

ORDER OF THE COURT (Fifth Chamber)

17 April 2007^{*}

In Case C-276/06,

REFERENCE for a preliminary ruling under Article 234 EC, by the Tribunal du Travail [Labour Court], Verviers (Belgium), made by decision of 13 June 2006, received at the Court on 26 June 2006, in the proceedings

Mamate El Youssfi

v

Office National des Pensions (ONP),

THE COURT (Fifth Chamber),

composed of R. Schintgen (Rapporteur), President of Chamber, A. Tizzano and A. Borg Barthet, Judges,

^{*} Language of the case: French.

Advocate General: M. Poiares Maduro,
Registrar: R. Grass,

the Court, proposing to give its decision by reasoned order in accordance with the first subparagraph of Article 104(3) of its Rules of Procedure,

after hearing the Advocate General,

makes the following

Order

- 1 The reference for a preliminary ruling concerns the interpretation of 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 approved on behalf of the Community by Council Regulation (EEC) No 2211/78 of 26 September 1978 (OJ L 264, p. 1, hereinafter referred to as the 'Cooperation Agreement'), the first subparagraph of Article 65(1) of the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part, signed in Brussels on 26 February 1996 and approved on behalf of the Communities by Decision No 2000/204/EC, ECSC of the Council and the Commission of 24 January 2000

(OJ 2000 L 70, p. 1, hereinafter referred to as the 'Association Agreement'), Article 4 of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ 2004 L 166, p. 1) read in conjunction with Council Regulation (EC) No 859/2003 of 14 May 2003 extending the provisions of Regulation (EEC) No 1408/71 and Regulation (EEC) No 574/72 to nationals of third countries who are not already covered by those provisions solely on the ground of their nationality (OJ 2003 L 124, p. 1), Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 (hereinafter referred to as the 'ECHR') and Article 1 of the First Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as 'the Additional Protocol').

- 2 That reference was submitted in the context of proceedings between Mrs El Youssfi and the Belgian Office National des Pensions (hereinafter referred to as the 'Office') arising from the latter's refusal to award her the Statutory Guaranteed Income to Elderly Persons provided for under national rules.

Legal background

Community rules

The Cooperation Agreement

- 3 According to Article 41(1) of the Cooperation Agreement, which is contained in Title III thereof, dealing with cooperation in the field of labour:

‘Subject to the provisions of the following paragraphs, workers of Moroccan 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.’

- 4 Article 41(2) to (4) contain provisions dealing with the adding together of periods of insurance, employment or residence completed by such workers in the various Member States, family allowances for members of their families who are resident in the Community and the transfer to Morocco of pensions or annuities in respect of old age, death, industrial accident, occupational disease, or invalidity.

The Association Agreement

- 5 Chapter I, entitled ‘Workers’, of Article 65(1) of the Association Agreement, which is contained in Title VI thereof, dealing, in particular, with cooperation in social matters, provides as follows:

‘Subject to the provisions of the following paragraphs, workers of Moroccan 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 relative to nationals of the Member States in which they are employed.

The concept of social security shall cover the branches of social security dealing with sickness and maternity benefits, invalidity, old-age and survivors' benefits, industrial accident and occupational disease benefits and death, unemployment and family benefits.

...'

6 Article 65(2) to (4) contains provisions similar to those set out in paragraph 4 of this order.

7 Article 66 of that agreement is worded as follows:

'The provisions of this Chapter shall not apply to nationals of the Parties residing or working illegally in the territory of their host countries.'

8 In accordance with Article 96 thereof, the Association Agreement entered into force on 1 March 2000.

- 9 Article 96(2) provides that upon its entry into force, the Association Agreement is to replace the Cooperation Agreement.

Regulation (EEC) No 1408/71

- 10 According to Article 2(1) thereof, 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 (EC) No 118/97 of 2 December 1996 (OJ 1997 L 28, p. 1, hereinafter referred to as ‘Regulation No 1408/71’) ‘shall apply to employed or self-employed persons who are or have been subject to the legislation of one or more Member States and who are nationals of one of the Member States or who are stateless persons or refugees residing within the territory of one of the Member States, as well as to the members of their families and their survivors’.
- 11 Article 3(1) of Regulation No 1408/71, entitled ‘Equality of treatment’, provides as follows:

‘Subject to the special provisions of this Regulation, persons resident in the territory of one of the Member States to whom this Regulation applies shall be subject to the same obligations and enjoy the same benefits under the legislation of any Member State as the nationals of the State.’

