ORDER OF THE COURT (Fifth Chamber)

13 June 2006 *

In Case C-336/05,

REFERENCE for a preliminary ruling under Article 234 EC from the Tribunal départemental des pensions militaires du Morbihan (France), made by decision of 7 September 2005, received at the Court on 15 September 2005, in the proceedings

Ameur Echouikh

v

Secrétaire d'État aux Anciens Combattants,

THE COURT (Fifth Chamber),

composed of J. Makarczyk, President of the Chamber, R. Schintgen (Rapporteur) and L. Bay Larsen, Judges,

* Language of the case: French.

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

the Court with the intention of ruling in the form of a reasoned order under Article 104(3), first subparagraph, 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 Articles 40 to 42 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 1978 L 264, p. 1) ('the Cooperation Agreement'), Articles 64 and 65 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 2000/204/EC, ECSC of the Council and Commission of 24 January 2000 (OJ 2000 L 70, p. 1) ('the Association Agreement'), and also of Article 12 of the EC Treaty and Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 ('the ECHR').

2 The reference was made in the course of proceedings between Mr Echouikh and the Secrétaire d'État aux Anciens Combattants (State Secretary for Former Armed Services Personnel) regarding the latter's refusal to award Mr Echouikh an armed services invalidity pension.

Legal context

Community legislation

3 Articles 40 to 42 of the Cooperation Agreement are in Title III, which concerns cooperation in the field of labour.

4 As set out in Article 40(1) of the Cooperation Agreement:

'The treatment accorded by each Member State to workers of Moroccan nationality employed in its territory shall be free from any discrimination based on nationality, as regards working conditions or remuneration, in relation to its own nationals.'

5 Article 41(1) of the Cooperation Agreement provides that:

'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.'

6 Article 42(1) of the Cooperation Agreement is worded thus:

'Before the end of the first year following entry into force of this Agreement, the Cooperation Council shall adopt provisions to implement the principles set out in Article 41.'

7 Articles 64 and 65 of the Association Agreement are in Chapter I of Title VI of the agreement entitled 'Workers', which concerns inter alia cooperation in social matters.

8 Article 64(1) of the Association Agreement provides that:

'The treatment accorded by each Member State to workers of Moroccan nationality employed in its territory shall be free from any discrimination based on nationality, as regards working conditions, remuneration and dismissal, relative to its own nationals.'

9 As set out in Article 65(1) of the Association Agreement:

'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.

...'

10 Article 67(1) of the Association Agreement provides that:

'Before the end of the first year following the entry into force of this Agreement, the Association Council shall adopt provisions to implement the principles set out in Article 65.'

11 In accordance with Article 96(1), the Association Agreement entered into force on 1 March 2000.

12 Article 96(2) provides that, upon its entry into force, the Association Agreement replaces the Cooperation Agreement.

The ECHR

13 Article 14 of the ECHR is worded in the following way:

'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.'

14 As set out in Article 1 of the Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms ('the Protocol'):

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

National legislation

15 Article L. 252-2 of the Code des pensions militaires d'invalidité et des victimes de la guerre (Code of armed services invalidity and victim of war pensions) ('the Code'), which is in Part VII thereof called 'Entitlement of certain foreign nationals ... to the benefits of the provisions of this Code', provides:

'The benefits of the provisions of this Code may be claimed by persons of foreign nationality and those stateless persons who are not entitled *ipso jure* to the benefits

of those provisions when, prior to the harmful event relied on as giving rise to the pension claim, they have served in the French army either as conscripts or as volunteers:

1. If they have been victims of events that took place in the circumstances provided for in Part III of Book II of the first part of the Code either in France or in the course of deportation from France;

2. If they suffer from disabilities attributable to enforced conscription into the Armies of the Axis.

Their French heirs may claim the same benefits.

Those persons lose these benefits if they cease to reside in French territory or in the overseas territories referred to in Article L. 137 of the Code or if they, at their request, acquire a nationality other than their original nationality or French nationality.'

