JUDGMENT OF THE COURT (Third Chamber)

2 June 2005 *

In Case C-136/03,

REFERENCE under Article 234 EC for a preliminary ruling, brought by the Verwaltungsgerichtshof (Austria), by decision of 18 March 2003, received at the Court on 26 March 2003, in the proceedings

Georg Dörr

v

Sicherheitsdirektion für das Bundesland Kärnten,

and

Ibrahim Ünal

v

Sicherheitsdirektion für das Bundesland Vorarlberg,

* Language of the case: German.

THE COURT (Third Chamber),

composed of A. Rosas (Rapporteur), President of the Chamber, A. Borg Barthet, S. von Bahr, J. Malenovský and U. Lõhmus, Judges,

Advocate General: M. Poiares Maduro,
Registrar: M. Múgica Arzamendi, Principal Administrator,

having regard to the written procedure and further to the hearing on 8 September 2004,

after considering the observations submitted on behalf of:

— Mr Dörr and Mr Ünal, by W. Weh, Rechtsanwalt, and M. Alge,

— the Austrian Government, by H. Dossi and M. Burgstaller, acting as Agents,

— the German Government, by A. Tiemann, acting as Agent,

— the Commission of the European Communities, by M. Condou-Durande, D. Martin and H. Kreppel, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 21 October 2004,

gives the following

Judgment

1 The reference for a preliminary ruling concerns the interpretation of Articles 8 and 9 of Council Directive 64/221/EEC of 25 February 1964 on the coordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health (OJ, English Special Edition 1963-1964, p. 117) and Articles 6 and 7 of Decision No 1/80 of the Association Council of 19 September 1980 on the development of the Association (hereinafter 'Decision No 1/80'). The Association Council was set up by the Agreement establishing an Association between the European Economic Community and Turkey, signed at Ankara on 12 September 1963 by the Republic of Turkey and by the Member States of the EEC and the Community, and concluded, approved and confirmed on behalf of the Community by Council Decision 64/732/EEC of 23 December 1963 (OJ 1973 C 113, p. 1, hereinafter 'the Association Agreement').

2 That reference has been made in connection with two sets of proceedings, the first between Mr Dörr, a German national, and the Sicherheitsdirektion für das Bundesland Kärnten (Carinthia Federal Security Authority) (Austria) and the second between Mr Ünal, a Turkish national, and the Sicherheitsdirektion für das Bundesland Vorarlberg (Vorarlberg Federal Security Authority) (Austria), those national authorities having decided to bring the residence of the two claimants in Austria to an end following criminal acts which they had committed there.

Law

Community legislation

Directive 64/221

3 Article 1(1) of Directive 64/221 provides that the latter is to apply to nationals of a Member State who reside in or travel to another Member State of the Community either to pursue activities as employed or self-employed persons or as recipients of services.

4 According to Article 2(1) thereof, that directive relates to measures concerning, inter alia, the issue or renewal of residence permits or expulsion from their territory taken by Member States on grounds of public policy, public security or public health.

5 Article 8 of that directive states as follows:

'The person concerned shall have the same legal remedies in respect of any decision concerning entry, or refusing the issue or renewal of a residence permit, or ordering expulsion from the territory, as are available to nationals of the State concerned in respect of acts of the administration.'

6 According to Article 9(1) of Directive 64/221:

'Where there is no right of appeal to a court of law, or where such appeal may be only in respect of the legal validity of the decision, or where the appeal cannot have suspensory effect, a decision refusing renewal of a residence permit or ordering the expulsion of the holder of a residence permit from the territory shall not be taken by the administrative authority, save in cases of urgency, until an opinion has been obtained from a competent authority of the host country before which the person concerned enjoys such rights of defence and of assistance or representation as the domestic law of that country provides for.

This authority shall not be the same as that empowered to take the decision refusing renewal of the residence permit or ordering expulsion.'