12 Article 4 of that Regulation defines the scope *ratione materiae* of that regulation in the following terms:

‘1. This Regulation shall apply to all legislation concerning the following branches of social security:

(a) sickness and maternity benefits;

(b) invalidity benefits, including those intended for the maintenance or improvement of earning capacity;

(c) old-age benefits;

(d) survivors’ benefits;

(e) benefits in respect of accidents at work and occupational diseases;

(f) death grants;

(g) unemployment benefits;

(h) family benefits.

2. This Regulation shall apply to all general and special social security schemes, whether contributory or non-contributory ...

2a. This Regulation shall also apply to special non-contributory benefits which are provided under legislation or schemes other than those referred to in paragraph 1 or excluded by virtue of paragraph 4, where such benefits are intended:

(a) either to provide supplementary, substitute or ancillary cover against the risks covered by the branches of social security referred to in paragraph 1(a) to (h);

or

(b) solely as specific protection for the disabled.

...'

- 13 Article 10a(1) of Regulation No 1408/71 provides as follows:

'Notwithstanding the provisions of Article 10 and Title III, persons to whom this Regulation applies shall be granted the special non-contributory cash benefits referred to in Article 4(2a) exclusively in the territory of the Member State in which they reside, in accordance with the legislation of that State, provided that such benefits are listed in Annex IIa. Such benefits shall be granted by and at the expense of the institution of the place of residence.'

- 14 In the part entitled 'A. Belgium', paragraph (b), Annexe IIa refers to '[g]uaranteed income for elderly persons ...'.

- 15 The procedure for implementing Regulation No 1408/71 was laid down in Regulation No 574/72 of the Council of 21 March 1972, as amended by Regulation No 118/97.

Regulation No 859/2003

¹⁶ The 12th recital in the preamble to Regulation No 859/2003 states that:

‘The provisions of Regulation ... No 1408/71 and Regulation ... No 574/72 are not applicable in a situation which is confined in all respects within a single Member State. This concerns, *inter alia*, the situation of a third country national who has links only with a third country and a single Member State.’

¹⁷ According to Article 1 of the same regulation:

‘Subject to the provisions of the Annex to this Regulation, the provisions of Regulation ... No 1408/71 and Regulation ... No 574/72 shall apply to nationals of third countries who are not already covered by those provisions solely on the ground of their nationality, as well as to members of their families and to their survivors, provided they are legally resident in the territory of a Member State and are in a situation which is not confined in all respects within a single Member State.’

Regulation No 883/2004

18 Article 4 of Regulation No 883/2004, entitled 'Equality of treatment' provides that:

'Unless otherwise provided for by this Regulation, persons to whom this Regulation applies shall enjoy the same benefits and be subject to the same obligations under the legislation of any Member State as the nationals thereof.'

19 According to Article 87(1) of Regulation No 883/2004, '[n]o rights shall be acquired under this Regulation for the period before its date of application'.

20 Article 90(1) of the same regulation provides that 'Council Regulation ... No 1408/71 shall be repealed from the date of application of this Regulation'.

21 Article 91 of Regulation No 883/2004 provides as follows:

'This Regulation shall enter into force on the 20th day after its publication in the *Official Journal of the European Union*.

It shall apply from the date of entry into force of the Implementing Regulation.’

- 22 It is not disputed that no such implementing regulation has yet been adopted.

The ECHR

- 23 Article 14 of the ECHR is drafted in the following terms:

‘The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.’

- 24 Article 1 of the Additional Protocol provides that:

‘Every natural or legal person is entitled to the peaceful enjoyment of his possessions. ...’

National rules

²⁵ The purpose of the Belgian Law of 22 March 2001 instituting the Income Guarantee for Elderly Persons (*Moniteur belge* of 29 March 2001, p. 10244, hereinafter referred to as the '2001 Law') is to ensure that elderly people dispose of minimum means of subsistence. That law does not make contributions or insurance a prerequisite for entitlement to the benefit which it institutes, but the income of the person concerned must be below a certain ceiling.

²⁶ According to Article 3 of that Law, 'persons aged 65 or above shall be ensured guaranteed income'.

