

JUDGMENT OF THE COURT  
20 September 1990

In Case C-192/89,

REFERENCE to the Court under [Article 267 TFEU] by the Raad van State, Netherlands, for a preliminary ruling in the proceedings pending before that court between

**S. Z. Sevince**

and

**Staatssecretaris van Justitie,**

on the interpretation of certain provisions of Decisions Nos 2/76 and 1/80 of the Council of Association established by the Association Agreement between the [European Union] and Turkey,

THE COURT

composed of: O. Due, President, Sir Gordon Slynn, C. N. Kakouris, F. A. Schockweiler and M. Zuleeg (Presidents of Chambers), G. F. Mancini, T. F. O'Higgins, J. C. Moitinho de Almeida, G. C. Rodriguez Iglesias, F. Grevisse and M. Diez de Velasco, Judges,

Advocate General : M. Darmon

Registrar: J. A. Pompe, Deputy Registrar,

after considering the observations submitted on behalf of

S. Z. Sevince, by A. W. M. Willems, of the Amsterdam Bar,

the German Government, by E. Roder, Regierungsdirektor im Bundesministerium für Wirtschaft, acting as Agent,

the Netherlands Government, by B. R. Bot, Secretary-General in the Ministry of Foreign Affairs, acting as Agent,

the Commission of the European [Union], by P. J. Kuijper, a member of its Legal Department, acting as Agent,

having regard to the Report for the Hearing,

after hearing oral argument presented on behalf of S. Z. Sevince, the German Government, the Netherlands Government, represented by J. W. De Zwaan, acting as Agent, and the Commission of the European [Union], at the sitting on 22 March 1990,

after hearing the Opinion of the Advocate General delivered at the sitting on 15 May 1990,

gives the following,

## Judgment

- 1 By decision of 1 June 1989, which was received at the Court on 8 June 1989, the Raad van State (Netherlands court of last instance in administrative matters) referred to the Court for a preliminary ruling under [Article 267 TFEU] three questions on the interpretation of certain provisions of Decisions Nos 2/76 of 20 December 1976 and 1180 of 19 September 1980 of the Council of Association established by the Agreement establishing an Association between the [European Union] and Turkey, signed in Ankara on 12 September 1963, concluded on behalf of the [Union] by Council Decision 64/732/EEC of 23 December 1963 (English version published in Official Journal 1973 C 113, p. 1, hereinafter referred to as 'the Agreement').
- 2 The questions were raised in proceedings brought by Mr S. Z. Sevince, a Turkish national, against the Staatssecretaris van Justitie (State Secretary of Justice) concerning the latter's refusal to grant him a permit allowing him to reside in the Netherlands.
- 3 It is apparent from the documents before the Court that on 11 September 1980 Mr Sevince was refused an extension to the residence permit which had been granted to him on 22 February 1979 on the ground that the family circumstances which had justified the grant of the

permit no longer existed. The appeal lodged against that decision, which had full suspensive effect, was definitively dismissed by the Raad van State on 12 June 1986. During the period in which he benefited from the suspensory effect of the appeal, Mr Sevince obtained an employment certificate which remained valid until the abovementioned judgment of the Raad van State was delivered on 12 June 1986.

4 Claiming that he had been in paid employment for a number of years in the Netherlands, on 13 April 1987 Mr Sevince applied for a residence permit. In support of his application, he relied on Article 2(1)(b) of Decision No 2/76, according to which a Turkish worker who has been in legal employment for five years in a Member State of the [Union] is to enjoy free access in that Member State to any paid employment of his choice, and on the third indent of Article 6(1) of Decision No 1180, according to which a Turkish worker duly registered as belonging to the labour force of a Member State is to enjoy free access in that Member State to any paid employment of his choice after four years' legal employment. His application was rejected, by implication, by the Netherlands authorities.

5 An appeal against that decision was brought before the Raad van State, which decided to stay the proceedings until the Court of Justice had given a ruling on the following questions:

'(1) Is [Article 267 TFEU] to be interpreted as meaning that a court or tribunal of a Member State may (and, in this case, must) refer to the Court of Justice for a preliminary ruling a question concerning the interpretation of the decisions of the Council of Association at issue in this case, that is to say, Decision No 2/76 and /or Decision No 1/80, if such a question is raised before it and it considers that a decision on the question is necessary to enable it to give judgment ?