The Association between the European Economic Community and the Republic of Turkey

7 The Association Agreement is intended, in accordance with its Article 2(1), to promote the continuous and balanced strengthening of trade and economic relations between the Contracting Parties. According to Article 12 of that agreement, that objective is pursued, inter alia, by the progressive implementation of the free movement of workers. Under the fourth recital to and Article 28 of that agreement, the agreement is intended to improve the standard of living of the Turkish people and later to facilitate the accession of the Republic of Turkey to the Community.

8 The Additional Protocol, signed on 23 November 1970 at Brussels and concluded, approved and confirmed on behalf of the Community by Regulation (EEC) No 2760/72 of the Council of 19 December 1972 (OJ 1972 L 293, p. 1; hereinafter 'the Additional Protocol'), lays down, in Article 1, the conditions, arrangements and timetables for implementing the transitional stage referred to in Article 4 of the Association Agreement. In accordance with its Article 62, the Additional Protocol forms an integral part of that agreement.

9 The Additional Protocol includes a Title II, headed 'Movement of persons and services', Chapter I of which is devoted to workers.

10 Article 36 of the Additional Protocol, which forms part of that Chapter I, provides:

'Freedom of movement for workers between Member States of the Community and Turkey shall be secured by progressive stages in accordance with the principles set out in Article 12 of the Agreement of Association between the end of the twelfth and the twenty-second year after the entry into force of that Agreement.

The Council of Association shall decide on the rules necessary to that end.'

11 Decision No 1/80 seeks, according to the third recital in the preamble thereto, to improve, in the social field, the treatment accorded to workers and members of their family.

12 Articles 6, 7 and 14 of Decision No 1/80 feature in Chapter II, headed 'Social Provisions', Section 1 thereof, concerning 'Questions relating to employment and the free movement of workers'.

13 Article 6(1) 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 Member 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.'

14 Article 7 covers free access to employment for the members of the family of a Turkish worker who have been authorised to join him.

15 Article 14(1) provides:

'The provisions of this section shall be applied subject to limitations justified on grounds of public policy, public security or public health.'

National legislation

16 Paragraph 10(2)(3) of the Federal Law on the entry, residence and establishment of aliens (Fremdengesetz), in the version in force at the material time, provides that there are grounds for a refusal to issue a residence permit, inter alia, if the residence of an alien poses a threat to public peace, order and security.

17 Under Paragraph 34(1)(2) of the Fremdengesetz, aliens residing in federal territory pursuant to a residence permit or during the procedure for the issue of a new residence permit may be expelled where a ground for refusal precludes the issue of a further residence permit.

18 Paragraph 36(1)(1) and (2) of the Fremdengesetz provides that a ban on residence may be issued against an alien where, on the basis of specific facts, there are sound reasons for assuming that his residence threatens public security and order or is contrary to other public interests referred to in Article 8(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950. Under Paragraph 36(2)(1) of the Fremdengesetz, the final sentencing of an alien by a national court to a non-suspended term of imprisonment of over three months, a partially suspended term of imprisonment, a suspended term of imprisonment of over six months, or the conviction of that person on more than one occasion for criminal acts on the basis of the same criminal conduct are, in particular, to be regarded as constituting a specific fact within the meaning of Paragraph 36(1).

19 Paragraph 48(1) of the Fremdengesetz provides that a ban on residence may be issued against nationals of the European Economic Area or beneficiary nationals of a non-member country only where public order or security is threatened as a result of their conduct. Paragraph 48(3) provides that, where such a person is subject to an expulsion order or a ban on residence, he must automatically be granted a one-month suspension of operation of the decision, unless considerations of public policy or national security require the immediate removal of the person concerned.

20 Under Paragraph 88 of the Fremdengesetz, it is the district administrative authority (Bezirksverwaltungsbehörde) that is to take a decision concerning bans on residence, unless stipulated otherwise.

