Reports of Cases

OPINION OF ADVOCATE GENERAL
Mengozzi
delivered on 15 September 2016[1]

Joined Cases C-508/15 and C-509/15

Sidika Ucar
v
Land Berlin (C-508/15)
and
Recep Kilic
v
Land Berlin (C-509/15)

(Requests for a preliminary ruling from the Verwaltungsgericht Berlin (Administrative Court, Berlin, Germany))

(Reference for a preliminary ruling — Association Agreement between the European Union and Turkey — Right of residence of the family members of a Turkish worker duly registered as belonging to the labour force of a Member State — Conditions — Requirement for the sponsor to be duly registered as belonging to the labour force during the first three years of residence of the family member))

1. By these two requests for a preliminary ruling, the Verwaltungsgericht Berlin (Administrative Court, Berlin, Germany) asks the Court to rule on the conditions under which the family members of a Turkish worker residing in the territory of a Member State of the European Union are to be recognised as having the right to work as an employed person. Those conditions are laid down in Article 7 of Decision No 1/80 of 19 September 1980 on the development of the Association ('Decision No 1/80') adopted by the Association Council set up by the Agreement establishing an Association between the European Economic Community and Turkey, signed at Ankara (Turkey) on 12 September 1963 by the Republic of Turkey, of the one part, and by the Member States of the EEC and the Community, of the other part, and concluded, approved and confirmed on behalf of the Community by Council Decision 64/732/EEC of 23 December 1963[2] ('the EEC-Turkey Association Agreement').

1 — Original language: French.
2 — OJ 1964 217, p. 3685.

I – **Legal framework**

A – *Decision No 1/80*

2. Article 6(1) of Decision No 1/80 is worded 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.’

3. The first paragraph of Article 7 of Decision No 1/80 concerns the rights granted to 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. It provides that those members ‘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 [and] shall enjoy free access to any paid employment of their choice provided that they have been legally resident there for at least five years’.

4. Article 14(1) of Decision No 1/80 provides that ‘the provisions of this section shall be applied subject to limitations justified on grounds of public policy, public security or public health’.

B – *German law*

5. The legislative provisions relevant to the present cases are set out in the Gesetz über den Aufenthalt, die Erwebstätigkeit und die Integration von Ausländern im Bundesgebiet (Law on the residence, employment and integration of foreign nationals in Federal Territory, ‘the AufenthG’). [3]

6. Paragraph 4(5) of the AufenthG states that ‘a foreign national who possesses a right of residence in accordance with the EEC-Turkey Association Agreement is required to prove the existence of that right through the possession of a residence permit, if he does not possess a settlement permit or an EC permanent residence permit. The residence permit shall be issued on request’.

3 — Law of 30 July 2004 (BGBl I. 2004, p. 1950) as published on 25 February 2008 (BGBl I. 2008, p. 162).

7. Paragraph 53 of the AufenthG is worded as follows:

'A foreign national shall be expelled:

1. where, after being convicted of one or more intentional offences, he has been definitively sentenced to at least three years' imprisonment or youth custody or where, after being convicted of a number of intentional offences within a period of five years, he has been definitively sentenced to a number of terms of imprisonment or youth custody amounting to at least three years or where, on the occasion of the most recent definitive conviction, a term of preventive detention was ordered[;]

2. where, after being convicted of an intentional offence under the Law on Narcotics …, he has been definitively sentenced to an unsuspended term of at least two years' youth custody or imprisonment …'

8. Paragraph 55 of the AufenthG provides that 'a foreign national may be expelled where his presence endangers public security, public order or other important interests of [Germany]'[4] in particular where he has committed 'an infringement of legal or administrative provisions, decisions or measures, which is not merely an isolated or minor offence ...'.[5]

II – **The disputes in the main proceedings, the questions referred for a preliminary ruling and the procedure before the Court**

A – *Case C-508/15*

9. Mrs Sidika Ucar is a Turkish national who married Mr Ucar in 1977. Together, they had four children, before divorcing in 1991. That same year, Mr Ucar left Turkey, where he lived with his family, and travelled to Germany, where he married a German national. In 1996, Mr Ucar was granted an indefinite residence permit by the German authorities. In 1999, Mr Ucar's second marriage was dissolved. In September 2000, Mr and Mrs Ucar remarried. In November 2001, accompanied by their youngest child, Mrs Ucar entered Germany holding a visa issued for the purpose of family reunification with her husband by the Landesamt für Bürger- und Ordnungsangelegenheiten (the Aliens Authority for the *Land* Berlin, Germany, 'the Aliens Authority'), and a spouse's residence permit, which was valid until 26 November 2002.

10. As regards Mr Ucar's professional situation, he was employed as a baker from May 2000 until the end of 2001. At the start of 2002, he took up an activity as a self-employed baker, an activity which he ended in October 2005 to resume paid employment in the same industry until December 2011.