16 As set out in Article L. 21 of the Code:

'Pension claims are admissible without time-bar.'

17 Article 71 of Law No 59-1454 of 26 December 1959, on the Finance Act for 1960 (JORF) of 27 December 1959, p. 12363) ('the law of 26 December 1959') is worded as follows:

'I — With effect from 1 January 1961, pensions, allowances and life annuities chargeable to the budget of the French State or public authorities for which nationals of countries or territories which were members of the French Union or of the Community or which were French protectorates or trust territories are eligible will be replaced for the duration of their entitlement, by annual allowances payable in francs, calculated on the basis of the tariffs in force in relation to such pensions and allowances at the date of conversion.

II — Decrees will, in each case, determine the conditions and time-limits subject to which the beneficiaries of an allowance provided for in paragraph 1 will be permitted to opt for that allowance to be substituted by an overall one-time flat-rate allowance equal to five times the annual allowance.

...'

18 In a judgment of 30 November 2001, the Conseil d'État (Council of State) (France) held as follows:

'Under Article L. 1 of the Code des pensions civiles et militaires de retraite (Civil and Military Retirement Pensions Code) ..., pensions are personal monetary benefits for life, entitlement to which is by virtue of the services performed by the public servants listed in that article until their retirement from the service. Therefore the cour [administrative d'appel de Paris] (Administrative Court of Appeal, Paris) did not err in law in finding that those pensions constitute claims which have to be regarded as possessions under Article 1... of the ... Protocol ...;

A distinction made between persons who are placed in a similar situation is discriminatory in accordance with the stipulations ... of Article 14 of the [ECHR] if it is not coupled with objective and reasonable justifications ...;

It is apparent from the actual words of Article 71 ... of the Law of 26 December 1959 that, under those provisions, nationals of countries referred to therein henceforth receive, in place of their pension, an allowance which is not subject to revalorisation in the circumstances provided for by the Civil and Military Retirement Pensions Code. Therefore, regardless of what the legislature's initial intention as expressed in the preparatory documents for those provisions may have been, the court did not err in law in finding that that article created an inequality in the treatment of pensioners solely on the basis of their nationality;

As regards public servants, retirement pensions constitute deferred remuneration which is intended to guarantee them material living conditions commensurate with the dignity of their past service. The difference in circumstances which exists between former public servants of France, depending on whether they are of French nationality or are nationals of States which have become independent, does not justify, in view of the aim of retirement pensions, an inequality in treatment. If it is apparent from the preparatory documents for the provisions ... of Article 71 of the Law of 26 December 1959 that those provisions had the objective inter alia of drawing conclusions from the independence of the countries mentioned in that article and from the henceforth distinct development of their economies and that of France which rendered unjustifiable the revalorisation of those pensions on the basis of changes in salaries paid to French civil servants, the inequality in treatment which they create, on the basis of nationality alone, between holders of pensions cannot be regarded as based on a criterion which is in keeping with that objective. As those provisions are therefore incompatible with the stipulations ... of Article 14 of the [ECHR], the court did not err in law in finding that the provisions were not able to substantiate the Minister for Defence's refusal to grant the application submitted by Mr X ...'

19 The national legislation was amended in the course of December 2002, but a foreign national who finds himself in a situation like that of Mr Echouikh is not covered by those amendments.

The main proceedings and the questions referred for a preliminary ruling

20 It is apparent from the case-file in the main proceedings that Mr Echouikh, a Moroccan national who was born in 1930 and is resident in France, served in the French army from 19 August 1949 to 16 August 1964.

21 On 28 January 2002, he submitted a claim under Article L. 252-2 of the Code for an armed services invalidity pension in respect of the sequelae of an illness contracted on 26 February 1953 in Saigon where he was for the purposes of his service in the French army.