21 Paragraph 66 of the Code of Administrative Procedure (Allgemeine Verwaltungsverfahrensgesetz), in the version in force at the material time, provides:

'(1) The appeal authority shall instruct a lower authority to make necessary additions to the examination procedure or shall itself do so.

(2) Where the facts before the appeal authority are so inadequate that the conduct or repeat of oral proceedings appears to be unavoidable, the appeal authority may rectify the contested decision and remit the case to a lower authority for reconsideration and the issue of a fresh decision.

(3) However, the appeal authority may also itself conduct oral proceedings and hear evidence directly where time and costs are thereby saved.

(4) Other than in the case referred to in subparagraph (2), the appeal authority may, in so far as the appeal does not have to be dismissed as being inadmissible or out of time, always rule itself on the case. It is entitled to substitute the view of any lower authority with that of its own, both in the judgment and as regards the grounds and, accordingly, to amend the contested decision in any way.'

22 Pursuant to Paragraph 144 of the Federal Constitutional Law (Bundes-Verfassungsgesetz), the Verfassungsgerichtshof (Constitutional Court) oversees the upholding of the rights guaranteed by the Constitution.

23 Paragraph 85 of the Law relating to the Verfassungsgerichtshof (Verfassungsgerichtshofgesetz), in the version in force at the material time, provides:

'(1) An appeal shall not have suspensory effect.

(2) However, the Verfassungsgerichtshof shall, at the request of the appellant, grant suspensory effect by order in so far as this is not precluded by overriding public interests and, following consideration of all the affected interests, the enforcement or exercise by a third party of the right granted by the decision would involve disproportionate detriment to the appellant. Where the requirements which were decisive in respect of the decision on the suspensory effect of the appeal have changed considerably, a fresh decision shall be taken at the request of the appellant, the authority (Paragraph 83(1)) or any other party concerned.

(3) Decisions taken pursuant to subparagraph 2 shall be notified to the appellant, the authority ... and any other party concerned. Where suspensory effect is recognised, the authority shall suspend enforcement of the contested administrative act and make the arrangements necessary in that regard. The party placed at an advantage by the contested decision may not exercise his entitlement.

(4) When the Verfassungsgerichtshof is not sitting, decisions pursuant to subparagraph 2 shall be adopted at the request of the senior administrator in the Chambers of the President of the Verfassungsgerichtshof.'

24 Under Paragraph 87(1) of the Verfassungsgerichtshofgesetz, the Verfassungsgerichtshof is required to rule on whether there has been an infringement of rights guaranteed by the Constitution or whether an appellant's rights have been infringed as a result of the application of an illegal regulation, an unconstitutional law or an unlawful treaty, and, where applicable, annul the contested administrative act.

25 Paragraph 30 of the Law relating to the Verwaltungsgerichtshof (Higher Administrative Court) (Verwaltungsgerichtshofgesetz), in the version in force at the material time, provides:

'(1) Appeals shall not have suspensory effect by law ... .

(2) The Verwaltungsgerichtshof shall, however, at the request of the appellant, grant suspensory effect by order in so far as this is not precluded by overriding public interests and, following consideration of all affected interests, the enforcement or exercise by a third party of the right granted by the decision would involve disproportionate detriment to the appellant. ...

(3) Decisions taken pursuant to subparagraph 2 shall be notified to all parties. Where suspensory effect is recognised, the authority shall suspend enforcement of the contested administrative act and make the orders necessary in that regard. The party placed at an advantage by the contested decision may not exercise his entitlement.'

26 Paragraph 41(1) of that Law provides that the Verwaltungsgerichtshof must review the contested decision on the basis of the facts of the case accepted by the administrative authority.

27 Paragraph 42(1) of that Law provides that the Verwaltungsgerichtshof must give a ruling in each case. That ruling must, in principle, either dismiss the appeal as unfounded or annul the contested decision.

