JUDGMENT OF THE COURT

20 April 1994 *

In Case C-58/93,

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

Zoubir Yousfi

and

The Belgian State

on the interpretation of Article 41(1) of the Cooperation Agreement between the European Economic Community and the Kingdom of Morocco, signed at Rabat on 27 April 1976 and approved on behalf of the Community by Council Regulation (EEC) No 2211/78 of 26 September 1978 (Official Journal 1978 L 264, p. 19),

THE COURT,

composed of: O. Due, President, G. F. Mancini, J. C. Moitinho de Almeida and M. Díez de Velasco (Presidents of Chambers), F. A. Schockweiler (Rapporteur), F. Grévisse, M. Zuleeg, P. J. G. Kapteyn and J. L. Murray, Judges,

* Language of the case: French.

Advocate General: G. Tesauro,
Registrar: H. von Holstein, Deputy Registrar,

after considering the written observations submitted on behalf of:

— Z. Yousfi, by R. O. Dalcq, of the Brussels Bar,

— the Belgian Government, by J. Devadder, Director of Administration at the Ministry for Foreign Affairs, acting as Agent,

— the German Government, by E. Röder, Ministerialrat at the Federal Ministry for the Economy, and C-D. Quassowski, Regierungsdirektor at the same ministry, acting as Agents,

— the French Government, by E. Belliard, Deputy Director in the Directorate of Legal Affairs of the Ministry of Foreign Affairs, and C. Chavance, principal in the central administration of the same ministry, acting as Agents,

— the Commission of the European Communities, by M. Patakia and P. Hetch, members of the Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Z. Yousfi, represented by B. Gribomont, of the Brussels Bar, of the Belgian Government, represented by J-J. Masquelin, of the Brussels Bar, and J. Devadder, of the German and French Governments and the Commission, represented by M. Wolfcarius, member of the Legal Service, acting as Agent, at the hearing on 26 January 1994,

after hearing the Opinion of the Advocate General at the sitting on 23 February 1994,

gives the following

Judgment

1 By judgment of 24 February 1993, which was received at the Court Registry on 5 March 1993, the Tribunal de Travail (Labour Court), Brussels, referred to the Court for a preliminary ruling under Article 177 of the EEC treaty two questions on the interpretation of Article 41(1) of the Cooperation Agreement between the European Economic Community and the Kingdom of Morocco, signed at Rabat on 27 April 1976 and approved on behalf of the Community by Council Regulation (EEC) No 2211/78 of 26 September 1978 (Official Journal 1978 L 264, p. 1).

2 These questions were raised in the course of proceedings between M. Yousfi, a Moroccan national, and the Belgian State concerning a refusal to grant a disability allowance.

3 It is apparent from the documents before the Court that Mr Yousfi, the son of a Moroccan national employed in Belgium, was born and is resident in that Member State.

4 Whilst in gainful employment in Belgium, Mr Yousfi was the victim on 31 July 1984 of an accident at work. The extent of the physical damage suffered by Mr Yousfi and the amount of the invalidity allowances to which he is entitled have not yet been determined. Mr Yousfi is at present dependent on his father with whom he lives.

5 On 15 October 1990 Mr Yousfi applied in Belgium for a disability allowance pursuant to the law of 27 February 1987 (*Moniteur Belge*, 1 April 1987, p. 4832).

6 Article 4(1) of that Law provides that, in order to claim entitlement to that allowance, the claimant must be Belgian, stateless, a refugee or of indeterminate nationality and must have actually and continuously resided in Belgium during the five years preceding the lodgment of the application.

7 On 15 February 1991 the competent Belgian authorities rejected Mr Yousfi's application on the ground that he was a Moroccan national. Thereupon Mr Yousfi instituted proceedings before the Brussels Labour Court.