11. Mrs Ucar's residence permit was extended for two years on 28 November 2002. On 29 November 2004, it was extended for a further two years. In order to grant those two extensions, the Aliens Authority had satisfied itself that Mrs Ucar's means of subsistence were ensured by her husband's income from his professional activity.

12. On 21 November 2006, the Aliens Authority issued Mrs Ucar with a residence permit for the purpose of family reunification, noting that Mr Ucar was once again in paid employment. That permit was extended on several occasions, including, for the last time, on 12 December 2013.

4 — Paragraph 55(1) of the AufenthG.

5 — Paragraph 55(2) of the AufenthG.

13. On 16 August 2013, Mrs Ucar applied to the Aliens Authority for a residence permit, on the basis of Paragraph 4(5) of the AufenthG, attesting to the existence of a right of residence under the EEC-Turkey Association Agreement; she claimed that the conditions set out in the first paragraph of Article 7 of Decision No 1/80 had been met, in view, in particular, of the fact that her husband had been in continuous paid employment since November 2005.

14. By decision of 6 May 2014, the Aliens Authority refused to grant her application and to extend her residence permit again. First, it considered that Mrs Ucar did not have secure means of subsistence. Secondly, it also took the view that Mrs Ucar did not enjoy any right acquired under the first paragraph of Article 7 of Decision No 1/80, as Mr Ucar had not met the condition of being duly registered as belonging to the labour force during the three years immediately following his spouse's arrival in Germany and the issuing of the initial residence permit granted to her for the purpose of family reunification with her husband. The fact that Mr Ucar was in continuous employment from 1 November 2005 to December 2011 cannot give rise to a right in respect of his wife. Lastly, the Aliens Authority considered that an extension of Mrs Ucar's residence permit could not be regarded as constituting authorisation to join the worker, within the meaning of the first paragraph of Article 7 of Decision No 1/80, as that authorisation necessarily refers, in its view, to the very first authorisation granted at the time of arrival in the territory of a Member State and not to successive authorisations.

15. Disputing those conclusions, Mrs Ucar brought an action before the referring court against the decision of the Aliens Authority of 6 May 2014.

16. Thus, faced with a difficulty in interpreting EU law, the Verwaltungsgericht Berlin (Administrative Court, Berlin) decided to stay proceedings and, by order lodged at the Registry of the Court on 24 September 2015, to refer the following questions to the Court for a preliminary ruling in Case C-508/15:

'1. Is the first indent of the first paragraph of Article 7 of EEC-Turkey Association Council Decision No 1/80 of 19 September 1980 to be interpreted as meaning that the conditions governing application of that provision are also met in the case where the three years of legal residence of the member of the family of the Turkish worker duly registered as belonging to the labour force were preceded by a period in which the principal person entitled, after having been joined by the family member authorised to do so in accordance with that provision, was no longer duly registered as belonging to the labour force of that Member State?

2. Is the first paragraph of Article 7 of Decision No 1/80 to be interpreted as meaning that the extension of a residence permit is to be regarded as constituting the authorisation specified in that provision to join a Turkish worker duly registered as belonging to the labour force in the case where the family member concerned has lived continuously, since being authorised to join the Turkish worker within the meaning of that provision, together with that person but the latter, following a period of temporary absence therefrom, is duly registered as belonging afresh to the labour force of the Member State only at the date on which the residence permit is extended?'

B – *Case C-509/15*

17. Mr Recep Kilic was born in 1993 in Turkey, during a holiday of his parents, who were German residents, in their country of origin. Mr Kilic entered Germany on 16 April 1994. At that time, neither of his parents was employed.

18. In May 1996, Mr Kilic's parents divorced and he remained dependent solely on his mother, who took up employment on 30 June 1998, which she maintained almost continuously until April 2003, when she took maternity leave and then parental leave.

19. On 5 May 1997, when an obligation to hold a residence permit was imposed under German law, Mr Kilic was granted such a permit, which was valid for two years. In 1999, following the production of a certificate from the employer of Mr Kilic's mother and despite the fact that she was in receipt of welfare payments, Mr Kilic's residence permit was extended for one year. It was then extended several times until 10 November 2011, at which time Mr Kilic held only provisional papers.

20. Mr Kilic failed at school, and a number of criminal proceedings were brought against him, resulting in several terms of imprisonment, the most recent of which was handed down on 11 June 2013, when he was sentenced to three years and three months' youth custody for illegal drug trafficking as part of a criminal group. He was released from prison on 27 May 2015.

21. On 24 July 2014, the Aliens Authority rejected his application to extend his residence permit and ordered his expulsion on the basis of Paragraph 53(1) and (2) and Paragraph 55 of the AufenthG. First, it considered that Mr Kilic could not rely on any right based on the EEC-Turkey Association Agreement or on the first paragraph of Article 7 of Decision No 1/80 because his parents had not met the condition of being duly registered as belonging to the labour force for an uninterrupted period of three years from the time Mr Kilic legally entered Germany. Secondly, the Aliens Authority took the view that, having regard to the repeated number of serious offences already committed, the risk of re-offending, and the threat posed by Mr Kilic to public security and public order, he should be deported to Turkey. Having balanced the interests at issue, it concluded that Mr Kilic's close personal links with Germany must, in those circumstances, be considered to be of secondary importance.