The disputes in the main proceedings and the questions referred for a preliminary ruling

28 Mr Dörr is a married German national. He has lived in Austria since 1992, together with his family since 1995, and pursues a professional activity there. He was sentenced to a term of imprisonment of 18 months, 12 of which were suspended, for, inter alia, serious fraud.

29 By decision of the Bezirkshauptmannschaft Klagenfurt (first-instance administrative authority of Klagenfurt) of 1 October 1998, a 10-year ban on residence was issued against Mr Dörr pursuant to Paragraph 48(1) and (3) and Paragraph 36(1)(1) of the Fremdengesetz.

30 After his appeal to the Sicherheitsdirektion für das Bundesland Kärnten had been dismissed by decision of 4 December 1998, pursuant to Paragraph 66(4) of the Allgemeine Verwaltungsverfahnensgesetz, Mr Dörr appealed to the Verwaltungsgerichtshof.

31 Mr Ünal is a Turkish national. He has been legally resident in Austria for several years and is employed there. He has been convicted three times, twice for affray and once for contravention of the Führerscheingesetz (Driving Licence Law) resulting in fines.

32 By decision of 23 March 2001, the Bezirkshauptmannschaft Dornbirn (first-instance administrative authority of Dornbirn) ordered the expulsion of Mr Ünal, pursuant to

the combined provisions of Paragraph 34(1)(2) and Paragraph 10(2)(3) of the Fremdengesetz.

33 After his appeal to the Sicherheitsdirektion für das Bundesland Vorarlberg had been dismissed by decision of 3 October 2001, pursuant to Paragraph 66(4) of the Allgemeine Verwaltungsverfahnensgesetz, Mr Ünal also appealed to the Verwaltungsgerichtshof.

34 The Verwaltungsgerichtshof joined the two sets of proceedings for the purpose of joint deliberation and resolution. It is unsure, firstly, whether the judicial protection provided for by the Austrian legal system is compatible with the requirements of Directive 64/221 and, secondly, whether those requirements are applicable to Turkish workers whose legal status is defined by Decision No 1/80.

35 In those circumstances, the Verwaltungsgerichtshof decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'1. Are Articles 8 and 9 of Council Directive 64/221/EEC ... to be interpreted as meaning that the administrative authorities may not — notwithstanding the existence of an internal appeal facility — take a decision ordering expulsion from the territory without obtaining an opinion from a competent authority within the meaning of Article 9(1) of the Directive (for which no provision is

made in the Austrian legal system) — save in cases of urgency — where appeals against its decisions may be lodged with the courts of public law only subject to the following limitations: such appeals have no suspensory effect and the courts are barred from taking a decision on appropriateness and are able merely to annul the contested decision? Moreover, is one court (the Verwaltungsgerichtshof) limited, as regards the findings of the facts, to an examination of whether the conclusions based on the facts are warranted (Schlüssig Keits prüfung), and the other (the Verfassungsgerichtshof) also limited to an examination of the infringement of rights guaranteed by the Constitution?

2. Are the guarantees of judicial protection provided by Articles 8 and 9 of [Directive 64/221] ... to be applied to Turkish nationals who enjoy legal status as defined by Article 6 or Article 7 of Decision No 1/80 ...?'

The questions referred for a preliminary ruling

The first question

36 By its first question, the national court essentially asks whether Articles 8 and 9 of Directive 64/221 are to be interpreted as prohibitory legislation of a Member State pursuant to which, firstly, a decision ordering expulsion from the territory of that State made against a national of another Member State can be the subject, at the time of the examination of the legal proceedings brought against such a decision, only of an assessment of its legality and, secondly, such appeals have no suspensory effect.

37 That question relates to Mr Dörr's situation. It is also pertinent, with regard to Mr Ünal's situation, in case the second question warrants an affirmative answer.