22 Although a provisional finding was made in respect of that claim suggesting entitlement to a pension calculated on the basis of an invalidity rate of 10% attributable to an ailment contracted while Mr Echouikh was serving in the French army, the Minister for Defence rejected it by decision of 24 May 2004 on the ground that it fell within the scope of Article 71 of the Law of 26 December 1959 by which the French Republic ceased, as from 1 January 1961, to confer any new rights under that code on nationals of non-member countries referred to therein, one of which is the Kingdom of Morocco.

23 On 6 July 2004, Mr Echouikh appealed against that decision before the Tribunal départemental des pensions militaries du Morbihan (Armed Services Pensions Tribunal for the Department of Morbihan).

24 In support of his action, Mr Echouikh submits that it is common ground that he resides on French territory and that the harmful event relied on in support of his pension application is a consequence of his service in the French army. Since he thus fulfils all the conditions laid down by national legislation as regards entitlement to the benefit applied for, with the exception of that concerning possession of French nationality, the decision to refuse his claim infringes the principle prohibiting any discrimination on the basis of nationality, set out in particular in the Association Agreement and the ECHR, inasmuch as the refusal to award him a pension is based exclusively on the fact that he is a Moroccan national.

25 While acknowledging that there would be no obstacle to the award of the pension applied for by Mr Echouikh if he were of French nationality, the commissaire du gouvernement (member of an administrative court who delivers an independent opinion on the case before the court) at the national court submits, by contrast, that Mr Echouikh, since he is no longer in the French army, cannot reasonably rely on the Association Agreement in so far as Article 64 thereof covers only workers of Moroccan nationality 'employed' in the territory of the host Member State, that word meaning that the person concerned must undertake paid employment. Furthermore, Article 65 of that agreement is indeed applicable in the field of social security, but this case concerns only the application of the national legislation on armed services invalidity pensions and the rights of nationals from those countries previously under French sovereignty.

26 In those circumstances the Tribunal départemental des pensions militaires du Morbihan decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'1. Do Articles 64 and 65 of the [Association] Agreement have direct effect?

2. If, for whatever reason, the [Association] Agreement is not found to be applicable in the present case, are Articles 40 to 42 of the Cooperation Agreement ... which the [Association] Agreement is intended to replace, to be regarded as having direct effect?

3. Does a Moroccan national who has served in a Member State's armed forces, including service beyond that State's territorial boundaries, fall within the category of 'workers' within the meaning of Articles 64 and 65 of the [Association] Agreement and within the meaning of Articles 40 to 42 of the ... Cooperation Agreement?

4. Irrespective of whether the provisions of the abovementioned Agreements signed with the Kingdom of Morocco in 1976 and 1996 are directly effective, can a Moroccan national, provided that he falls within the category of 'workers' within the meaning of these provisions in the Community legal order, invoke the direct applicability of the general principle of non-discrimination based on nationality enshrined in Article 12 of the EC Treaty and Article 14 of the [ECHR]?

5. Does an armed services invalidity pension claimed by a Moroccan national who has served in the armed forces of a Member State in respect of the sequelae of an accident or illness occurring in the course of such military service fall within the category of remuneration for work covered by Article 64 of the [Association] Agreement or within the category of social security benefits covered by Article 65 of that Agreement?

6. Do Articles 64 and 65 of the [Association] Agreement and, prior to the entry into force of that Agreement, Articles 40 to 42 of the Cooperation Agreement ...

or, failing that, Article 12 ... of the EC Treaty and Article 14 of the [ECHR], preclude a Member State from relying on restrictive provisions in its national legislation connected to the nationality of a Moroccan national in order to:

— refuse to grant him an armed services invalidity pension that it would have granted, without that restriction, to its own nationals who, like him, are permanently resident in its territory, and who find themselves in the same position as him, having served in the armed forces of that Member State in the same circumstances as him?

