# JUDGMENT OF THE COURT (Second Chamber)
15 January 1998 *

In Case C-113/97,

REFERENCE to the Court under Article 177 of the EC Treaty by the Tribunal du Travail, Charleroi (Belgium), for a preliminary ruling in the proceedings pending before that court between

**Henia Babahenini**

and

**The Belgian State**

on the interpretation of Article 39(1) of the Cooperation Agreement between the European Economic Community and the People's Democratic Republic of Algeria, signed in Algiers on 26 April 1976 and concluded on behalf of the Community by Council Regulation (EEC) No 2210/78 of 26 September 1978 (OJ 1978 L 263, p. 1),

THE COURT (Second Chamber),

composed of: R. Schintgen (Rapporteur), President of the Chamber, G. F. Mancini and G. Hirsch, Judges,

* Language of the case: French.

Advocate General: F. G. Jacobs,
Registrar: R. Grass,

after considering the written observations submitted on behalf of:

— the Belgian Government, by J. Devadder, General Adviser in the Ministry of Foreign Affairs, External Trade and Cooperation with Developing Countries, acting as Agent,

— the Commission of the European Communities, by M. Wolfcarius, of its Legal Service, acting as Agent,

having regard to the Report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 13 November 1997,

gives the following

## Judgment

By judgment of 18 March 1997, received at the Court on 20 March 1997, the Tribunal du Travail (Labour Court), Charleroi, referred to the Court for a preliminary ruling under Article 177 of the EC Treaty a question on the interpretation of Article 39(1) of the Cooperation Agreement between the European Economic Community and the People's Democratic Republic of Algeria, signed in Algiers on 26 April 1976 and concluded on behalf of the Community by Council Regulation (EEC) No 2210/78 of 26 September 1978 (OJ 1978 L 263, p. 1, hereinafter 'the Agreement').

2 That question was raised in a dispute between Mrs Babahenini, an Algerian national, and the Belgian State concerning the refusal to grant her disability allowance.

3 According to the documents on the file, Mrs Babahenini is the spouse of a retired Algerian worker. She lives with her husband in Belgium, where he was employed and where he receives a retirement pension under Belgian legislation. She herself has never been engaged in a trade or profession in Belgium. It is common ground that she is physically disabled.

4 On 11 September 1995, Mrs Babahenini applied for disability allowance under the Belgian Law of 27 February 1987 (*Moniteur Belge* of 1 April 1987, p. 4832).

5 Under Article 4(1) of that Law, as amended by the Law of 20 July 1991 (*Moniteur Belge* of 1 August 1991, p. 16951), a person must, in order to be entitled to disability allowance, be actually resident in Belgium, be a Belgian national or a national of another Member State of the Community, stateless or of indeterminate nationality or a refugee, or have been entitled up to the age of 21 to a family allowance at the increased rate provided for under Belgian legislation. The Law of 20 July 1991 entered into force on 1 January 1992.

6 On 27 September 1995, the competent Belgian authorities rejected Mrs Babahenini's application on the ground that she did not meet the nationality requirement laid down in Article 4(1) of the Law of 27 February 1987.

7 On 29 November 1995, Mrs Babahenini challenged that decision before the Tribunal du Travail, Charleroi, arguing that it was contrary to Article 39(1) of the Agreement, which prohibits the authorities of a Member State from relying on the

Algerian nationality of an applicant in order to deny him entitlement to the social security benefits for which he has applied.

8 The *auditeur du travail* (public attorney in labour-law cases) appearing before the Tribunal du Travail, Charleroi, takes the view, however, that Mrs Babahenini does not come within the scope of Article 39(1) of the Agreement on the ground that the right to disability allowances provided for under Belgian law must be regarded as a personal right and that the plaintiff in the main proceedings does not herself have the status of a worker.

9 The Tribunal du Travail, Charleroi, is uncertain whether this position taken by the public attorney has had the effect of limiting the scope of the Agreement, which, according to the Court's case-law (see, by way of analogy, Case C-18/90 *ONEM* v *Kziber* [1991] ECR I-199), also applies to the members of the family of an Algerian migrant worker. It also points out that in this case Mrs Babahenini was denied the benefits for which she had applied solely on the ground of her nationality and not because she had not been engaged in any trade or profession, a requirement which, moreover, is not imposed on Belgian nationals in any form.

10 Taking the view that the dispute accordingly raised problems concerning the interpretation of Community law, the Tribunal du Travail, Charleroi, decided to stay the proceedings and refer the following question to the Court for a preliminary ruling:

'In the light of Article 39 of the Cooperation Agreement between the European Economic Community and the People's Democratic Republic of Algeria, approved by Regulation (EEC) No 2210/78, may a Member State refuse to grant disablement benefit (in this case that provided for by the Belgian Law of 27 February 1987) to a disabled person of Algerian nationality who has not herself worked in Belgium, where that person resides in Belgium with her spouse, an Algerian national in receipt of a Belgian retirement pension?'

