JUDGMENT OF THE COURT
31 January 1991 *

In Case C-18/90,

REFERENCE to the Court under Article 177 of the EEC Treaty by the Cour du travail, Liège, for a preliminary ruling in the proceedings pending before that court between

Office national de l'emploi (Onem)

and

Bahia Kziber

on the interpretation of certain provisions of the Cooperation Agreement between the European Economic Community and Kingdom of Morocco,

THE COURT

composed of: O. Due, President, G. F. Mancini, G. C. Rodríguez Iglesias and M. Díez de Velasco (Presidents of Chambers), Sir Gordon Slynn, C. N. Kakouris, R. Joliet, F. A. Schockweiler and P. J. G. Kapteyn, Judges,

Advocate General: W. Van Gerven
Registrar: J. A. Pompe, Deputy Registrar

after considering the observations submitted on behalf of

Onem, by C. Derwael, of the Brussels Bar,

Bahia Kziber, by Michèle Baiwir and René Jamar, trade union representatives,

* Language of the case: French.

the German Government, by Ernst Röder and Joachim Karl, officials in the Federal Ministry of the Economy, acting as Agents,

the French Government, by Philippe Pouzoulet, Deputy Director, and Claude Chavance, Attaché Principal, in the Legal Affairs Directorate of the Ministry of Foreign Affairs, acting as Agents,

the Commission of the European Communities, by Jean-Claude Séché, Legal Adviser, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral argument presented by Onem, Miss Kziber, the French Government and the Commission at the hearing on 6 November 1990,

after hearing the Opinion of the Advocate General at the sitting on 6 December 1990,

gives the following

Judgment

1 By judgment of 16 January 1990 which was received at the Court on 22 January 1990 the Cour du travail (Labour Court), Liège (Belgium), referred a question to the Court of Justice under Article 177 of the EEC Treaty for a preliminary ruling on the interpretation of the Cooperation Agreement between the European Economic Community and the Kingdom of Morocco signed in Rabat on 27 April 1976 and concluded on behalf of the Community by Council Regulation No 2211/78 of 26 September 1978 (Official Journal L 264, p. 1, hereinafter referred to as 'the Agreement').

2 That question was raised in proceedings between Bahia Kziber, a Moroccan national, and the Belgian Office national de l'emploi concerning a refusal to grant unemployment allowances.

3 It is apparent from the file in the main proceedings that Miss Kziber lives with her father, a Moroccan national, who is a pensioner in Belgium where he had worked as a wage-earner.

4 The Belgian Royal Decree of 20 December 1963 relating to employment and unemployment (*Moniteur belge* of 18.1.1964, p. 506) provides, in Article 124 thereof, for the grant of unemployment allowances for the benefit of young workers who have completed vocational studies or apprenticeships. As regards foreign and stateless workers, Article 125 of the Royal Decree provides that they are not to be entitled to unemployment allowances except within the limits of an international convention.

5 The Office national de l'emploi refused to grant the unemployment allowance to Miss Kziber on the ground of her nationality. She brought proceedings against that decision before the Belgian labour courts.

6 The Cour du travail (Labour Court), Liège, before which the matter had been brought on appeal, decided to stay the proceedings until the Court of Justice had given a preliminary ruling on the following question:

'May a Member State refuse to grant, on the grounds of nationality, social advantage within the meaning of Article 7(2) of Regulation No 1612/68 to the dependent children of the worker who is the national of a non-member country (Morocco), with which the European Economic Community has concluded a cooperation agreement containing, in the field of social security, a clause providing for the equal treatment of migrant workers from that country employed in the Community and of members of their families living with them?'

7 Reference is made to the Report for the Hearing for a fuller account of the facts of the case in the main proceedings, the course of the procedure and the written observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

8 In order to define the purpose of the question submitted by the Cour du travail, Liège, it is necessary to recall to mind the objectives and the relevant provisions of the Agreement.

9 The objective of the Agreement is, according to Article 1 thereof, to promote overall cooperation between the Contracting Parties with the view to contributing to the economic and social development of Morocco and helping to strengthen relations between the Parties. That cooperation is instituted, under Title I, in the economic technical and financial fields, under Title II, in the field of trade cooperation, and, under Title III, in the field of labour.