²⁷ Article 4 of the Law of 22 March 2001 provides:

'Recipients of guaranteed income must have their principal place of residence in Belgium and belong to one of the following categories:

(1) Belgian nationals;

(2) persons to whom Regulation ... No 1408/71 ... applies;

- (3) stateless persons to whom the Convention on the Status of Stateless Persons, signed in New York on 28 September 1954, and approved by the Law of 12 May 1960, applies;
- (4) refugees within the meaning of Article 49 of the Law of 15 December 1980 on entry to Belgian territory, residence, establishment and the expulsion of foreigners;
- (5) nationals of a country with which Belgium has concluded a relevant reciprocal convention or in relation to which it has recognised that de facto reciprocity exists;
- (6) foreign nationals, provided that entitlement to a retirement or survivor's pension is conferred upon them under a Belgian scheme.

...'

The main proceedings and the question referred to the Court

- ²⁸ It is apparent from the file that Mrs El Youssfi, a Moroccan national, born on 1 July 1939 and a widow since 1982, currently resides in Belgium, on the basis of family reunification, with her son who himself lives in that Member State.

29 It is not disputed that Mrs El Youssfi is legally resident in Belgium.

30 On 25 August 2005, Mrs El Youssfi applied to the Office to be granted the Guaranteed Income for Elderly Persons provided for by the Law of 22 March 2001.

31 By decision of 16 December 2005, that application was rejected on the ground that the plaintiff in the main proceedings had not produced any evidence that she fell within one of the categories set out in Article 4 of that law.

32 On 2 March 2006, Mrs El Youssfi lodged an appeal against that decision before the Tribunal du Travail, Verviers.

33 In support of her application, Mrs El Youssfi contends that she is lawfully resident in Belgium and that that legal status entitles her to claim the Guaranteed Income for Elderly Persons provided for by the legislation of the host Member State under the same conditions as nationals of that State. The refusal to award her that benefit, which is a property right within the meaning of Article 1 of the Additional Protocol infringes the prohibition of discrimination based on nationality set out, in particular, in the Cooperation and Association Agreements, and in Article 14 of the ECHR.

34 The Office and the Public Attorney attached to the national court argue that the right to the benefit claimed by Mrs El Youssfi, being a personal right, depends of her

being 'subject to the legislation of a Member State' and that she cannot rely on Community law, since she has not moved within the European Union.

35 In those circumstances, the Tribunal du Travail, Verviers, decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'Is a refusal to grant statutory Guaranteed Income to Elderly Persons on the ground that:

(a) Regulation ... No 1408/71 ... does not apply to the applicant;

(b) the applicant is not a recognised stateless person or a refugee;

(c) the applicant is not a national of a country with which Belgium has concluded a reciprocal convention on guaranteed income or in relation to which it has recognised that de facto reciprocity exists; or that

- (d) the applicant is not entitled to any retirement or survivor's pension under a Belgium scheme,

the result of:

- (1) too restrictive an interpretation of Regulation ... No 883/2004 ... (replacing Regulation ... No 1408/71 ...), in particular in the light of Article 14 of the ECHR, Article 1 of the First Protocol thereto and Regulation ... No 859/2003 ...;

or, if that is not the case,

- (2) an interpretation of Regulation ... No 883/2004 that is incompatible with the Cooperation Agreement ..., as supplemented by the [Association] Agreement ...?'

The national court's question

³⁶ In accordance with the first subparagraph of Article 104(3) of the Rules of Procedure, when the answer to a question asked by way of reference for a

preliminary ruling can be clearly deduced from the existing case-law, the Court can at any moment after hearing the Advocate General rule by way of a reasoned order which includes a reference to the relevant case-law. The Court considers that that is so in the present case.

Preliminary observations

³⁷ It is clear, first of all, that the national court's question is intended to elicit an interpretation of Regulation No 1408/71, notwithstanding the fact that the question refers to regulation No 883/2004 'replacing Regulation ... No 1408/71'.

³⁸ It is true that, in accordance with Article 91 thereof, Regulation No 883/2004 entered into force on the 20th day after its publication in the Official Journal, but it is applicable only from the date on which the implementing regulation enters into force. Since no regulation implementing Regulation No 883/2004 has yet been adopted, it necessarily follows that the provisions of Regulation No 1408/71 remain applicable (see the judgment in Case C-205/05 *Nemec* [2006] ECR I-10745, paragraphs 31 and 32).

