 23, *Günaydin*, paragraphs 52 and 53, and *Birden*, paragraphs 43 and 65.

VII — Fifth question

73. In its order for reference, the Verwaltungsgericht Karlsruhe states that if Mr Kurz is the holder of a right under Article 6(1) of Decision No 1/80, Paragraph 8(2) of the Ausländergesetz (Law on Aliens) precludes the issue of a residence permit to him until a time-limit has been placed on his deportation. Paragraph 8(2) of the Ausländergesetz provides:

'An alien who has been expelled or deported may not re-enter Germany and reside there. He shall not be issued with a residence authorisation even where the conditions of entitlement under this Law are met. A time-limit shall as a rule, upon application, be placed on the effects referred to in the first and second sentences. The time-limit shall run from the time of leaving the country.'

74. By its last question, the national court is asking the Court to consider whether Article 6(1) of Decision No 1/80 precludes the application of national legislation such as Article 8(2) of the Ausländergesetz.

75. I consider, without any hesitation, that in the present circumstances that question should be answered in the affirmative.

76. Decision No 1/80 admittedly does not encroach upon the competence of the Member States to regulate the entry of Turkish nationals into their territories.

77. However, the Court has also ruled on several occasions that although Decision No 1/80 makes provision in respect of Turkish nationals only as regards employment, and not as regards a right of residence, those two aspects of the personal situation of such nationals are closely linked. The Court infers from this that, by granting Turkish nationals some right to join the labour market and to work as an employed person, the provisions concerned necessarily imply the existence of a right of residence, since otherwise the right which they establish would be deprived of all effect. [46]

78. The Court concludes from this that Member States are not authorised to adopt

46 — *Günaydin*, paragraph 26, and *Birden*, paragraph 20.

unilaterally measures in respect of the right of residence of Turkish nationals which are liable to prevent them from enjoying rights acquired under Community rules. [47]

79. It seems to me that that case-law must be applied in the present case. To concede that Member States may make the grant of a residence authorisation to a Turkish national subject to conditions or restrictions where he has been deported in breach of the rights conferred on him by Article 6(1) of Decision No 1/80 clearly amounts to depriving the right to join the labour market and to work as an employed person, provided for in that article, of all effect.

80. Furthermore, while Article 14 of Decision No 1/80 states that the provisions relating to employment and the free movement of workers are to be applied subject to limitations justified on grounds of public policy, public security or public health, the Court held in *Nazli*, at paragraph 61, that a Turkish national can be denied the rights which he derives directly from Decision No 1/80 only if that measure is justified because his personal conduct indicates a specific risk of new and serious prejudice to the requirements of public policy. However, that does not correspond in the slightest to the situation in the present case.

81. It is also clear from the case-law that every court of a Member State must apply Community law in its entirety and protect the rights which Community law confers on individuals, setting aside any provision of national law which may conflict with it. [48]

82. I therefore suggest that the answer to the fifth question should be that where a Turkish national has been deported in breach of the rights which Article 6(1) of Decision No 1/80 conferred on him, that provision precludes the application of national legislation providing that issue of a residence authorisation must be refused until a time-limit has, upon application, been placed on the effects of the deportation.

47 — *Günaydin*, paragraph 37, and *Birden*, paragraph 37. See also *Nazli*, paragraph 30, and Case C-65/98 *Eyüp* [2000] ECR I-4747, paragraph 41.

48 — See, by analogy, Case 106/77 *Simmenthal* [1978] ECR 629, paragraph 21.

Conclusion

On the foregoing grounds I propose that the Court give the following reply to the questions from the Verwaltungsgericht Karlsruhe:

(1) Article 6(1) of Decision No 1/80 of 19 September 1980 on the development of the Association, adopted by the Association Council established by the Association Agreement between the European Economic Community and Turkey, must be interpreted as meaning that a Turkish national who entered the territory of a Member State with a visa 'valid only for the purpose of vocational training' and has subsequently held a temporary residence authorisation restricted to vocational training activity with a specific employer, in which context he has, for an uninterrupted period of more than four years, lawfully pursued a genuine and effective activity for that employer and received remuneration in return, is a worker duly registered as belonging to the labour force of that Member State who has been in legal employment there within the meaning of the said provision.

(2) Where a Turkish national has been deported in breach of the rights which Article 6(1) of Decision No 1/80 conferred on him, that provision precludes the application of national legislation providing that issue of a residence authorisation must be refused until a time-limit has, upon application, been placed on the effects of the deportation.