38 The Austrian and German Governments take the view that the judicial protection provided for by the Austrian legal system meets the requirements of Directive 64/221. In their view, the courts having jurisdiction must not only examine the legality of the contested measure, but also ensure that the assessment of the evidence carried out by the administrative authorities is well founded. On that basis, there is also, to a certain extent, a check carried out on the facts. Moreover, the appeals may have, at the request of the appellant, a suspensory effect. In such circumstances the intervention of a competent authority within the meaning of Article 9(1) of Directive 64/221 is not required.

39 The appellants in the main proceedings take the contrary view. The competent courts do not, in their opinion, have the power to rule on the substance of the case, but have the power only to quash a judgment. They cannot assess the facts but are bound by the assessment thereof made by the administrative authorities. They are prohibited from taking new factors into consideration. The judicial decision may refer only to the factual and legal situation as it was at the date of adoption of the contested measure. In such circumstances the person affected should be able to rely on considerations of expediency before the authority referred to in Article 9(1) of Directive 64/221.

40 According to the Commission, it is possible that procedural administrative law in force in Austria does not conform entirely to the provisions of Articles 8 and 9 of Directive 64/221, since no competent authority within the meaning of the latter article has been created.

41 In that regard, it should first be noted that it follows from Article 8 of Directive 64/221 that a person covered by that directive must have the same legal remedies in respect of any decision refusing the renewal of a residence permit, or ordering expulsion from the territory, as are available to nationals of the State concerned in respect of acts of the administration (see Case 98/79 *Pecastaing* [1980] ECR 691, paragraphs 9 and 10, and Joined Cases C-297/88 and C-197/89 *Dzodzi* [1990] ECR I-3763, paragraphs 57 and 58).

42 The purpose of Article 9(1) of Directive 64/221 is to provide minimum procedural guarantees for nationals of Member States refused renewal of a residence permit, or whose expulsion from the territory has been ordered. That provision, which applies in three situations, namely in the absence of any possibility of an appeal to a court of law, where such an appeal relates only to the legality of the decision, or where it has no suspensory effect, provides for the intervention of a competent authority other than that empowered to take the decision. Save in cases of urgency, the administrative authority may take its decision only after obtaining the opinion of the other competent authority. The person concerned must be able to present his defence before that second authority and arrange for assistance or representation on the procedural terms laid down by national legislation (see, to that effect, *Dzodzi*, cited above, paragraph 62, and Joined Cases C-482/01 and C-493/01 *Orfanopoulos and Oliveri* [2004] ECR I-5257, paragraph 105).

43 It is also appropriate to examine whether national legislation such as that in force in Austria is capable of ensuring, for nationals of other Member States affected by decisions ending their right of residence, provision of the minimum procedural guarantees laid down by Directive 64/221 and, more particularly, whether, in the circumstances of the dispute between Mr Dörr and the Sicherheitsdirektion für das Bundesland Kärnten, at least one of the situations referred to in Article 9(1) of that directive obtains.

44 Firstly, with regard to judicial review, it is common ground that decisions terminating the right to residence of nationals of other Member States may be the subject, in Austria, of an appeal, on the one hand, before the Verwaltungsgerichtshof and, on the other hand, where there has been an infringement of the rights guaranteed by the Constitution, before the Verfassungsgerichtshof.

45 Secondly, with regard to the scope of that review, the decision for reference is based on the premiss that those courts cannot rule on the appropriateness of the contested administrative measures. The Austrian and German Governments do not, however, entirely agree with the description of the national legal framework given in that decision.

46 In that regard, is it sufficient to point out that it is not for the Court, in the context of a reference for a preliminary ruling, to rule on the interpretation of national provisions or to decide whether the referring court's interpretation thereof is correct (see, to that effect, Case C-58/98 *Corsten* [2000] ECR I-7919, paragraph 24). The Court must take account, under the division of jurisdiction between the Community Courts and the national courts, of the factual and legislative context, as described in the decision for reference, in which the questions put to it are set (see Case C-475/99 *Ambulanz Glöckner* [2001] ECR I-8089, paragraph 10, and *Orfanopoulos and Oliveri*, cited above, paragraph 42).