22. On 1 September 2014, Mr Kilic brought an action before the referring court against that decision. He argued that he should be granted a residence permit under the first paragraph of Article 7 of Decision No 1/80, as his mother had been in paid employment for an uninterrupted period of nearly five years. Furthermore, he claimed to be entitled to the specific protection against expulsion offered to Turkish nationals under Article 14 of that decision.

23. By separate decision received at the Registry of the Court on the same day, the Verwaltungsgericht Berlin (Administrative Court, Berlin) referred to the Court in Case C-509/15 a single question worded as follows:

'Can the extension of the residence permit of a family member — who was permitted to join the principal person entitled at a time when the latter was not duly registered as belonging to the labour force — at a date on which the principal person entitled, with whom the family member is lawfully resident, has become an employed person be regarded as constituting an "authorisation to join" for the purposes of Article 7 of EEC-Turkey Association Council Decision No 1/80 of 19 September 1980?'

C – *The procedure before the Court*

24. By decision of 27 October 2015, Cases C-508/15 and C-509/15 were joined for the purposes of the written and oral procedure and of the judgment.

25. Only Mrs Ucar, the Aliens Authority and the European Commission submitted written observations.

III – **Legal analysis**

A – *Introductory remarks*

26. It will be recalled that Decision No 1/80 provides that a Turkish worker duly registered as belonging to the labour force of a Member State is to be entitled to the renewal of his permit to work, after one year's legal employment, where employment is available with the same employer. After three years of employment, he is to be entitled to respond to offers of employment, for the same occupation, with other employers. After four years of legal employment, that worker is to enjoy free access to any paid employment in that Member State. As regards the rights acquired under Article 6 of Decision No 1/80, it is also stated that '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'.[6] As regards periods of involuntary unemployment and long absences on account of sickness, '[they] shall not be treated as periods of legal employment, but shall not affect rights acquired as the result of the preceding period of employment'.[7]

27. While a Turkish worker who has legally entered a Member State is consolidating his rights to access the labour force, that consolidation will have the effect of improving the situation of that worker's family members. Where they have been authorised to join that worker in the territory of the host Member State, the members of his family are to be entitled to respond to any offer of employment after they have been lawfully resident there for at least three years. After five years of lawful residence, the family members are to enjoy free access to any paid employment. It is, in that regard, irrelevant whether or not those family members have expressed any intention to take up employment.[8]

28. As regards the issue of access by a Turkish worker and the members of his family to the labour force of a Member State, the Court held that a right of residence must necessarily be recognised as a corollary to access to that labour force. To be able to respond effectively to an offer of employment or to enjoy the freedom to access any activity as an employed person, it is clearly necessary to be able to reside in the territory of the Member State in which the activity in question takes place or in which the offer is made.[9]

29. It is precisely the question of the residence status of Mrs Ucar and Mr Kilic which is at issue in the present references for a preliminary ruling. If they have acquired a right to access the labour force in Germany on the basis of the first paragraph of Article 7 of Decision No 1/80, the Aliens Authority must grant them a residence permit which is based not only on the provisions of national law but also on that decision. The difficulty arises from the fact that the Turkish worker whom they joined

6 — See Article 6(2) of Decision No 1/80.

7 — See Article 6(2) of Decision No 1/80.

8 — The Court appears to have accepted that a right of residence may be claimed in connection with employment, even future employment: see, as regards Article 6(1) of Decision No 1/80, the judgment of 10 February 2000 in *Nazli* (C-340/97, EU:C:2000:77, paragraph 37). Above all, and in contrast to Turkish workers to whom Article 6(1) of Decision No 1/80 applies, the status of the family members referred to in Article 7 of that decision does not depend on paid employment: see judgments of 7 July 2005, *Aydinli* (C-373/03, EU:C:2005:434, paragraph 29); of 18 July 2007, *Derin*, (C-325/05, EU:C:2007:442, paragraph 56); and of 25 September 2008, *Er* (C-453/07, EU:C:2008:524, paragraph 31). The argument relied on by the Aliens Authority as regards Mrs Ucar's unwillingness to pursue any activity as an employed person appears, in those circumstances, to be irrelevant. The same would be true if it were relied on against Mr Kilic (see judgment of 25 September 2008, *Er* (C-453/07, EU:C:2008:524), paragraph 34).