(2) If Question 1 is answered in the affirmative:

Are the following to be regarded as provisions applicable in the countries of the European [Union] to legal disputes: Article 2(1)(b) of Decision No 2/76 and/or Article 6(1) of Decision No 1/80, and Article 7 of Decision No 2/76 and/or Article 13 of Decision No 1/80?

(3) If Question 2 is answered in the affirmative:

What is to be understood by the term "legal employment" in Article 2(1)(b) of Decision No 2/76 and/or Article 6(1) of Decision No 1/80 (in the light of Article 7 of Decision No 2/76 and/or Article 13 of Decision No 1180)? Is it to be understood as referring to employment while the person concerned was in possession of a residence permit in compliance with the laws relating to aliens -with the subsidiary question whether, more broadly, it includes employment which that person could have had while he was waiting for the decision concerning his residence permit to become final and irreversible -or solely to employment which may be regarded as lawful employment within the terms of the legislation governing the employment of aliens?'

- Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the course of the procedure and the submissions and arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

### **The first question**

- The national court's first question is essentially whether an interpretation of Decisions Nos 2/76 and 1/80 may be given under [Article 267 TFEU].
- By way of a preliminary observation, it should be borne in mind that, as the Court has consistently held, the provisions of an agreement concluded by the Council under [Articles 218(1) to (9), (11), 216(2) and 217 TFEU] form an integral part of the [Union] legal system as from the entry into force of that agreement (see judgments in Case 12/86 *Demirel* [1987] ECR 3719, paragraph 7 and in Case 30/88 *Greece v Commission* [1989] ECR 3711, paragraph 12).
- The Court has also held that, since they are directly connected with the Agreement to which they give effect, the decisions of the Council of Association, in the same way as the Agreement itself, form an integral part, as from their entry into force, of the [Union] legal system (see judgment in Case 30/88 *Greece v Commission*, *supra*, paragraph 13).
- Since the Court has jurisdiction to give preliminary rulings on the Agreement, in so far as

it is an act adopted by one of the institutions of the [Union] (see judgment in Case 181/73 *Haegeman* [1974] ECR 449), it also has jurisdiction to give rulings on the interpretation of the decisions adopted by the authority established by the Agreement and entrusted with responsibility for its implementation.

- 11 That finding is reinforced by the fact that the function of [Article 267 TFEU] is to ensure the uniform application throughout the [Union] of all provisions forming part of the [Union] legal system and to ensure that the interpretation thereof does not vary according to the interpretation accorded to them by the various Member States (see judgments in Case 104/81 *Kupferberg* (1982] ECR 3641 and in Joined Cases 267 to 269/81 *SPI and SAM* / [1983] ECR 801).
- 12 It must therefore be stated in reply to the first question submitted by the Raad van State that the interpretation of Decisions Nos 2/76 and 1/80 falls within the scope of [Article 267 TFEU].

### **The second question**

- 13 The second question submitted by the Raad van State is whether Articles 2(1)(b) and 7 of Decision No 2/76 and Articles 6(1) and 13 of Decision No 1/80 have direct effect in the territory of the Member States.
- 14 In order to be recognized as having direct effect, the provisions of a decision of the Council of Association must satisfy the same conditions as those applicable to the provisions of the Agreement itself.
- 15 In *Demirel, supra*, the Court held that a provision in an agreement concluded by the [Union] with non-member countries must be regarded as being directly applicable when, regard being had to its wording and the purpose and nature of the agreement itself, the provision contains a clear and precise obligation which is not subject, in its implementation or effects, to the adoption of any subsequent measure (paragraph 14). The same criteria apply in determining whether the provisions of a decision of the Council of Association can have direct effect.