11 It is appropriate at the outset to recall the purpose and relevant provisions of the Agreement.

12 Article 1 provides that the object of the Agreement is to promote overall cooperation between the Contracting Parties with a view to contributing to the economic and social development of Algeria and helping to strengthen relations between them. Such cooperation is established, under Title I, in economic, technical and financial areas, under Title II, in the area of trade, and, under Title III, in the area of social affairs.

13 Article 39(1), which forms part of Title III, on cooperation in the field of labour, provides as follows:

'Subject to the provisions of the following paragraphs, workers of Algerian nationality and any members of their families living with them shall 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.'

14 The subsequent paragraphs of Article 39 deal with the aggregation of periods of insurance, employment or residence completed in the various Member States, entitlement to family allowances for family members residing within the Community, and the transfer to Algeria of pensions and annuities in respect of old age, death, industrial accident or occupational disease, and invalidity.

15 It appears from the context of the case in the main proceedings that, by its question, the national court is in substance seeking to ascertain whether Article 39(1) of the Agreement is to be interpreted as precluding a Member State from refusing to

grant a benefit, such as disability allowance, provided for under its legislation in favour of nationals resident in that State and irrespective of whether they have been working in an employed capacity, to the disabled spouse of a retired Algerian worker who lives with her husband in the Member State in question, on the ground that she is of Algerian nationality and has never been engaged in a trade or profession.

16 In order to provide a useful answer to that question, it is necessary to consider, first, whether Article 39(1) of the Agreement may be relied on directly by an individual in proceedings before a national court and, second, whether that provision covers the situation of the spouse of an Algerian migrant worker who applies, in the Member State in which they reside and in which her husband receives an old-age pension, for an allowance of the kind at issue in the main proceedings.

**The direct effect of Article 39(1) of the Agreement**

17 The Court has consistently held in this regard (see Case C-103/94 *Krid* v *CNAVTS* [1995] ECR I-719, paragraphs 21 to 23, and, by analogy, *Kziber*, cited above, paragraphs 15 to 22, Case C-58/93 *Yousfi* v *Belgian State* [1994] ECR I-1353, paragraphs 16 to 18, and Case C-126/95 *Hallouzi-Choho* v *Bestuur van de Sociale Verzekeringsbank* [1996] ECR I-4807, paragraph 19, dealing with Article 41(1) 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 (EEC) No 2211/78 of 26 September 1978 (OJ 1978 L 264, p. 1), a provision drafted in the same terms as Article 39(1) of the EEC-Algeria Cooperation Agreement) that Article 39(1) of the Agreement, which lays down in clear, precise and unconditional terms a prohibition of discrimination, based on nationality, against workers of Algerian nationality and the members of their families living with them in the field of social security, contains a clear and precise obligation which is not subject, in its implementation or effects, to the adoption of any subsequent measure in respect of any question other than the matters mentioned in paragraphs 2, 3 and 4 of that article. In those judgments, the Court added that the object of the Agreement,

which is to promote overall cooperation between the Contracting Parties, in particular in the field of labour, confirms that the principle of non-discrimination enshrined in Article 39(1) is capable of governing directly the legal position of individuals.

18 The Court has inferred from this (see *Krid*, paragraph 24, and, by analogy, *Kziber*, paragraph 23, *Yousfi*, paragraph 19, and *Hallouzi-Choho*, paragraph 20, all cited above) that Article 39(1) has direct effect, with the result that persons to whom that provision applies are entitled to rely on it in proceedings before the national courts.

## The scope of Article 39(1) of the Agreement

19 In order to determine the scope of the principle of non-discrimination laid down in Article 39(1) of the Agreement, it is necessary to examine, first of all, whether a person such as the plaintiff in the main proceedings comes within the scope *ratione personae* of Article 39 and, second, whether a benefit such as the disability allowance under Belgian law at issue in the main proceedings comes within the ambit of social security for the purposes of that provision.

20 With regard, first, to the persons covered by Article 39(1) of the Agreement, it should be noted that the provision applies first and foremost to workers of Algerian nationality, an expression which, according to settled case-law (see *Krid*, paragraph 26, and, by analogy, *Kziber*, paragraph 27, *Yousfi*, paragraph 21, and *Hallouzi-Choho*, paragraph 22), covers both active workers and those who have left the labour market, in particular after reaching the age required for receipt of an old-age pension.

21 Furthermore, Article 39(1) of the Agreement also applies to members of those workers' families living with them in the Member State in which they are or have been employed.

22 In those circumstances, a person such as the plaintiff in the main proceedings, in her capacity as the spouse of an Algerian migrant worker living with him in the Member State in which that worker receives an old-age pension after having worked there, is covered by Article 39(1) of the Agreement.

23 Against this, however, the Belgian State argues that an Algerian national who is married to an Algerian migrant worker but has herself never worked cannot rely on Article 39(1) of the Agreement for the purpose of receiving a benefit such as the disability allowance provided for under Belgian law on the ground that this benefit is treated by the national legislation in question as a personal right and not a derived right acquired by the person concerned in his or her capacity as a member of a migrant worker's family.