10 Article 40, which forms part of Title III relating to cooperation in the field of labour, provides that each Member State is to grant to workers of Moroccan nationality employed in its territory treatment free from any discrimination based on nationality, as regards working conditions or remuneration.

11 Article 41, which forms part of the same Title III provides, in paragraph 1, that subject to the provisions of the following paragraphs, workers of Moroccan nationality and any members of the family living with them are to enjoy, in the field of social security, treatment free from any discrimination based on nationality in relation to nationals of the Member States in which they are employed. Paragraph 2 of that article grants to Moroccan worker the benefit of the aggregation of periods of insurance, employment or residence completed by such workers in the various Member States in respect of certain benefits; paragraph 3 grants them the benefit of family allowances for members of their families who are resident in the Community; paragraph 4 allows them to transfer freely to Morocco pensions or annuities. Article 41(5) establishes the principle of reciprocity in favour of workers who are nationals of the Member States as regards the treatment specified in paragraphs 1, 3 and 4 of that article.

12 Article 42 of the Agreement entrusts the Cooperation Council with the task of adopting provisions to implement the principles set out in Article 41.

13 Analysed in the light of those provisions of the Agreement, the question referred to the Court for a preliminary ruling must be understood as seeking, in substance, to ascertain whether Article 41(1) of the Agreement precludes a Member State from refusing to grant an *allocation d'attente* provided by its legislation for young persons in search of employment to a member of a family of a worker of Moroccan nationality living with him, on the ground that the person in search of employment is of Moroccan nationality.

14 In order to give a helpful answer to that question it is first necessary to determine whether Article 41(1) of the Agreement may be relied on before the national court and, secondly, whether that provision covers the situation of a member of the family of a migrant Moroccan worker who applies for an allowance of the type at issue in the main proceedings.

The direct effect of Article 41(1) of the Agreement

15 As the Court has consistently held (see judgment in Case 12/86 *Demirel* [1987] ECR 3719), a provision of an agreement concluded by the Community with non-member countries must be regarded as being directly applicable when, regard being had to its wording and to 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.

16 In order to determine whether Article 41(1) of the Agreement satisfies those criteria, it is necessary in the first place to examine the terms of that provision.

17 In that respect, it must be held that Article 41(1) lays down in clear, precise and unconditional terms a prohibition of discrimination, based on nationality, against workers of Moroccan nationality and the members of their families living with them in the field of social security.

18 The fact that Article 41(1) states that that prohibition of discrimination applies only subject to the provisions of the following paragraphs means that, as regards the aggregation of periods, the grant of family benefits and the transfer to Morocco of pensions and annuities, that prohibition of discrimination is

guaranteed only within the limits of the conditions laid down in paragraphs 2, 3 and 4 of Article 41. That reservation may not, however, be interpreted as divesting the prohibition of discrimination of its unconditional character in respect of any other question which arises in the field of social security.

19 Similarly, the fact that Article 42(1) provides for the implementation of the principles set out in Article 41 by the Cooperation Council may not be construed as calling in question the direct applicability of a provision which is not subject, in its implementation or effects, to the adoption of any subsequent measure. The role assigned to the Cooperation Council by Article 42(1) consists, as the Advocate General has pointed out in section 12 of his Opinion, in facilitating compliance with the prohibition of discrimination and, if necessary, in adopting the measures required for the implementation of the principle of aggregation embodied in paragraph 2 of Article 41 but it may not be regarded as rendering conditional the immediate application of the principle of non-discrimination.

20 The finding that the principle of non-discrimination embodied in Article 41(1) is capable of directly governing the situation of a Moroccan worker and of the members of his family living with him in the Member States of the Community is not, moreover, contradicted by a consideration of the purpose and the nature of the Agreement of which that provision forms part.