- 16 In order to determine whether the relevant provisions of Decisions Nos 2/76 and 1/80 satisfy those criteria, it is first necessary to examine their terms.
- 17 Article 2(1)(b) of Decision No 2/76 and the third indent of Article 6(1) of Decision No 1/80 uphold, in clear, precise and unconditional terms, the right of a Turkish worker, after a number of years' legal employment in a Member State, to enjoy free access to any paid employment of his choice.
- 18 Similarly, Article 7 of Decision No 2/76 and Article 13 of Decision No 1/80 contain an unequivocal 'standstill' clause regarding the introduction of new restrictions on access to the employment of workers legally resident and employed in the territory of the contracting States.
- 19 The finding that the provisions of the decisions of the Council of Association at issue in the main proceedings are capable of direct application to the situation of Turkish workers duly registered as belonging to the labour force of a Member State is confirmed by the purpose and nature of the decisions of which those provisions form part and of the Agreement to which they relate.
- 20 According to Article 2(1) of the Agreement, its purpose is to promote the continuous and balanced strengthening of trade and economic relations between the parties, and it establishes between the European [Union] and Turkey an association which provides for a preparatory stage to enable Turkey to strengthen its economy with aid from the [Union], a transitional stage for the progressive establishment of a customs union and for the alignment of economic policies, and a final stage based on the customs union and entailing close coordination of economic policies (see judgment in Case 12/86 *Demirel*, *supra*, paragraph 15). As far as freedom of movement for workers is concerned, Article 12 of the Agreement, forming part of Title II concerning implementation of the transitional stage, provides that the contracting parties agree to be guided by [Articles 45, 46 and 47 TFEU] for the purpose of progressively securing freedom of movement for workers between them. Article 36 of the Additional Protocol signed on 23 November 1970, annexed to the Agreement establishing an association between the [European Union] and Turkey, concluded by Regulation (EEC) No 2760/72 of the Council of 19 December 1972

(Official Journal 1973 C 113, p. 17, hereinafter referred to as the 'Additional Protocol') lays down the time-limits for the progressive attainment of such freedom of movement and provides that the Council of Association is to decide on the rules necessary to that end.

- 21 Decisions Nos 2/76 and 1/ 80 were adopted by the Council of Association in order to implement Article 12 of the Agreement and Article 36 of the Additional Protocol which, in its judgment in *Demirel, supra*, the Court recognized as being intended essentially to set out a programme. Thus, in the preamble to Decision No 2/76 reference is expressly made to Article 12 of the Agreement and Article 36 of the Additional Protocol and Article 1 of the decision lays down the detailed arrangements for the first stage of implementation of Article 36 of the Additional Protocol. The third recital in the preamble to Decision No 1/80 refers to improving, in the social sphere, the conditions available to workers and members of their families in relation to the arrangements introduced by Decision No 2/76. The fact that the abovementioned provisions of the Agreement and the Additional Protocol essentially set out a programme does not prevent the decisions of the Council of Association which give effect in specific respects to the programmes envisaged in the Agreement from having direct effect.
- 22 The conclusion that the articles of Decisions Nos 2/76 and 1/80 mentioned in the second question referred to the Court can have direct effect cannot be affected by the fact that Article 2(2) of Decision No 2/76 and Article 6(3) of Decision No 1/ 80 provide that the procedures for applying the rights conferred on Turkish workers are to be established under national rules. Those provisions merely clarify the obligation of the Member States to take such administrative measures as may be necessary for the implementation of those provisions, without empowering the Member States to make conditional or restrict the application of the precise and unconditional right which the decisions of the Council of Association grant to Turkish workers\_
- 23 Similarly, Article 12 of Decision No 2/76 and Article 29 of Decision No 1/80, which provide that the contracting parties are, each for its own part, to take any measures required for the purposes of implementing the provisions of the decision, merely lay emphasis on the obligation to implement in good faith an international agreement, an obligation which, moreover, is referred to in Article 7 of the Agreement itself.
- 24 The direct effect of the provisions at issue in the main proceedings cannot, furthermore,

be contested merely because Decisions Nos 2/76 and 1/80 were not published. Although non-publication of those decisions may prevent their being applied to a private individual, a private individual is not thereby deprived of the power to invoke, in dealings with a public authority, the rights which those decisions confer on him.