— apply to him different conditions from those it applies to its own nationals with regard to the granting, method of calculation and duration of armed services pensions intended to compensate for the sequelae of accidents or illnesses arising in the course of service in its armed forces?

7. Does the fact that the person concerned was not working at the time when he made his pension claim and that the accident or illness on which this claim is based arose whilst he was formerly engaged in active military service, namely between 19 August 1949 and 16 August 1964, outside the territorial boundaries of the Member State he was serving in the capacity of a soldier, namely in Saigon, affect the replies to the preceding questions?

The admissibility of the reference for a preliminary ruling

27 In the written observations which it submitted to the Court, the French Government takes the view that there is no need for the Court to answer the questions referred.

28 Following a judgment of 10 August 2005 in which the Conseil d'État held that the provisions of Article 71 of the Law of 26 December 1959 do not preclude a pension claim, even one made after 1 January 1961, from being examined in the light of the rights which the person concerned has, as at the date of his claim, under the pensions legislation, the competent national authorities decided on 12 December 2005 to grant Mr Echouikh's claim. Mr Echouikh thus obtained full satisfaction so that the case pending before the national court was thereafter devoid of any purpose.

29 In reply to a letter from the Court Registry in which the Tribunal départemental des pensions militaires du Morbihan was asked whether, in those circumstances, it intended to continue its reference for a preliminary ruling, the president of that court observed that, according to the information given by Mr Echouikh at the hearing of 2 February 2006, firstly, action still had to be taken so that he could obtain the invalidity pension applied for and, secondly, the competent authorities were not disposed to pay him default interest so that he was not withdrawing his action.

30 The president of the national court added that even if the award of the pension were obtained in those circumstances, on the basis of a decision by a national court which applied to a Tunisian national and did not formally annul the relevant legislative provisions, the questions referred retain all their interest in particular as regards assessment of the wrongful nature, in the light of the requirements of Community law, of the delay on the part of the French authorities in granting the pension claim made by Mr Echouikh on 28 January 2002 on the sole ground that he was of Moroccan nationality, a delay which has to date not been compensated for.

31 Therefore, the Tribunal départemental des pensions militaries du Morbihan decided on 2 February 2006 not to withdraw its reference for a preliminary ruling.

32 In that regard, it must be borne in mind that, according to settled case-law, it is solely for the national courts before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine, in the light of the particular circumstances of each case, both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court (see inter alia Case C-379/98 *PreussenElektra* [2001] ECR I-2099, paragraph 38, and Case C-112/00 *Schmidberger* [2003] ECR I-5659, paragraph 31).

33 Consequently, in the absence of information in the case-file which manifestly shows that the interpretation of Community law requested by the national court bears no relation to the actual facts of the main action or its purpose or that the problem raised by the order for reference is hypothetical, it is the task of the Court to rule on the questions referred by that court.

The questions referred for a preliminary ruling

34 Under Article 104(3), first subparagraph, of the Rules of Procedure, where the answer to a question referred to the Court for a preliminary ruling may be clearly deduced from existing case-law, the Court may, after hearing the Advocate General, at any time give its decision by reasoned order in which reference is made to the relevant case-law. The Court is of the opinion that that is true of the case in the main proceedings.

35 By its seven questions, which should be examined together, the national court is essentially asking whether Articles 40 to 42 of the Cooperation Agreement, Articles 64 and 65 of the Association Agreement, Article 12 of the EC Treaty and Article 14

of the ECHR are to be interpreted as meaning that they preclude the host Member State from refusing to grant an armed services invalidity pension to a Moroccan national who has served in that State's army and resides in its territory on the sole ground that the person concerned is of Moroccan nationality.

36 As a preliminary point, it must be stated, having regard firstly to the provisions of Article 96 of the Association Agreement in accordance with which, as from the date of its entry into force, namely 1 March 2000, the Association Agreement replaces the Cooperation Agreement and, secondly, to the fact that Mr Echouikh made his pension claim on 28 January 2002, only the Association Agreement may be applied *rationae temporis* to the facts of the case in the main proceedings.