9 — See, as regards Article 6 of Decision No 1/80, among many, judgments of 20 September 1990, *Sevince* (C-192/89, EU:C:1990:322, paragraph 26); of 29 May 1997, *Eker* (C-386/95, EU:C:1997:257, paragraph 19); of 30 September 1997, *Ertanir* (C-98/96, EU:C:1997:446, paragraph 26); of 7 July 2005, *Dogan* (C-383/03, EU:C:2005:436, paragraph 14); and of 10 January 2006, *Sedef* (C-230/03, EU:C:2006:5, paragraphs 33 and 34).
See, as regards Article 7 of Decision No 1/80, and again among many, judgments of 17 April 1997, *Kadiman* (C-351/95, EU:C:1997:205, paragraph 29); of 16 March 2000, *Ergat* (C-329/97, EU:C:2000:133, paragraph 40); of 22 June 2000, *Eyüp* (C-65/98, EU:C:2000:336, paragraph 29); of 11 November 2004, *Cetinkaya* (C-467/02, EU:C:2004:708, paragraph 31); of 7 July 2005, *Aydinli* (C-373/03, EU:C:2005:434, paragraph 25); of 18 July 2007, *Derin* (C-325/05, EU:C:2007:442, paragraphs 40 and 47); of 18 December 2008, *Altun* (C-337/07, EU:C:2008:744, paragraph 21); and of 19 July 2012, *Dülger* (C-451/11, EU:C:2012:504, paragraph 28).

does not have or did not retain the status of worker duly registered as belonging to the labour force in the three years immediately following their arrival in Germany. According to the German authorities' interpretation of Decision No 1/80 and of the EEC-Turkey Association Agreement, Mrs Ucar could acquire rights under the first paragraph of Article 7 of Decision No 1/80 only if her husband had been in legal and continuous paid employment from November 2001 — the month in which Mrs Ucar entered Germany — until November 2004. Similarly, Mr Kilic would only have acquired those rights only if his mother had been in such employment from April 1994 — the month in which Mr Kilic entered Germany — until April 1997. That is the issue with which the first question referred to the Court in Case C-508/15 is concerned. [10]

30. Furthermore, if the Court confirms the interpretation adopted by the Aliens Authority and if the rights derived from the first paragraph of Article 7 of Decision No 1/80 arise only where a Turkish worker, joined in the territory of the host Member State by his family member, is duly registered as belonging to the labour force from the time of arrival of that family member and for the whole of the period necessary to acquire those rights, the referring court also asks the Court whether it is possible to treat the decision to extend the residence permit granted to that family member in the same way as the original decision to authorise family reunification, so that the period during which the Turkish worker must be duly registered as belonging to the labour force could also effectively run from the date of the extension decision and not only from the date on which the family member first entered the host Member State. That is the subject of the second question referred in Case C-508/15 and the single question in Case C-509/15. However, in view of the answer which I am going to suggest that the Court give to the first question in Case C-508/15, I shall address that issue only in the further alternative.

B – *The first question referred in Case C-508/15*

31. By the first question referred in Case C-508/15, the referring court asks the Court, in essence, whether the first paragraph of Article 7 of Decision No 1/80 must be interpreted as meaning that that provision confers a right of residence on the family member of a Turkish worker who has settled in Germany where that worker has been duly registered as belonging to the labour force for an uninterrupted period of three years and where, during that period, the family member has lived with that worker, and that this is not precluded by the fact that completion of that period did not immediately follow the entry of the family member concerned into Germany.

32. To answer that question, it is necessary to return briefly to the general considerations made by the Court in its case-law relating to the first paragraph of Article 7 of Decision No 1/80 before examining, in particular, the concept of being duly registered as belonging to the labour force.

10 — I am convinced that that question is also relevant to Case C-509/15 and Mr Kilic's situation. It is only in the light of Mrs Ucar's situation that the referring court asks the Court whether the national authorities' requirement that a Turkish worker who is joined in the host Member State by a family member must retain the status of worker duly registered as belonging to the labour force during the three years immediately following the arrival of that family member is compatible with the first paragraph of Article 7 of Decision No 1/80. It is clear, however, from the documents before the Court in Case C-509/15 that Mr Kilic was refused an extension of his residence permit in particular because, according to the Aliens Authority, he could not rely on any right based on the first paragraph of Article 7 of Decision No 1/80, as his mother had not met that requirement. It is therefore necessary, when addressing the first question referred in Case C-508/15, to extend my considerations to Mr Kilic's situation.

1. The first paragraph of Article 7 of Decision No 1/80 in the case-law of the Court

33. It is settled case-law that the first paragraph of Article 7 of Decision No 1/80 has direct effect, so that Turkish nationals to whom that provision applies have the right to rely on it directly before the courts of the Member States in order to have rules of national law which are contrary to it disapplied.[11] That article, furthermore, forms part of the social provisions of Decision No 1/80, which constitutes a further stage in securing freedom of movement for workers on the basis of Article 45 to Article 47 TFEU, so that the principles enshrined in those Treaty articles must be transposed, so far as possible, to Turkish nationals who enjoy the rights conferred by that Decision.[12]