24 Suffice it to note in this regard that the scope *ratione personae* of Article 39(1) of the Agreement is not the same as that of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended and updated by Council Regulation (EEC) No 2001/83 of 2 June 1983 (OJ 1983 L 230, p. 6), defined in Article 2 thereof, with the result that the case-law in which a distinction is drawn between the derived rights and the personal rights of the members of the migrant worker's family in the context of Regulation No 1408/71, and which, moreover, has been recently clarified by the judgment in Case C-308/93 *Bestuur van de Sociale Verzekeringsbank* v *Cabanis-Issarte* [1996] ECR I-2097, cannot be applied in the context of the Agreement, as is clear from paragraph 39 of the judgment in *Krid* (see, by way of analogy, the judgment in *Kziber* and paragraph 30 of the judgment in *Hallouzi-Choho*).

25 A person such as the plaintiff in the main proceedings therefore comes within the scope *ratione personae* of Article 39(1) of the Agreement, irrespective of whether the benefit for which she has applied is awarded to a recipient as a personal right or in that person's capacity as a member of the family of an Algerian migrant worker.

26 Secondly, it follows from *Krid*, paragraph 32, and, by analogy, from *Kziber*, paragraph 25, *Yousfi*, paragraph 24, and *Hallouzi-Choho*, paragraph 25, that the term 'social security' contained in that provision must be deemed to bear the same meaning as the identical term used in Regulation No 1408/71.

27 Since its amendment by Council Regulation (EEC) No 1247/92 of 30 April 1992 (OJ 1992 L 136, p. 1), Regulation No 1408/71 expressly refers, in Article 4(2a)(b) (see also Article 10a(1) of and Annex IIa to that regulation), to benefits intended to ensure specific protection for the disabled. Furthermore, even before Regulation No 1408/71 was so amended, it had been settled case-law since the judgment in Case 187/73 *Callemeyn* v *Belgian State* [1974] ECR 553 that disability allowances came within the scope *ratione materiae* of that regulation by virtue of Article 4(1)(b) thereof, which refers expressly to 'invalidity benefits' (see also, to that effect, *Yousfi*, paragraph 25).

28 It follows that a benefit such as the disability allowance provided for under Belgian law comes within the scope *ratione materiae* of Regulation No 1408/71 and consequently within that of Article 39(1) of the Agreement.

29 Accordingly, the principle laid down in Article 39(1) of the Agreement that there must be no discrimination based on nationality in the field of social security between Algerian migrant workers and members of their family living with them, on the one hand, and nationals of the Member States in which they are working, on the other, means that persons covered by that provision are entitled to disability

allowances on the same conditions as those imposed on nationals of the Member States concerned.

30 Accordingly, the imposition on persons covered by that provision not only of the requirement that they must be nationals of the Member State concerned, which nationals of that Member State necessarily satisfy, but also of the condition that the person applying for the social security benefit in question must be engaged in a trade or profession, when, as the referring court has pointed out, no such condition is imposed on nationals, must be regarded as incompatible with that principle.

31 It thus follows from the principle that there must be no discrimination based on nationality in the field of social security, embodied in Article 39(1) of the Agreement, that the spouse of an Algerian migrant worker who lives in the Member State in which that worker was employed and who satisfies all the conditions, save that of nationality, governing entitlement in that country to a benefit such as the disability allowance provided for under Belgian law in favour of persons resident in the Member State concerned cannot be denied entitlement to that benefit.

32 In the light of all the foregoing considerations, the answer to the question submitted must be that Article 39(1) of the Agreement is to be interpreted as precluding a Member State from refusing to grant a benefit, such as disability allowance, provided for under its legislation in favour of nationals resident in that State and irrespective of whether they have been working in an employed capacity, to the disabled spouse of a retired Algerian worker who lives with her husband in the Member State in question, on the ground that she is of Algerian nationality and has never been engaged in a trade or profession.

## Costs

33 The costs incurred by the Belgian Government and the Commission of the European Communities, which have submitted observations to the Court, are

not recoverable. 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.

On those grounds,

THE COURT (Second Chamber),

in answer to the question referred to it by the Tribunal du Travail, Charleroi, by judgment of 18 March 1997, hereby rules:

**Article 39(1) of the Cooperation Agreement between the European Economic Community and the People's Democratic Republic of Algeria, signed in Algiers on 26 April 1976 and concluded on behalf of the Community by Council Regulation (EEC) No 2210/78 of 26 September 1978, is to be interpreted as precluding a Member State from refusing to grant a benefit, such as disability allowance, provided for under its legislation in favour of nationals resident in that State and irrespective of whether they have been working in an employed capacity, to the disabled spouse of a retired Algerian worker who lives with her husband in the Member State in question, on the ground that she is of Algerian nationality and has never been engaged in a trade or profession. yy**

Schintgen Mancini Hirsch

Delivered in open court in Luxembourg on 15 January 1998.

R. Grass R. Schintgen

Registrar President of the Second Chamber