37 Furthermore, in view of the nature of the benefit sought in this case, an examination of the conditions of application of the first subparagraph of Article 65(1) of that agreement should be undertaken at the outset.

38 In order to provide the national court with a useful answer, first, an examination of the question of whether that provision of the Association Agreement may be relied on by an individual before a national court must be carried out and, if the answer is in the affirmative, second, the scope of the principle of non-discrimination set out in that provision must be assessed.

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

39 In that connection, it is important to bear in mind that the Court has consistently held that Article 41(1) of the Cooperation Agreement 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 (see Case C-18/90 *Kziber* [1991] ECR I-199, paragraphs 15 to 23; Case C-58/93 *Yousfi* [1994] ECR I-1353, paragraphs 16 to 19; Case C-126/95 *Hallouzi-Choho* [1996] ECR I-4807, paragraphs 19 and 20; the orders in Case C-23/02 *Alami* [2003] ECR I-1399, paragraph 22; and Case C-358/02 *Haddad*, not published in the ECR, paragraph 26; see also, by analogy, the judgments in Case C-103/94 *Krid* [1995] ECR I-719, paragraphs 21 to 24, and Case C-113/97 *Babahenini* [1998] ECR I-183, paragraphs 17 and 18 given as regards 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) ('the EEC-Algeria Agreement'), a provision drafted in the same terms as Article 41(1) of the Cooperation Agreement).

40 As the Commission of the European Communities rightly states, that case-law is fully transposable to the first subparagraph of Article 65(1) of the Association Agreement which is formulated in terms identical to those of Article 41(1) of the Cooperation Agreement and, moreover, has aims which may be viewed as directly furthering those on which the Cooperation Agreement is based.

41 It must be added that, according to the case-law referred to in paragraph 39 of this order, Article 41(1) of the Cooperation Agreement and Article 39(1) of the EEC-Algeria Agreement, which provide for the prohibition of all discrimination based on nationality in the field of social security against Moroccan and Algerian nationals as compared with the nationals of the host Member State, are directly effective notwithstanding the fact that the Cooperation Council provided for by those agreements has not adopted measures implementing Article 42(1) of the Cooperation Agreement and Article 40(1) of the EEC-Algeria Agreement relating to the implementation of the principles stated in Articles 41 and 39 respectively of those agreements (Case C-262/96 *Sürül* [1999] ECR I-2685, paragraph 66).

42 As the grounds are identical, the same considerations must apply to the first subparagraph of Article 65(1) of the Association Agreement so that the failure on the part of the Association Council established under Article 67(1) of that agreement to take a decision is irrelevant.

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

43 With a view to determining the scope of the principle of non-discrimination set out in the first subparagraph of Article 65(1) of the Association Agreement, it must be established, firstly, whether a person finding himself in Mr Echouikh's position is a 'worker' covered by that provision and, secondly, whether an armed services invalidity pension such as that at issue in the main proceedings belongs to the field of 'social security' within the meaning of that provision.

44 First of all, as regards the persons covered by that provision, the Court has already held that the concept of 'worker' in Article 41(1) of the Cooperation Agreement 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 inter alia *Kziber*, cited above, paragraph 27, and *Alami*, cited above, paragraph 27).

45 Given that Article 41(1) of the Cooperation Agreement and the first subparagraph of Article 65(1) of the Association Agreement have been formulated in the same terms, that case-law is capable of being applied, by analogy, to Article 65(1).

46 The fact that Mr Echouikh had ceased working at the date on which his claim for an invalidity pension was made does not, therefore, exclude him from the personal scope of that provision.

47 With respect to the fact that the applicant worked in the army of the host Member State, the Court has already held that a person who carries out a period of compulsory or enlisted military service is to be considered to be a 'worker' in view of the relationship of subordination in the context of which he performs his military duties, in consideration for which he is paid (see to that effect, by analogy, Case C-248/96 *Grahame and Hollanders* [1997] ECR I-6407, paragraphs 27 to 33).