8 Before that court Mr Yousfi contended that in the field of social security Article 41(1) of the Cooperation Agreement enshrined the principle of non-discrimination on the ground of nationality between the nationals of the Member States and Moroccan workers. Moreover, it was clear from the judgment in Case C-18/90 *Kziber* [1991] ECR I-199 that that provision had direct effect and that the reference to social security made therein had to be construed as being analogous with the subject matter covered by Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons and to self-employed persons and to members of their families moving within the Community, as codified in Council Regulation (EEC) No 2001/83 of 2 June 1983 (Official Journal 1983 L 230, p. 6). Finally, the applicant pointed out, under the Court's settled case law disability benefits constituted social security benefits within the meaning of that regulation. Thus, Article 41(1) of the Cooperation Agreement precluded the authorities of a Member State from relying on the Moroccan nationality of the claimant as a ground for withholding those benefits.

9 On the other hand, the Belgian State maintained that Mr Yousfi did not belong to any of the categories of recipients of disability benefits provided for in Belgian legislation and that there was no reciprocal international convention between Belgium

and Morocco in relation to disability benefits. Moreover, the reliance sought to be placed on Article 41(1) of the Cooperation Agreement, as interpreted by the Court in the *Kziber* judgment cited above, could not avail Mr Yousfi inasmuch as, unlike the unemployment benefit for young persons seeking employment at issue in that case, disability allowances financed by the public treasury in order to provide assistance, irrespective of the existence of a contract of employment, were outside the social security system and therefore did not fall within the substantive scope of that provision of the Cooperation Agreement.

10 Under those circumstances the Tribunal du Travail, Brussels, referred the following questions to the Court for a preliminary ruling:

'1. Does the Belgian legislation relating to disability benefits (Law of 27 February 1987) fall within the material scope 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 concluded on behalf of the Community by Regulation (EEC) No 2211/78?

2. If so, are those provisions directly applicable in national law?'

11 At the outset it is appropriate to recall the objective and relevant provisions of the Cooperation Agreement.

12 Under the terms of Article 1 the objective of the Cooperation Agreement is to promote overall cooperation between the contracting parties in order to contribute to the economic and social development of Morocco and to help strengthen relations between the parties. Economic, technical and financial cooperation is provided for under Title I of the Cooperation Agreement, trade cooperation under Title II, and cooperation in social matters under Title III.

13 Article 41(1), which comes under Title III concerning cooperation in the field of labour, provides that, subject to the provisions of the subsequent paragraphs of that article concerning aggregation of periods of insurance, employment or residence completed in the various Member States, workers of Moroccan nationality and any members of their families 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.

14 It is apparent from the context of the main proceedings that the national court is essentially seeking to ascertain whether Article 41(1) of the Cooperation Agreement is to be interpreted as precluding a Member State from refusing to grant a disability allowance available under its legislation to nationals who have resided in that state for at least five years to a Moroccan national who is incapable of working as a result of an accident at work in that state and who has been residing in its territory for more than five years on the ground that the person concerned is a Moroccan national.

15 In order to reply to that question it is necessary to examine first of all whether Article 41(1) of the Cooperation Agreement is capable of being relied on directly by an individual before a national court and, secondly, whether that provision covers the situation of a Moroccan migrant worker who applies in the Member State in which he suffered an accident at work and has resided for more than five years for an allowance of the kind at issue in the main proceedings.

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

16 In that connection the Court has already held in its *Kziber* judgment, cited above, that Article 41(1) of the Cooperation Agreement which 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, 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. The Court added that the object of the Cooperation Agreement 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 41(1) is capable of governing the legal situation of individuals.

17 The Court deduced therefrom (paragraph 23) that it followed from the terms of Article 41(1), as well as from the purpose and nature of the Agreement of which that article formed part, that that provision was capable of being applied directly.

18 Since the Government of the Federal Republic of Germany had expressly requested the Court to reconsider that case-law, it should be emphasized, as the Advocate General pointed out at paragraphs 6 and 7 of his Opinion, that the observations submitted in the context of this case have provided no new factor which might induce the Court to go back on the position which it adopted in the *Kziber* judgment cited above.

19 The direct effect which Article 41(1) of the Agreement must be recognized as having entails that persons to whom that provision applies are entitled to rely on it before national courts.

The scope of Article 41(1) of the Agreement

20 In order to determine the scope of the principle of non-discrimination laid down in Article 41(1) of the Cooperation Agreement, it is necessary to examine on the one hand whether a person such as the claimant in the main proceedings is a worker covered by that provision and whether a disability allowance such as that at issue in the main proceedings comes within the field of social security within the meaning of that provision.