³⁹ It should also be made clear that the Community rules concerning the coordination of national social security systems do not apply to situations which are confined in all respects within a single Member State, which is in particular the case where the

situation of the person concerned has factors linking it solely with a non-member country and one single Member State (see, in particular, the judgment in Joined Cases C-95/99 to C-98/99 and C-180/99 *Khalil and Others* [2001] ECR I-7413, paragraphs 70 and 71).

40 That interpretation is valid both for Article 42 EC and for Regulation No 1408/71, in particular Article 3 thereof.

41 Similarly, Article 1 of Regulation No 859/2003, to which the national court's question refers, provides that the provisions of Regulations Nos 1408/71 and 574/72 'shall apply to nationals of third countries who are not already covered by those provisions solely on the ground of their nationality, as well as to members of their families and to their survivors, provided they are legally resident in the territory of a Member State and are in a situation which is not confined in all respects within a single Member State'.

42 The 12th recital in the preamble to Regulation No 859/2003 states that Regulations Nos 1408/71 and 574/72 'are not applicable in a situation which is confined in all respects within a single Member State. This concerns, inter alia, the situation of a third country national who has links only with a third country and a single Member State'.

43 It the light of the information available to the Court concerning the main proceedings, that condition, which requires a link between a national of a non-

member country and at least two Member States, does not seem to be fulfilled by a person such as Mrs El Youssfi since it appears that she left Morocco directly for Belgium in order to live, on the basis of family reunification, with her son resident in that Member State.

44 It is for the national court to verify that situation of fact.

45 Subject to that reservation, Mrs El Youssfi cannot take advantage of the principle of equal treatment in the field of social security laid down in Article 3(1) of Regulation No 1408/71, read together with regulation No 859/2003, which would make it impossible to refuse to award her a benefit such as the Guaranteed Income for Elderly Persons on the basis solely of the nationality of the applicant (see, by analogy, paragraphs 51 to 55 of this order).

46 Under those circumstances, the Court must consider the question raised in regard to the relevant provisions of the agreements concluded between the Community and the Kingdom of Morocco.

47 According to its wording, the national court's question deals with the Cooperation Agreement, 'supplemented by' the Association Agreement.

48 However, having regard, on the one hand, to the provisions of Article 96 of the Association Agreement, according to which, from the date on which it enters into force, that is to say, 1 March 2000, it replaces the Cooperation Agreement and, on the other to the fact that Mrs El Youssfi applied for the Guaranteed Income for Elderly Persons on 25 August 2005, only the Association Agreement can be applicable *ratione temporis* to the facts in the main proceedings (see, by analogy, the order in Case C-336/05 *Echouikh* [2006] ECR I-5223, paragraph 36).

49 In order to provide the national court with a useful reply, the Court must consider the question whether the first paragraph of Article 65(1) of the Association Agreement has direct effect and may therefore be relied on by an individual before a national court, the scope of the principle of non-discrimination laid down in that provision and the conditions fixed therein in regard to the scope of its application, both *ratione materiae* and *ratione personae*.

The direct effect of the first subparagraph of Article 65(1) of the Association Agreement

50 It is sufficient to point out that the Court's case-law has already decided that the first subparagraph of Article 65(1) of the Association Agreement has direct effect, with the result that the persons to whom it applies are entitled to rely on it before national courts (order in *Echouikh*, cited above, paragraphs 39 to 42, and the case-law cited in paragraph 39 concerning Article 41(1) of the Cooperation Agreement, which is drafted in the same terms as the first subparagraph of Article 65(1)).

The scope of the principle of non-discrimination laid down in the first subparagraph of Article 65(1) of the Association Agreement

51 As the Court decided in paragraphs 55 to 58 of the order in *Echouikh*, cited above, and as is clear from the case-law concerning Article 41(1) of the Cooperation Agreement, which may be applied by analogy to the first subparagraph of Article 65(1) of the Association Agreement, the prohibition of any discrimination based on nationality, in the field of social security, as between Moroccan migrant workers and members of their families living with them, on the one hand, and nationals of the Member States in which they work or have worked, on the other, means that persons to whom that provision applies must be treated as if they were nationals of the Member States concerned.

52 That principle thus implies that persons covered by that provision of the Association Agreement may claim social security benefits on the same basis as nationals of the host Member State and the legislation of that State cannot impose on them more or stricter conditions than those applicable to nationals of that State (order in *Echouikh*, cited above, paragraph 56).