47 By examining in that manner the question of the extent of the judicial review within the legislative framework as described by the national court, it appears that the national legislation does not permit nationals of other Member States affected by decisions terminating their residence in Austria the safeguard of an exhaustive examination of the expediency of the measure in question and for that reason does not meet the requirements of sufficiently effective protection (see, to that effect, Case 222/84 *Johnston* [1986] ECR 1651, paragraph 17; Case 222/86 *Heylens and*

Others [1987] ECR 4097, paragraphs 14 and 15; and *Orfanopoulos and Oliveri*, paragraph 110).

48 With regard, thirdly, to the effect of the appeals before the courts having jurisdiction, the wording of the question implies that they do not have a suspensory effect. However, it is apparent from the decision for reference that those appeals may, under certain conditions, have such an effect at the request of the appellant. The Austrian Government claims that suspension of the decision of expulsion may in fact be obtained as a matter of course from the Austrian courts.

49 In that regard, it is established case-law that all steps must be taken by the Member States to ensure that the safeguard of the right of appeal guaranteed by Directive 64/221 is in fact available to any national of another Member State against whom a decision ordering expulsion has been issued. That guarantee would, however, become illusory if the Member States could, by the immediate enforcement of a decision ordering expulsion, deprive the person concerned of the opportunity to take advantage of the success of the pleas raised in his appeal (see, to that effect, Case 48/75 *Royer* [1976] ECR 497, paragraphs 55 and 56).

50 It is indisputable that a Member State's legislation which does not confer a suspensory effect on appeals relating to decisions ending the residence of nationals of other Member States does not comply with the requirements of Directive 64/221, unless a competent authority within the meaning of Article 9(1) of that directive is created.

51 In order to be regarded as having a suspensory effect in terms of that article, the appeal available to persons covered by Directive 64/221 must have an automatic suspensory effect. It is not sufficient for the court having jurisdiction to have the authority, upon application by the person concerned and under certain conditions, to stay implementation of the decision ending that person's residence. The assertion by the Austrian Government that suspension of such a decision may in fact be obtained as a matter of course from the Austrian courts is not such as to vitiate that conclusion.

52 The requirement for legal certainty means that the legal situation resulting from national implementing measures must be sufficiently precise and clear to enable the individuals concerned to know the extent of their rights and obligations. With regard, more particularly, to the practice followed by national courts as described by the Austrian Government, it must be emphasised that such a practice, which by its nature is alterable at will by the authorities and is not given appropriate publicity, cannot be regarded as constituting a valid implementation of obligations under Directive 64/221.

53 It appears, therefore, that in the circumstances which gave rise to the dispute between Mr Dörr and the Sicherheitsdirektion für das Bundesland Kärnten, the second and third situations covered by Article 9(1) of Directive 64/221 obtain. National legislation, such as that in force in Austria, therefore complies with the requirements of that directive only if the condition requiring the intervention, before the adoption of the definitive decision by the administrative authorities and the judicial review carried out a postiori by the courts having jurisdiction, of an independent authority as referred to in Article 9(1) of the directive, has been satisfied.

54 Finally, it is necessary to assess whether a competent authority within the meaning of Article 9(1) of Directive 64/221 has been created in the Austrian legal order.

55 It should be noted that the intervention of such an authority must make it possible for the person concerned to obtain an exhaustive examination of all the facts and circumstances, including the expediency of the measure in question, before the decision is definitively adopted (Case 131/79 *Santillo* [1980] ECR 1585, paragraph 12, and Joined Cases 115/81 and 116/81 *Adoui and Cornuaille* [1982] ECR 1665, paragraph 15). The Court has also stated that, save in urgent cases, the administrative authority may not take its decision until an opinion has been obtained from the competent authority (*Pecastaing*, cited above, paragraph 17; *Dzodzi*, paragraph 62, and *Orfanopoulos and Oliveri*, paragraph 106).