21 The object of the Agreement, as has already been stated, is to promote overall cooperation between the Contracting Parties, in particular in the field of labour. The fact that the Agreement is intended essentially to promote the economic development of Morocco and that it confines itself to instituting cooperation between the Parties without referring to Morocco's association with or future accession to the Communities is not such as to prevent certain of its provisions from being directly applicable.

22 That finding applies in particular in the case of Articles 40 and 41 which form part of Title III relating to cooperation in the field of labour and which, far from being purely programmatic in nature, establishes, in the field of working conditions and remuneration and in that of social security, a principle capable of governing the legal situation of individuals.

23 In those circumstances, it must be held that it follows from the terms of Article 41(1), as well as from the purpose and nature of the Agreement of which that article forms part, that that provision is capable of being applied directly.

The scope of Article 41(1) of the Agreement

24 In order to determine the scope of the principle of non-discrimination laid down in Article 41(1) of the Agreement, it is necessary to define in the first place the concept of social security as it appears in that provision and then to analyse the concept of 'worker' in the meaning of that provision before specifying the conditions under which the members of the family of a Moroccan worker may claim entitlement to social security benefits.

25 The concept of social security in Article 41(1) of the Agreement must be understood by means of an analogy with the identical concept in Regulation No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community (codified version, Official Journal 1980, C 138, p. 1). Article 4 of that regulation, relating to the matters covered by it, lists, in paragraph 1, among the branches of social security, unemployment benefits of which the *allocation d'attente* at issue in the main proceedings merely constitute a specific form.

26 The fact that Article 41(2) of the Agreement, unlike Regulation No 1408/71, does not mention unemployment benefits among the schemes to which the aggregation of insurance periods applies is of importance solely as regards the question of aggregation but it cannot, in itself, in the absence of any clearly manifested intention on the part of the Contracting Parties, warrant the conclusion that those parties intended to exclude unemployment benefits, which are traditionally regarded as a branch of social security, from the concept of social security within the meaning of the Agreement.

27 As regards the concept of 'worker' in Article 41(1) of the Agreement, it encompasses both active workers and those who have left the labour market after

reaching the age required for receipt of an old-age pension or after becoming the victims of the materialization of one of the risks creating entitlement to allowances falling under other branches of social security. Paragraphs 2 and 4 of Article 41 make express reference, as regards the benefit of aggregation and the possibility of transferring benefits to Morocco, to matters such as the old-age or invalidity pensions and annuities enjoyed by retired workers.

28 As regards, finally, the scope of the rights of a member of the family of a Moroccan worker living with him, the principle of freedom from all discrimination, based on nationality, in the field of social security, which is laid down in Article 41(1), means that such a person, who satisfies all the conditions laid down by national legislation for the purposes of entitlement to the unemployment allowances provided for the benefit of young persons in search of employment, may not be refused those benefits on the ground of his nationality.

29 It follows from the foregoing that the answer to be given to the Cour du travail, Liège, must be that Article 41(1) of the Agreement is to be interpreted as meaning that it precludes a Member State from refusing to grant an *allocation d'attente* provided by its legislation in favour of young persons in search of employment, to a member of the family of a worker of Moroccan nationality living with him, on the ground that the person in search of employment is of Moroccan nationality.

Costs

30 The costs incurred by the Government of the Federal Republic of Germany, the Government of the French Republic and the Commission of the European Communities, 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 proceedings before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the question submitted to it by the Cour du travail, Liège, by judgment of 16 January 1990, hereby rules:

Article 41(1) of the Cooperation Agreement between the European Economic Community and the Kingdom of Morocco signed on 27 April 1976 in Rabat and concluded on behalf of the Community by Council Regulation No 2211/78 of 26 September 1978 must be interpreted as meaning that it precludes a Member State from refusing to grant an *allocation d'attente*, provided by its legislation for young persons in search of employment, to a member of the family of a worker of Moroccan nationality living with him, on the ground that the person in search of employment is of Moroccan nationality.

Due Mancini Rodríguez Iglesias Díez de Velasco

Slynn Kakouris Joliet Schockweiler Kapteyn

Delivered in open court in Luxembourg on 31 January 1991.

J.-G. Giraud
Registrar

O. Due
President