34. The Court has ruled, furthermore, that the first paragraph of Article 7 of Decision No 1/80 implements a 'scheme of gradual acquisition of rights' which pursues a dual objective.[13] Thus, the Court has held that 'first, before the *initial* period of three years expires, that provision seeks to enable family members to be with a migrant worker, with a view to thus furthering, by means of family reunification, the employment and residence of the Turkish worker who is already legally integrated in the host Member State .... Thereafter, that provision seeks to deepen the lasting integration of the Turkish migrant worker's family in the host Member State by granting to the family member concerned, after three years of legal residence, the possibility of himself gaining access to the labour force. The fundamental objective thus pursued is that of consolidating the position of that family member, who is, at that stage, already legally integrated in the host Member State, by giving him the means to earn his own living in that State and therefore to establish a position which is independent of that of the migrant worker'.[14] Therefore, interpreted in the light of the general objective pursued by Decision No 1/80, 'the system put in place by, in particular, the first paragraph of Article 7 of that decision is thus intended to create conditions which will promote family reunification'.[15]

35. As regards the scope of the powers retained by the Member States, although it is settled case-law that they remain competent to regulate the conditions under which Turkish nationals may first enter their territories and the conditions under which they may access the labour force for the first time,[16] where those nationals satisfy the conditions laid down in one of the provisions of Decision No 1/80 and, accordingly, enjoy the rights conferred on them by that decision, those same Member States are not entitled to provide for rules which differ from those resulting from Decision No 1/80 or which impose conditions other than those provided for in that decision.[17] Therefore, the Member States are not permitted to modify unilaterally the scope of the system of gradually integrating Turkish nationals in the host Member State.[18]

11 — See, in particular, judgments of 22 June 2000, *Eyüp* (C-65/98, EU:C:2000:336, paragraph 25); of 18 July 2007, *Derin* (C-325/05, EU:C:2007:442, paragraph 47); of 25 September 2008, *Er* (C-453/07, EU:C:2008:524, paragraph 25); of 18 December 2008, *Altun* (C-337/07, EU:C:2008:744, paragraph 20); of 8 December 2011, *Ziebell* (C-371/08, EU:C:2011:809, paragraph 48); and of 29 March 2012, *Kahveci* (C-7/10 and C-9/10, EU:C:2012:180, paragraph 24 and the case-law cited).

12 — See, in particular, judgments of 17 April 1997, *Kadiman* (C-351/95, EU:C:1997:205, paragraph 30); of 10 January 2006, *Sedef* (C-230/03, EU:C:2006:5, paragraph 33); and of 19 July 2012, *Dülger* (C-451/11, EU:C:2012:504, paragraph 48).

13 — See judgment of 29 March 2012, *Kahveci* (C-7/10 and C-9/10, EU:C:2012:180, paragraph 31).

14 — Judgment of 29 March 2012, *Kahveci* (C-7/10 and C-9/10, EU:C:2012:180, paragraphs 32 and 33 and the case-law cited). Emphasis added. I shall return, later in my analysis, to the significance or otherwise of the use, by the Court, of the adjective 'initial'.

15 — Judgment of 29 March 2012, *Kahveci* (C-7/10 and C-9/10, EU:C:2012:180, paragraph 34 and the case-law cited).

16 — See, among many, judgments of 16 December 1992, *Kus* (C-237/91, EU:C:1992:527, paragraph 25); of 5 October 1994, *Eroglu* (C-355/93, EU:C:1994:369, paragraph 10); of 17 April 1997, *Kadiman* (C-351/95, EU:C:1997:205, paragraph 31); of 10 February 2000, *Nazli* (C-340/97, EU:C:2000:77, paragraph 29); and of 29 September 2011, *Unal* (C-187/10, EU:C:2011:623, paragraph 41).

17 — See judgments of 16 June 2011, *Pehlivan* (C-484/07, EU:C:2011:395, paragraph 56); and of 29 March 2012, *Kahveci* (C-7/10 and C-9/10, EU:C:2012:180, paragraph 36). See, also, judgment of 18 December 2008, *Altun* (C-337/07, EU:C:2008:744, paragraph 61).

18 — See judgments of 16 June 2011, *Pehlivan* (C-484/07, EU:C:2011:395, paragraph 56 and the case-law cited); and of 29 March 2012, *Kahveci* (C-7/10 and C-9/10, EU:C:2012:180, paragraph 37).

36. It is therefore a question of determining whether, by requiring, for the purposes of recognising the rights derived from the first paragraph of Article 7 of Decision No 1/80, that a Turkish worker who is joined in the territory of a Member State by a member of his family be duly registered, from the date of arrival of that family member, as belonging to the labour force for the entire period necessary to acquire the rights laid down by that provision, without the possibility of taking into consideration periods of an equivalent duration in that labour force but subsequent to that date, the German authorities unilaterally modified the system to which I have just referred.

2. The concept of being duly registered as belonging to the labour force and the conditions for acquiring the rights provided for in the first paragraph of Article 7 of Decision No 1/80

37. Under which specific conditions may a family member of a Turkish worker acquire rights under the first paragraph of Article 7 of Decision No 1/80? Whilst the Court has already partially answered that question, it has never taken a clear view on the chronology according to which those conditions must be fulfilled.