21 With regard, first, to the concept of worker in Article 41(1) of the Cooperation Agreement, it is clear from paragraph 27 of the *Kziber* judgment, cited above, that 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 conferring entitlement to allowances under other social security branches.

22 Paragraphs 2 and 4 of Article 41 of the Cooperation Agreement expressly refer, in connection with aggregation and the possibility of transferring benefits to Morocco, to schemes such as pensions or annuities in respect of old-age or invalidity benefits paid in the event of an industrial accident.

23 The term 'worker' used in Article 41(1) of the Cooperation Agreement therefore covers a Moroccan national such as the claimant before the national court who is incapable of working following an industrial accident suffered by him in the Member State in which he has been living for more than five years and who applies for a disability allowance.

24 With regard, secondly, to the term 'social security' used in Article 41(1) of the Cooperation Agreement, it is clear from paragraph 25 of the *Kziber* judgment, cited above, that it must be deemed to be analogous with the identical term used in Regulation No 1408/71.

25 Even if, prior to its amendment by Council Regulation (EEC) No 1247/92 of 30 April 1992 (Official Journal 1992 L 136, p. 1), Regulation No 1408/71 did not specifically mention amongst the social security branches to which it applies benefits for handicapped persons, the Court has nevertheless consistently held that disability benefits fall within the substantive scope of Regulation No 1408/71 by virtue of Article 4(1)(b) which expressly refers to 'invalidity benefits' (see judgments in Case 187/73 *Callemeyn* [1974] ECR 553, paragraph 15 and, most recently, in Case C-310/91 *Schmid* [1993] ECR I-3011, paragraph 10).

26 In fact, the Court has held (see in particular judgment in Case C-356/89 *Newton* [1991] ECR I-3017, paragraph 14) that national legislation concerning disability allowances has in fact a two-fold function, seeking, on the one hand, to ensure a minimum level of income for handicapped persons who are entirely outside the social security system and, on the other, to provide supplementary income for recipients of social security benefits who suffer permanent incapacity for work.

27 The Court inferred therefrom (see paragraph 15 of the *Newton* judgment) that in the case of an employed or self-employed person who by reason of his previous occupational activity is already covered by the social security system of the State whose legislation is invoked, that legislation must be deemed to fall within the field of social security within the meaning of Article 51 of the Treaty and the

legislation adopted in implementation of that provision, although in the case of other categories of beneficiaries it may be deemed not to.

28 Since, in line with the *Kziber* judgment cited above the term 'social security' mentioned in Article 41(1) of the Cooperation Agreement cannot receive a definition different to that indicated in the context of Regulation No 1408/71, disability allowances such as those at issue in the main proceedings come within the purview of social security within the meaning of that article of the Cooperation Agreement.

29 In view of all the foregoing considerations, the reply to be given to the Tribunal du Travail, Brussels, must be that Article 41(1) of the Agreement must be interpreted as meaning that it precludes a Member State from refusing to grant a disablement allowance provided for under its legislation in favour of nationals residing in that State for at least five years to a Moroccan national suffering permanent incapacity for work following an industrial accident occurring in that State and who has resided on that state's territory for more than five years on the ground that the person concerned is of Moroccan nationality.

Costs

30 The costs incurred by the the German, Belgian and French Governments, 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,

in answer to the questions referred to it by the Tribunal du Travail, Brussels, by judgment of 24 February 1993, hereby rules:

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 in Council Regulation (EEC) No 2211/78 of 26 September 1978, must be interpreted as meaning that it precludes a Member State from refusing to grant a disability allowance provided for under its legislation in the case of nationals residing in that State for at least five years to a Moroccan national suffering permanent incapacity for work following an industrial accident occurring in that State who has resided on that state's territory for more than five years on the ground that the person concerned is of Moroccan nationality.

Due Mancini Moitinho de Almeida

Díez de Velasco Schockweiler Grévisse

Zuleeg Kapteyn Murray

Delivered in open court in Luxembourg on 20 April 1994.

R. Grass
Registrar

O. Due
President