48 In those circumstances, since it is common ground that Mr Echouikh is a Moroccan national who undertook paid employment in France, the Member State in which he resides, he must be regarded as a 'worker' within the meaning of the first subparagraph of Article 65(1) of the Association Agreement.

49 Secondly, as regards the material scope of the principle of non-discrimination laid down in the first subparagraph of Article 65(1) of the Association Agreement, it must be stated that the second subparagraph of Article 65(1) expressly refers to invalidity benefits among the branches of social security covered by that article.

50 Furthermore, the Court has repeatedly held (*Kziber*, paragraph 25; *Yousfi*, paragraph 24; *Hallouzi-Choho*, paragraph 25; *Alami*, paragraph 23; and *Haddad*, paragraph 27, and, by analogy, *Krid*, paragraph 32, and *Babahenini*, paragraph 26) that the term 'social security' contained in Article 41(1) of the Cooperation Agreement must be deemed to bear the same meaning as the identical term used in 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) ('Regulation No 1408/71').

51 For the same reasons as those stated in paragraphs 40 and 45 of this order, that case-law is capable of being applied, by analogy, to the first subparagraph of Article 65(1) of the Association Agreement.

52 Article 4(1) of Regulation No 1408/71 lists the branches of social security falling within its scope among which 'invalidity benefits' are expressly referred to in Article 4(1)(b).

53 Consequently, benefits of the kind at issue in the main proceedings fall within the material scope of the first subparagraph of Article 65(1) of the Association Agreement.

54 The fact, mentioned by the national court, that the illness on which the Mr Echouikh's claim for an invalidity pension is based occurred in the past, namely in the course of 1949 to 1964, and took place outside of the territorial boundaries of the host Member State does not affect that finding. Firstly, it is common ground that the period of employment which was taken into account in calculating the benefit, in the course of which the illness on which the claim was based occurred, was carried out in the service of the State itself, which was the applicant's employer, so that, in

this case, there was a close link between the applicant and the Member State concerned (see to that effect Case C-282/91 *De Wit* [1993] ECR I-1221, paragraph 21). Secondly, the illness which occurred during that period constitutes a situation which arose prior to the entry into force of the Association Agreement the future consequences of which, such the possibility of receiving an armed services invalidity pension in respect of the sequelae of the illness, are however governed by that agreement, and in particular by Article 65(1) thereof, from the date of the agreement's entry into force as the application of the Association Agreement to such a pension claim cannot be considered as affecting a situation arising prior to that date (see to that effect Case C-162/00 *Pokrzeptowicz-Meyer* [2002] ECR I-1049, paragraphs 49 to 52).

55 Finally, it is also settled case-law that the principle, laid down in Article 41(1) of the Cooperation Agreement, of freedom from any discrimination based on nationality in the field of social security against Moroccan migrant workers and members of their family living with them in relation to nationals of the Member States in which they are or have been employed means that the persons referred to by that provision must be treated as if they were nationals of the Member States concerned (see, inter alia, *Hallouzi-Choho*, paragraph 35, and *Alami*, paragraph 30).

56 That principle therefore requires that persons falling within the scope of that provision of the Cooperation Agreement may claim social security benefits under the same conditions as nationals of the host Member State without its being possible for the legislation of that Member State to impose upon those persons more or stricter conditions than those applicable to its nationals (see, inter alia, *Hallouzi-Choho*, paragraph 36, and, *Alami*, paragraph 31, and, by analogy, *Babahenini*, paragraph 29, and *Sürül*, paragraph 97).

57 Accordingly, the imposition on persons covered by Article 41(1) of the Cooperation Agreement not only of the requirement that they must be nationals of the Member State concerned but also of any other condition which is not required in respect of nationals must be regarded as incompatible with that principle of non-discrimination (see *Hallouzi-Choho*, paragraph 37; *Alami*, paragraph 32; and, by analogy, *Babahenini*, paragraph 30).