38. Before turning my attention to the Court's interpretation of those conditions, I would note that there is no provision in the actual text of the first paragraph of Article 7 of Decision No 1/80 which is comparable, *expressis verbis*, to what is required by the German authorities. A reading of that article merely shows that a family member authorised to join a Turkish worker who is duly registered as belonging to the labour force of a Member State, is entitled, in principle, to respond to any offer of employment after he has been legally resident for at least three years in that State (first indent of the first paragraph of Article 7 of Decision No 1/80) and may enjoy there free access to any paid employment of his choice provided he has been legally resident there for at least five years (second indent of the first paragraph of Article 7 of Decision No 1/80).

39. The Court interpreted the first paragraph of Article 7 of Decision No 1/80 as meaning that 'the acquisition of the rights provided for in that provision is made subject to two cumulative conditions, namely, first, that the person concerned must be a member of the family of a Turkish worker who is already duly registered as belonging to the labour force of the host Member State and, second, that he has been authorised by the competent authorities of that State to join that worker there. Where those conditions are met, it remains to be established, for the purposes of the application of the first paragraph of Article 7 of Decision No 1/80, whether the Turkish worker concerned has been legally resident for a certain period on the territory of the host Member State with the worker from whom he derives his rights'. [19]

40. In its case-law, the Court referred, without drawing any distinction, to the 'initial period' [20] of three years, to the 'period' [21] of three years, to a 'specific … period' [22] or to the 'period of three years from the arrival of the family member concerned in the territory of the host Member State'. [23] Those considerations do not appear to me to be decisive. On the one hand, the reference to the 'initial' period seeks merely to distinguish it from the successive period of two additional years which confer entitlement, under the second indent of the first paragraph of Article 7 of Decision No 1/80, to free

19 — Judgment of 29 March 2012, *Kahveci* (C-7/10 and C-9/10, EU:C:2012:180, paragraphs 26 and 27 and the case-law cited). In the judgment of 19 July 2012, *Dülger* (C-451/11, EU:C:2012:504, paragraph 29), the Court would ultimately list three conditions.

20 — See judgments of 17 April 1997, *Kadiman* (C-351/95, EU:C:1997:205, paragraphs 32 and 33); of 21 January 2010, *Bekleyen* (C-462/08, EU:C:2010:30, paragraph 36); of 16 June 2011, *Pehlivan* (C-484/07, EU:C:2011:395, paragraphs 45, 51 and 55); of 29 March 2012, *Kahveci* (C-7/10 and C-9/10, EU:C:2012:180, paragraph 32); and of 19 July 2012, *Dülger* (C-451/11, EU:C:2012:504, paragraph 39).

21 — See judgments of 11 November 2004, *Cetinkaya* (C-467/02, EU:C:2004:708, paragraph 30); of 7 July 2005, *Aydinli* (C-373/03, EU:C:2005:434, paragraphs 24 and 29); of 18 December 2008, *Altun* (C-337/07, EU:C:2008:744, paragraphs 19, 30 and 58); and of 16 June 2011, *Pehlivan* (C-484/07, EU:C:2011:395, paragraphs 36, 38, 60, 61 and 64).

22 — See judgment of 21 January 2010, *Bekleyen* (C-462/08, EU:C:2010:30, paragraph 26).

23 — Judgment of 16 June 2011, *Pehlivan* (C-484/07, EU:C:2011:395, paragraph 52). To be compared, however, with paragraph 60 of that judgment, in which the Court abandons that unhelpful clarification in the light of the facts of the case.

access to any paid employment for the family member of a Turkish worker who is duly registered as belonging to the labour force of a Member State. On the other hand, the clarification in the judgment in *Pehlivan*[24] is entirely isolated and was made in a case in which there was raised no issue of chronology, such as that which must be addressed here.[25]

41. As regards both Mrs Ucar and Mr Kilic, it is common ground that they meet the conditions traditionally laid down by the Court for the grant of the rights conferred by Article 7 of Decision No 1/80. Both are family members of a Turkish worker and were legally entitled to join the Turkish worker concerned in the territory of the host Member State. It is also common ground that both individuals have met the requirement of actual cohabitation in a household.[26]

42. The case-law requires, lastly, that the Turkish worker who is joined by members of his family must be duly registered as belonging to the labour force of the Member State in which he resides 'for the whole of the period necessary for the acquisition by the family member of the right of access to employment'[27] in that Member State. The concept of being duly registered as belonging to the labour force is distinct from that of being in legal employment set out in Article 6(1) of Decision No 1/80.[28] As regards the concept of being duly registered as belonging to the labour force, the Court has held that 'it embraces all workers who have met the conditions laid down by law or regulation in the host Member State and who are thus entitled to pursue an occupation in its territory'.[29] A temporary interruption of the employment relationship will not necessarily result in the Turkish worker no longer being duly registered as belonging to the labour force at least during the period which is reasonably necessary for him to find other paid employment and provided that that absence is temporary.[30] Ultimately, 'a Turkish worker is excluded from the labour force only if objectively he no longer has any chance of rejoining the labour force or has exceeded a reasonable time-limit for finding new employment after the end of the period of inactivity'.[31]

43. Furthermore, and as the Commission has noted, the acquisition of rights under Article 6 of Decision No 1/80 is allowed even where the requirement of being duly registered as belonging to the labour force, as set out in that article, is not met from the time of the arrival in the territory of the host Member State of the Turkish national concerned (who may, at that time, not yet even have the status of worker).[32] Given the objective pursued by Article 7 of Decision No 1/80, it would be inappropriate, when applying that Article, to take a stringent approach which is not required when applying Article 6 of that Decision.