- 25 As regards the safeguard clauses which enable the contracting parties to derogate from the provisions granting certain rights to Turkish workers duly registered as belonging to the labour force of a Member State, it must be observed that they apply only to specific situations. Otherwise than in the specific situations which may give rise to their application, the existence of such clauses is not in itself liable to affect the direct applicability inherent in the provisions from which they allow derogations (see judgment in Case 104/81 *Kupferberg, supra*).
- 26 It follows from the foregoing considerations that it must be stated in reply to the second question submitted by the Raad van State that Article 2(1)(b) of Decision No 2/76 and /or Article 6(1) of Decision No 1/80 and Article 7 of Decision No 2/76 and /or Article 13 of Decision No 1/80 have direct effect in the Member States of the European [Union].

### **The third question**

- 27 The national court's third question seeks to determine whether the expression 'legal employment' contained in Article 2(1)(b) of Decision No 2/76 and in the third indent of Article 6(1) of Decision No 1/80 covers a situation where a Turkish worker is authorized to work during the period for which the operation is suspended of a decision refusing him a right of residence, against which he has appealed.
- 28 In replying to that question it must first be stated that the abovementioned provisions merely govern the circumstances of the Turkish worker as regards employment, and make no reference to his circumstances concerning the right of residence.
- 29 The fact nevertheless remains that those two aspects of the personal situation of a Turkish worker are closely linked and that by granting to such a worker, after a specified period of legal employment in the Member State, access to any paid employment of his choice, the provisions in question necessarily imply -since otherwise the right granted by them to the Turkish worker would be deprived of any effect -the existence, at least at that time, of a

right of residence for the person concerned.

- 30 The legality of the employment within the meaning of those provisions, even assuming that it is not necessarily conditional upon possession of a properly issued residence permit, nevertheless presupposes a stable and secure situation as a member of the labour force.
- 31 In particular, although legal employment over a given period gives rise, at the end of that period, to recognition of a right of residence, it is inconceivable that a Turkish worker could contrive to fulfil that condition, and consequently be recognized as being vested with that right, merely because, having been refused a valid residence permit by the national authorities during that period and having exercised the rights of appeal provided for by national law against such refusal, he benefited from the suspensory effect deriving from his appeal and was therefore able to obtain authorization, on a provisional basis pending the outcome of the dispute, to reside and be employed in the Member State in question.
- 32 Consequently, the expression 'legal employment' contained in Article 2(1)(b) of Decision No 2/76 and in the third indent of Article 6(1) of Decision No 1/80 cannot cover the situation of a Turkish worker who has been legally able to continue in employment only by reason of the suspensory effect deriving from his appeal pending a final decision by the national court thereon, provided always, however, that that court dismisses his appeal.
- 33 It must therefore be stated in reply to the third question submitted by the national court that the term 'legal employment' in Article 2(1)(b) of Decision No 2/76 and the third indent of Article 6(1) of Decision No 1/80 does not cover the situation of a Turkish worker authorized to engage in employment for such time as the effect of a decision refusing him a right of residence, against which he has lodged an appeal which has been dismissed, is suspended.

### **Costs**

- 34 The costs incurred by the Government of the Federal Republic of Germany, the Government of the Kingdom of the Netherlands and the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are, in

so far as the parties to the main proceedings are concerned, in the nature of a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT,

in reply to the questions submitted to it by the Raad van State of the Netherlands, by decision of 1 June 1989 hereby rules:

- (1) The interpretation of Decision No 2/76 of 20 December 1976 and Decision No 1/80 of 19 September 1980 of the Association Council set up by the Agreement establishing an Association between the [European Union] and Turkey falls within the scope of [Article 267 TFEU].**
- (2) Article 2(1)(b) of Decision No 2/76, cited above, and Article 6(1) of Decision No 1/80, cited above, and Article 7 of Directive No 2/76 and Article 13 of Decision No 1180 have direct effect in the Member States of the European [Union].**
- (3) The term 'legal employment' in Article 2(1)(b) of Decision No 2/76, cited above, and the third indent of Article 6(1) of Decision No 1/80, cited above, does not cover the situation of a Turkish worker authorized to engage in employment for such time as the effect of a decision refusing him a right of residence, against which he has lodged an appeal which has been dismissed, is suspended.**

Due	Slynn	Kakouris	Schockweiler
Zuleeg	Mancini		O'Higgins
Moitinho de Almeida	Rodriguez Iglesias	Grevisse	Diez de Velasco

Delivered in open court in Luxembourg on 20 September 1990.

J.-G. Giraud  
Registrar

O. Due  
President