58 For the reasons set out in paragraphs 40, 45 and 51 of this order the same considerations are capable of being applied, by analogy, to the first subparagraph of Article 65(1) of the Association Agreement.

59 In this case, it is common ground that the national legislation at issue in the main proceedings precludes the award of an armed services invalidity pension to a Moroccan national solely on account of the applicant's nationality.

60 Therefore, such legislation appears incompatible with the principle of non-discrimination set out in the first paragraph of Article 65(1) of the Association Agreement. It is apparent from that principle that a Moroccan national who has served in the army of the host Member State in the territory of which he resides and thus satisfies all the requisite conditions, save that of nationality, governing entitlement in that country to a benefit such as that at issue in the main proceedings cannot be denied entitlement to that benefit solely on account of his nationality (see, by analogy, inter alia *Krid*, paragraph 40, and *Babahenini*, paragraph 31).

61 In view of the foregoing, there is no need to adjudicate on the other aspects of the questions referred for a preliminary ruling.

62 First of all, since the first subparagraph of Article 65(1) of the Association Agreement can be relied on before the national courts by a Moroccan national like Mr Echouikh to have disapplied rules of national law which are contrary to it, it is no longer necessary to interpret Article 64 of that agreement.

63 Secondly, Article 12 of the EC Treaty, which lays down the principle of non-discrimination on grounds of nationality, applies independently only to situations governed by Community law in regard to which the Treaty lays down no specific rules prohibiting discrimination (see to that effect, inter alia, *Sürül*, paragraph 64; Case C-422/01 *Skandia and Ramstedt* [2003] ECR I-6817, paragraph 61; and Case C-185/04 *Öberg* [2006] ECR I-1453, paragraph 25). That general principle finds specific expression in the field of social security, inter alia in Article 65 of the Association Agreement.

64 Lastly, according to settled case-law (see inter alia Schmidberger, cited above, paragraphs 71 to 73 and the case-law cited), fundamental rights form an integral part of the general principles of law the observance of which the Court ensures and, for that purpose, the Court draws inspiration from the constitutional traditions common to the Member States and from the guidelines supplied by international treaties for the protection of human rights on which the Member States have collaborated or to which they are signatories, the ECHR having special significance in that respect. The principles established by that case-law were reaffirmed in the preamble to the Single European Act and subsequently in Article F.2 of the Treaty on European Union. It follows that measures which are incompatible with observance of the human rights thus recognised and guaranteed are not acceptable in the Community.

65 However, the short answer to that point is that the interpretation which this order lays down as regards the first subparagraph of Article 65(1) of the Association Agreement is consistent with the requirements of Article 14 of the ECHR and Article 1 of the Protocol, as interpreted inter alia by the European Court of Human Rights in its judgment of 16 September 1996 *Gaygusuz* v *Austria* (*Reports of Judgments and Decisions* 1996-IV, p. 1129), so that the Court is providing the national court with all the criteria necessary for it to assess the conformity of the national legislation at issue with the fundamental rights the observance of which the Court ensures, such as those guaranteed by the ECHR.

66 In the light of all the foregoing considerations, the answer to the questions referred must be that the first subparagraph of Article 65(1) of the Association Agreement is to be interpreted as meaning that it precludes the host Member State from refusing to grant an armed services invalidity pension to a Moroccan national who has served in that State's army and resides in its territory on the sole ground that the person concerned is of Moroccan nationality.

Costs

67 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 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 2000/204/EC, ECSC of the Council and Commission of 24 January 2000 is to be interpreted as meaning that it precludes the host Member State from refusing to grant an armed services invalidity pension to a Moroccan national who has served in that State's army and resides in its territory on the sole ground that the person concerned is of Moroccan nationality.

[Signatures]