44. As regards that objective, I cannot agree with the argument put forward by the Aliens Authority that Article 7 of Decision No 1/80 would no longer be consistent with the objective it pursues if it were to be interpreted as meaning that rights could be acquired on the basis of it even where the period of being duly registered as belonging to the labour force does not immediately follow the arrival of the family member because, in such a case, there would no longer be any need to promote family reunification. It is my view that, in order to create conditions that promote family reunification,

24 — Judgment of 16 June 2011 (C-484/07, EU:C:2011:395, paragraph 52).

25 — By analogy, see point 24 of the Opinion of Advocate General Bot in *Dülger* (C-451/11, EU:C:2012:331).

26 — See judgment of 18 December 2008, *Altun* (C-337/07, EU:C:2008:744, paragraph 31 and the case-law cited).

27 — Judgment of 18 December 2008, *Altun* (C-337/07, EU:C:2008:744, paragraph 32).

28 — See judgment of 18 December 2008, *Altun* (C-337/07, EU:C:2008:744, paragraph 22).

29 — Judgment of 18 December 2008, *Altun* (C-337/07, EU:C:2008:744, paragraph 23).

30 — See judgment of 18 December 2008, *Altun* (C-337/07, EU:C:2008:744, paragraph 24 and the case-law cited).

31 — Judgment of 18 December 2008, *Altun* (C-337/07, EU:C:2008:744, paragraph 25). The Court also stated that those considerations, which it made in the context of interpreting Article 6(1) of Decision No 1/80, could also be used when interpreting the first paragraph of Article 7 of that decision (see judgment of 18 December 2008, *Altun* (C-337/07, EU:C:2008:744, paragraphs 27 and 28)). Furthermore, the relevance of the conclusions to be drawn from the case-law as regards Mrs Ucar's situation is questionable. While it is clear that Mr Ucar did not work as an employed person in the three years after his wife arrived in Germany (that is to say from November 2001 to November 2004), he was self-employed during that period, apparently in full accordance with the national legislation, so that he was duly registered as belonging continuously to the labour force, for national purposes.

32 — See, in particular, judgment of 24 January 2008, *Payir and Others* (C-294/06, EU:C:2008:36, paragraph 45).

Article 7 of Decision No 1/80 must not be interpreted too strictly. The fact that the Turkish worker concerned fully completes his period of being duly registered as belonging to the labour force of the host Member State only after the arrival of the family member who has come to join him does not detract from the relevance of the idea that the employment and residence of a Turkish worker who is already legally integrated will be more tolerable if he is able to re-establish his family unit on a long-lasting basis in that Member State.

45. Therefore, by requiring Turkish workers, for the purposes of conferring on their family members the rights laid down in the first paragraph of Article 7 of Decision No 1/80, to be duly registered as belonging to the labour force, for the period necessary for acquiring those rights, from the time of arrival of those family members, without it being possible to take into account the subsequent completion of equivalent periods of being duly registered as belonging to the labour force, it is clear that the German authorities imposed a condition which is not provided for by Decision No 1/80.

46. My conviction being strengthened by the fact that, as will be recalled, there are no express contrary provisions in Decision No 1/80, I am inclined to take the view, quite specifically, that Mrs Ucar, who lived with her husband for nearly 14 years, acquired rights under the first paragraph of Article 7 of Decision No 1/80 from the moment when Mr Ucar, duly registered as belonging to the labour force, was employed for an uninterrupted period of three years, in full accordance with the requirements of Article 6 of Decision No 1/80. Thus, from November 2008, Mrs Ucar enjoys the rights derived from the first indent of the first paragraph of Article 7 of Decision No 1/80 and, from November 2010, she enjoys the rights derived from the second indent of the first paragraph of Article 7 of that decision. As regards Mr Kilic, he acquired a right under the first indent of the first paragraph of Article 7 of Decision No 1/80 from the moment when his mother was duly registered as belonging to the labour force for a period sufficient to give rise to that right, that is to say from June 2001. [33]

47. The German authorities consider that such an interpretation would considerably widen the personal scope of the first paragraph of Article 7 of Decision No 1/80. A similar risk, which arose for various reasons, had already been relied on in the judgment of 19 July 2012 in *Dülger*. [34] In that case, the Court recalled that the first paragraph of Article 7 of Decision No 1/80 'expressly provides that the family member's right to join the migrant Turkish worker is subject to the authorisation to that effect granted in accordance with the conditions laid down by the legislation of the host Member State … That requirement … is explained by the fact that, in the context of the EEC-Turkey Association, the members of the family of the migrant Turkish worker do not have a right to join him to live as a family; their ability to join him depends rather on a decision of the national authorities taken solely on the basis of the law of the Member State concerned, subject to the requirement of observance of fundamental rights …'. [35] In other words, it is only because the host Member State authorises family reunification that the first paragraph of Article 7 of Decision No 1/80 may produce its effects. It is therefore, first and foremost, the national laws which define the personal scope of that provision.