53 It is thus contrary to the abovementioned principle of non-discrimination to apply to persons referred to in the first subparagraph of Article 65(1) of the Association Agreement not only the requirement that they have the nationality of the Member

State concerned but also any other condition which nationals are not required to fulfil (order in *Echouikh*, cited above, paragraph 57).

54 In this case, it appears, on the one hand, that a person such as the plaintiff in the main proceedings fulfils the conditions as to age and residence laid down in the legislation of the Member State concerned in order to obtain the Guaranteed Income for Elderly Persons. On the other, a national of the host Member State in a comparable position to Mrs El Youssfi would be entitled to that benefit inasmuch as the condition laid down in Article 4(6) of the 2001 Law to the effect that there must be entitlement to a retirement or survivor's pension under national rules is applicable only to 'foreign nationals'. The refusal to award Mrs El Youssfi the benefit she applied for is thus based only on the fact that she is not a national of the Member State concerned and cannot, under national law, be assimilated to a national of that State, and on the fact that she does not fulfil a condition which is not applicable to nationals.

55 Consequently, national legislation such as that at issue in the main proceedings appears to be incompatible with the principle of non-discrimination laid down in the first subparagraph of Article 65(1) of the Association Agreement by virtue of which a Moroccan national cannot be refused a social benefit on grounds linked to the applicant's nationality.

56 It must also be determined whether a benefit such as that at issue in the main proceedings falls within the concept of 'social security' within the meaning of the first subparagraph of Article 65(1) of the Association Agreement and whether a person in the position of Mrs El Youssfi is covered by that provision.

The scope ratione materiae of the first subparagraph of Article 65(1) of the Association Agreement

57 It is settled case-law that the term ‘social security’ contained in the first subparagraph of Article 65(1) of the Association Agreement must be deemed to bear the same meaning as the identical term used in Regulation No 1408/71 (order in *Echouiikh*, cited above, paragraphs 50 and 51 and the case-law cited therein concerning Article 41(1) of the Cooperation Agreement).

58 Since the adoption of Council Regulation (EEC) No 1247/92 of 30 April 1992 (OJ 1992 L 136, p. 1), non-contributory benefits such as the Guaranteed Income for Elderly Persons instituted by the 2001 Law were expressly excluded from the scope ratione materiae of Regulation No 1408/71, by virtue of Article 4(2a)(a) thereof (see also Article 10a(1) and Annex IIa to the latter regulation) if they are intended to provide supplementary, substitute or ancillary cover against the risks arising in the branches of social security referred to in Article 4(1)(a) to (h), one of which is old-age benefits (see by analogy the judgment in Case C-103/94 *Krid* [1995] ECR I-719, paragraph 36, dealing with 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 approved on behalf of the Community by Council Regulation (EEC) No 2210/78 of 26 September 1978 (OJ 1978 L 263, p. 1, which is drafted in essentially identical terms to those of the first subparagraph of Article 65(1) of the Association Agreement).

59 Moreover, even before the adoption of the abovementioned regulation, the Court had decided that a benefit of the same kind as the Guaranteed Income for Elderly

Persons fell within the matters covered by Regulation No 1408/71 by virtue of Article 4(1) thereof (see the judgment in *Krid*, cited above, paragraphs 33 to 35 and the case-law cited therein).

- 60 There is thus no doubt that a benefit such as the Guaranteed Income for Elderly Persons, the purpose of which is to ensure the minimum means of subsistence to persons aged at least 65 whose income is below a certain threshold, falls within the concept of 'social security' within the meaning of the first subparagraph of Article 65(1) of the Association Agreement, even though the benefit at issue in the main proceedings also possesses the characteristics of a social assistance measure.
- 61 It should be added in that context that, contrary to the Office's contention, the fact that the 2001 Law views the benefit it institutes as a personal right and not as a derived right, acquired by the plaintiff in the main proceedings in her capacity as a member of the family of a migrant worker is irrelevant.
- 62 The scope *ratione personae* of the first subparagraph of Article 65(1) of the Association Agreement is not the same as that of Regulation No 1408/71, 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 that regulation — which, moreover, has been clarified by the judgment in *Cabanis-Issarte* (Case C-308/93 [1996] ECR I-2097) — cannot be applied in the context of the Association Agreement (see, by way of analogy, the judgment in Case C-126/95 *Hallouzi-Choho* [1996] ECR I-4807, paragraph 30 and the case-law cited therein).