56 The decision for reference is based on the premiss that a competent authority has not been created. It should be added that the documents forwarded to the Court by the national court did not show either that such an authority intervened or that there was, in the circumstances giving rise to the dispute between Mr Dörr and the Sicherheitsdirektion für das Bundesland Kärnten, a situation of urgency.

57 In light of the foregoing considerations, the answer to the first question must be that Article 9(1) of Directive 64/221 is to be interpreted as precluding legislation of a Member State under which appeals brought against a decision to expel a national of another Member State from the territory of that first Member State have no suspensory effect and, at the time of examination of such appeal, the decision to expel can be the subject only of an assessment as to its legality, inasmuch as no competent authority within the meaning of that provision has been established.

The second question

58 By its second question, the national court asks whether the procedural guarantees provided by Articles 8 and 9 of Directive 64/221 apply to Turkish nationals whose legal status is defined by Article 6 or Article 7 of Decision No 1/80.

59 The Austrian and German Governments take the view that the answer to this question should be negative. Although it is true that Articles 8 and 9 of Directive 64/221 specify the detailed rules for the application of the public policy exception referred to in Article 48(3) of the EEC Treaty (subsequently Article 48(3) of the EC Treaty and now, after amendment, Article 39(3) EC), the fact remains that those rules cannot be directly inferred from the latter provision. In order to be applicable to Turkish workers, Articles 8 and 9 would require an additional legal measure. Those governments maintain, moreover, that the arguments outlined by the Court in Case C-340/97 *Nazli* [2000] ECR I-957 concern, in essence, the interpretation of the concept of public policy established in Article 14(1) of Decision No 1/80, not the procedural aspects relating to Directive 64/221. In such circumstances, an application by analogy of Articles 8 and 9 of Directive 64/221 to Turkish workers and members of their family is in no way appropriate.

60 The appellants in the main proceedings and the Commission hold the opposite view. The Court, they submit, has expressly confirmed that it is necessary to extend, so far as possible, the principles enshrined in Article 48 of the Treaty to Turkish workers accorded rights under Decision No 1/80. Therefore, the minimum legal protection afforded by the procedural guarantees provided by Directive 64/221 must be capable of being applied within the context of Decision No 1/80.

61 It should be reiterated that, in the terms of Article 12 of the Association Agreement, 'the Contracting Parties agree to be guided by Articles 48, 49 and 50 of the Treaty establishing the Community for the purpose of progressively securing freedom of movement for workers between them'. Article 36 of the Additional Protocol specifies the stages by which free movement of workers between the Member States of the Community and the Republic of Turkey is progressively to be secured and provides that 'the Council of Association shall decide on the rules necessary to that end'. Decision No 1/80 seeks, according to the third recital in the preamble thereto, to improve, in the social field, the treatment accorded to workers and members of their family.

62 The Court has inferred from the wording of those provisions that the principles laid down in the context of Article 48 of the Treaty must be extended, so far as possible, to Turkish nationals who enjoy the rights conferred by Decision No 1/80 (see, to that effect, Case C-275/02 *Ayaz* [2004] ECR I-8765, paragraph 44, and Case C-467/02 *Cetinkaya* [2004] ECR I-10895, paragraph 42).

63 The Court has also held, when determining the scope of the public policy exception provided for in Article 14(1) of Decision No 1/80, that reference should be made to the interpretation given to that exception in the field of freedom of movement for workers who are nationals of a Member State of the Community (*Nazli*, cited above, paragraph 56). Such an approach is all the more justified because Article 14(1) is formulated in terms that are almost identical to those of Article 48(3) of the Treaty (see *Nazli*, paragraph 56, and *Cetinkaya*, cited above, paragraph 43).