33 — It does not appear that Mr Kilic is able to rely on the second paragraph of Article 7 of Decision No 1/80, which governs specifically the situation of the children of Turkish workers who are duly registered as belonging to the labour force. It is, however, common ground that such children may also claim rights in the field of employment under the first paragraph of Article 7 of Decision No 1/80 (see judgment of 19 November 1998, *Akman* (C-210/97, EU:C:1998:555, paragraph 34)). Mr Kilic does not appear to meet the conditions for entitlement to free access to the labour force, such as that laid down in the second indent of the first paragraph of Article 7 of that decision. At least, the reasons why his mother stopped working, which could fall under Article 6(2) of Decision No 1/80, are not sufficiently detailed in the documents before the Court.

34 — C-451/11, EU:C:2012:504.

35 — Judgment of 19 July 2012, *Dülger* (C-451/11, EU:C:2012:504, paragraphs 61 and 62 and the case-law cited).

48. For all of the foregoing reasons, the first paragraph of Article 7 of Decision No 1/80 must be interpreted as meaning that a family member of a Turkish worker, authorised to enter the territory of the host Member State for the purpose of family reunification, may, where he meets all the other conditions laid down therein, rely on the rights established by that provision if the period of three or five years during which the Turkish worker he has come to join must be duly registered as belonging to the labour force does not immediately follow the arrival of that family member in the territory of the host Member State.

C – *The second question referred in Case C-508/15 and the single question referred in Case C-509/15*

49. As I have already stated, in the light of the answer which I suggest that the Court give to the first question referred in Case C-508/15, which I consider, furthermore, to be of use in clarifying Mr Kilic's legal situation, I take the view that it is not necessary to answer the second question in Case C-508/15 and the single question in Case C-509/15.

50. That said, I would point out to the referring court, which in Case C-509/15 is dealing with an expulsion order, several relevant considerations in the case-law of the Court relating to Article 14 of Decision No 1/80, though I am aware that the request for a preliminary ruling made to the Court makes no reference to that provision. Nevertheless, the observations submitted by the Aliens Authority in that case also focus on the lawfulness of the expulsion decision imposed on Mr Kilic. [36]

51. So far as is relevant, I would therefore note that, in order to interpret the public policy exception referred to in Article 14(1) of Decision No 1/80, it is necessary to refer to the interpretation of that exception in the field of freedom of movement for workers. [37] 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'. [38] As the public policy exception is to be interpreted restrictively, 'the existence of a criminal conviction can justify 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'. [39] A Turkish national 'can be denied, by means of expulsion, 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'. [40]

52. Where appropriate, the referring court will therefore have to ascertain whether those conditions have been met with regard to Mr Kilic.

36 — It must, however, be emphasised that most of those observations describe a dispute between the Aliens Authority and the referring court as regards the applicable national law as it stands, a dispute which, obviously, falls outside the jurisdiction of the Court.

37 — See judgment of 10 February 2000, *Nazli* (C-340/97, EU:C:2000:77, paragraph 56).

38 — Judgments of 10 February 2000, *Nazli* (C-340/97, EU:C:2000:77, paragraph 57 and the case-law cited), and of 7 July 2005, *Aydinli* (C-373/03, EU:C:2005:434, paragraph 27).

39 — Judgment of 10 February 2000, *Nazli* (C-340/97, EU:C:2000:77, paragraph 58). See, also, judgments of 16 March 2000, *Ergat* (C-329/97, EU:C:2000:133, paragraph 46); of 7 July 2005, *Dogan* (C-383/03, EU:C:2005:436, paragraph 24); and of 8 December 2011, *Ziebell* (C-371/08, EU:C:2011:809, paragraph 49).

40 — Judgment of 10 February 2000, *Nazli* (C-340/97, EU:C:2000:77, paragraph 61).

IV – **Conclusion**

53. In the light of the foregoing considerations, I suggest that the Court answer the questions referred for a preliminary ruling by the Verwaltungsgericht Berlin (Administrative Court, Berlin, Germany) as follows:

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 must be interpreted as meaning that a family member of a Turkish worker, authorised to enter the territory of the host Member State for the purpose of family reunification, may, where he meets all the other conditions laid down therein, rely on the rights established by that provision where the period of three or five years during which the Turkish worker he has come to join must be duly registered as belonging to the labour force does not immediately follow the arrival of that family member in the territory of the host Member State.