The scope ratione personae of the first subparagraph of Article 65(1) of the Association Agreement

- 63 It is clear from the order for reference that the Office accepts that Mrs El Youssfi is lawfully resident in Belgium, with the effect that she is not covered by the provisions of Article 66 of the Association Agreement.
- 64 For the rest, it should be noted that the first subparagraph of Article 65(1) of the Association Agreement applies first of all to workers of Moroccan nationality, that concept being given a broad interpretation.
- 65 It is clear from the case-law of the Court that the concept of ‘worker’ 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 one of the risks creating entitlement to allowances falling under other branches of social security (see the order in *Echouikh*, cited above, paragraphs 44 and 45).
- 66 It is in the light of those criteria that the national court must determine if Mrs El Youssfi may herself be regarded in Belgium, where she currently lives, as a ‘worker’ within the meaning of the first subparagraph of Article 65(1) of the Association Agreement.

- 67 If that is not the case, it should be pointed out that the aforementioned provision of the Association Agreement also applies to members of workers' families residing with them in the Member State in which they are employed.
- 68 It should be made clear that the term 'members of the family' refers not only to the worker's spouse and descendants but also to persons having a close family relationship with him such as his relatives in the ascending line, including those related to him by marriage (see, by analogy, the judgment in Case C-179/98 *Mesbah* [1999] ECR I-7955, paragraph 46).
- 69 Since Mrs El Youssfi is a widow, she could be covered by the first subparagraph of Article 65(1) of the Association Agreement if it is established that her husband, before his death, was a Moroccan migrant worker in Belgium, where Mrs El Youssfi continues to reside (see, by analogy, the judgment in *Krid*, cited above, paragraphs 28 to 31).
- 70 In addition, the plaintiff in the main proceedings must also be regarded as a member of the worker's family within the meaning of the abovementioned provision if she resides with her son in Belgium and the latter is both a worker, as defined in paragraph 65 of this order, and of Moroccan nationality.
- 71 It would appear from the documents before the Court that Mrs El Youssfi's son has taken Belgian nationality.

72 However, if Mrs El Youssfi's son has retained Moroccan nationality, it is for the national court to ascertain, on the basis of the legislation of the host Member State, if a member of the family of a Moroccan migrant worker who is also a national of that State may, under its legislation, rely on the worker's Moroccan nationality for the purposes of the application of the first subparagraph of Article 65(1) of the Association Agreement (see, by analogy, the judgment in *Mesbah*, cited above, paragraphs 40 and 41).

73 In the light of the foregoing considerations, the reply to the question referred to the Court should be that the first subparagraph of Article 65(1) of the Association Agreement must be interpreted as precluding the host Member State from refusing to grant the statutory Guaranteed Income for Elderly Persons to a Moroccan national who has reached the age of 65 and resides legally in the territory of that State as long as she comes within the scope of that provision

- either because she herself has been employed in the Member State concerned,

- or she is a member of the family of a worker of Moroccan nationality who is or has been employed in that Member State.

74 It is for the national court to determine if one or other of those conditions has been fulfilled in this case.

- 75 Since the interpretation which this order provides of the first subparagraph of Article 65(1) of the Association Agreement is accordance with the requirements of Article 14 of the ECHR and Article 1 of the Additional Protocol, as interpreted, in particular, by the European Court of Human Rights in its judgment of 16 September 1996 in *Gaygusuz v Austria* (ECHR 1996-IV, p. 1129), the Court has thus provided the national court with all the interpretations necessary for it to assess whether the national rules at issue in the main proceedings are in accordance with the fundamental rights the observance of which the Court ensures, such as those guaranteed by the ECHR and the Additional Protocol (see, in particular, the order in *Echouikh*, cited above, paragraphs 64 and 65).

Costs

- 76 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 (Fifth Chamber) hereby rules:

The first subparagraph of Article 65(1) of the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part, signed in Brussels on 26 February 1996 and approved on behalf of the Communities by Decision No 2000/204/EC, ECSC of the Council and the

Commission of 24 January 2000 must be interpreted as precluding the host Member State from refusing to grant the statutory Guaranteed Income for Elderly Persons to a Moroccan national who has reached the age of 65 and resides legally in the territory of that State as long as she comes within the scope of that provision

- **either because she herself has been employed in the Member State concerned,**
- **or she is a member of the family of a worker of Moroccan nationality who is or has been employed in that Member State.**

[Signatures]