64 On the basis of these elements, the Court held, in paragraphs 46 and 47 of *Cetinkaya*, that Article 14(1) of Decision No 1/80 imposes on the competent

national authorities limits analogous to those which apply to a measure expelling a national of a Member State and that the principles established on the basis of Article 3 of Directive 64/221 can be extended to Turkish workers who enjoy the rights recognised by Decision No 1/80. National courts must, therefore, take these principles into consideration in reviewing the lawfulness of the expulsion of such a Turkish worker.

65 The same considerations require that the principles enshrined in Articles 8 and 9 of Directive 64/221 be regarded as capable of extension to Turkish workers who enjoy the rights recognised by Decision No 1/80.

66 Such an interpretation is justified by the objective of progressively securing freedom of movement for Turkish workers, as set out in Article 12 of the Association Agreement. The social provisions of Decision No 1/80 constitute a further stage in securing that freedom (see, inter alia, Case C-1/97 *Birden* [1998] ECR I-7747, paragraph 52, and Case C-188/00 *Kurz* [2002] ECR I-10691, paragraph 40). In particular, Article 6(1) of Decision No 1/80 grants to migrant Turkish workers who fulfil its conditions precise rights with regard to the exercise of employment (see Joined Cases C-317/01 and C-369/01 *Abatay and Others* [2003] ECR I-12301, paragraph 78). It is established case-law that Article 6(1) of Decision No 1/80, which has been recognised as having direct effect, creates an individual right as regards employment and a correlated right of residence (see Case C-192/89 *Sevince* [1990] ECR I-3461, paragraphs 29 and 31; Case C-237/91 *Kus* [1992] ECR I-6781, paragraph 33; Case C-171/95 *Tetik* [1997] ECR I-329, paragraphs 26, 30 and 31; and *Kurz*, cited above, paragraphs 26 and 27).

67 In order for those individual rights to be effective, Turkish workers must be able to rely on them before national courts. To ensure the effectiveness of that judicial protection, it is essential to grant those workers the same procedural guarantees as those granted by Community law to nationals of Member States and, therefore, to permit those workers to take advantage of the guarantees laid down in Articles 8 and 9 of Directive 64/221. As the Advocate General states in point 59 of his Opinion, such guarantees are inseparable from the rights to which they relate.

68 That interpretation is valid not only for Turkish nationals whose legal status is defined in Article 6 of Decision No 1/80, but also for members of their family whose status is governed by Article 7 of that decision. Nothing can justify the granting to those nationals residing lawfully in the territory of a Member State, as regards the rights granted to them by Decision No 1/80, of a separate level of protection lower than that laid down in Articles 8 and 9 of Directive 64/221. If Article 14(1) of Decision No 1/80 did not impose on the competent national authorities procedural limits analogous to those which apply to a decision to expel a national of a Member State, as the Court has already held in *Cetinkaya*, cited above, the Member States would have complete freedom to render impossible the exercise of the rights to which Turkish nationals enjoying a right granted by Decision No 1/80 are entitled.

69 Having regard to the foregoing considerations, the answer to the second question must be that the procedural guarantees set out in Articles 8 and 9 of Directive 64/221 apply to Turkish nationals whose legal status is defined by Article 6 or Article 7 of Decision No 1/80.

Costs

70 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Third Chamber) hereby rules:

1. **Article 9(1) of Council Directive 64/221/EEC of 25 February 1964 on the coordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health is to be interpreted as precluding legislation of a Member State under which appeals brought against a decision to expel a national of another Member State from the territory of that first Member State have no suspensory effect and, at the time of examination of such appeal, the decision to expel can be the subject only of an assessment as to its legality, inasmuch as no competent authority within the meaning of that provision has been established.**

2. **The procedural guarantees set out in Articles 8 and 9 of Directive 64/221 apply to Turkish nationals whose legal status is defined by Article 6 or Article 7 of Decision No 1/80 of the Association Council of 19 September 1980 on the development of the Association.**

[Signatures]