OPINION OF ADVOCATE GENERAL RUIZ-JARABO COLOMER delivered on 6 April 2006 [1]

I — Introduction

1. The Verwaltungsgericht (Administrative Court) Darmstadt has requested the Court of Justice to provide an interpretation of Article 64 of the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Tunisia, of the other part. [2]

2. That court has doubts as to the effect of that agreement on the curtailment on the period of validity of a residence permit and on the consequent order to deport a Tunisian national holding a work permit of indefinite duration.

3. Although the Court of Justice has previously ruled on agreements between the Community and non-member countries, [3] it has not yet done so in relation to the Agreement with Tunisia. This is the first time that it has had to consider a Euro-Mediterranean treaty. [4]

4. There is one precedent, however: the judgment of 2 March 1999 in *El-Yassini*, [5]

1 — Original language: Spanish.

2 — Signed in Brussels on 17 July 1995 (OJ 1998 L 97, p. 2) and approved on behalf of the European Community and the European Coal and Steel Community by Decision 98/238/EC, ECSC of the Council and the Commission of 26 January 1998 (OJ 1998 L 97, p. 1).

3 — See inter alia Case C-113/97 *Babahenini* [1998] ECR I-183 (Cooperation Agreement with Algeria); Case C-179/98 *Mesbah* [1999] ECR I-7955; and Case C-33/99 *Fahmi and Esmoris Cerdeiro-Pinedo Amado* [2001] ECR I-2415 (Cooperation Agreement with Morocco); Case C-162/00 *Pokrzeptowicz-Meyer* [2002] ECR I-1049 (Association Agreement with the Republic of Poland); or, more recently, Case C-265/03 *Simutenkov* [2005] ECR I-2579 (Partnership and Cooperation Agreement with the Russian Federation); and also Case C-136/03 *Dörr and Ünal* [2005] ECR I-4759; Case C-383/03 *Dogan* [2005] ECR I-6237; and Case C-373/03 *Aydinli* [2005] ECR I-6181 (Association Agreement with Turkey). It was categorically stated in paragraph 9 of the judgment in Case 12/86 *Demirel* [1987] ECR 3719 that the Court of Justice has jurisdiction to examine a provision of this kind.

4 — At the time this Opinion is being delivered, Case C-336/05 *Echouikh* is pending; it relates to Articles 64 and 65 of the Euro-Mediterranean Agreement with the Kingdom of Morocco, signed in Brussels on 26 February 1996 (OJ 2000 L 70, p. 2) and approved on behalf of the European Community and the European Coal and Steel Community by Decision 2000/204/EC, ECSC of the Council and the Commission of 24 January 2000 (OJ 2000 L 70, p. 1). Also pending is Case C-4/05 *Güzeli*, in which the German authorities refused to extend the residence permit of a Turkish worker who had obtained a work permit of indefinite duration, and in which the Association Agreement with Turkey will have to be considered.

5 — Case C-416/96 [1999] ECR I-1209.

which interpreted Article 40 of the Agreement concluded with Morocco in 1976,[6] which has similar wording to the provision to which the questions raised in this case relate. However, the national court has doubts as to whether that precedent is applicable, and there have been disagreements in that regard during these proceedings.

II — Legal framework

A — *The Euro-Mediterranean Agreement with Tunisia*

1. Background

5. Since its inception, the Community has assumed legal competency to enter into agreements with other international bodies. Article 310 EC authorises it to 'conclude with one or more States or international organisations agreements establishing an association involving reciprocal rights and obligations, common action and special procedure'.[7]

6. Association agreements have four main objectives: to prepare for membership of the European Union, to offer an alternative to membership, to establish a programme of cooperation in order to aid development and to promote inter-regional assistance.[8] The agreements intended to achieve that international aid include those concluded in the 1970s with African countries on the Mediterranean coast: Morocco,[9] Algeria[10] and Tunisia.

7. The Cooperation Agreement between the European Economic Community and the Republic of Tunisia was signed on 25 April 1976.[11] Under Article 39 thereof, 'the treatment accorded by each Member State to workers of Tunisian 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'.

6 — 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).

7 — Article 310 EC is based on Article 238 of the EC Treaty which in turn in based on Article 14 of the Convention on the Transitional Provisions of the Treaty establishing the European Coal and Steel Community.

8 — Hanf, D., and Dengler, P., 'Accords d'association', *Commentaires Mégret, Le droit de la CE et de l'Union européenne*, Vol. XII (*Relations extérieures*), Brussels, 2004.

9 — See footnote 6.

10 — 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).

11 — OJ 1978 L 265, p. 2; approved by Council Regulation (EEC) No 2212/78 of 26 September 1978 (OJ 1978 L 265, p. 1). On the same date, another agreement was concluded between the Member States of the European Coal and Steel Community and the Republic of Tunisia (OJ 1978 L 265, p. 119).

2. The Euro-Mediterranean Agreement of 17 July 1995

8. In 1995 a conference of the Foreign Ministers of Mediterranean countries was held to promote peace, security and justice in the region.

9. The Community, in accordance with the results of that conference, has replaced the former agreements and concluded others. [12] They all have similar structure and content. [13]

10. The Euro-Mediterranean Agreement with Tunisia, which replaced the 1976 Agreement as from the date it entered into force, [14] forms part of that context.

11. The aims of that agreement are stated in Article 1: to provide an appropriate framework for political dialogue; gradually to liberalise trade in goods, services and capital; to promote trade and the expansion of harmonious economic and social relations notably through dialogue and cooperation; to encourage integration of the Maghreb, and to promote economic, social, cultural and financial cooperation.

12. Article 64(1) in Title VI ('Cooperation in social and cultural matters'), Chapter I ('Workers') of that agreement states that 'the treatment accorded by each Member State to workers of Tunisian 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'. [15]

13. That rule must be construed in the light of the 'Joint declaration', annexed to the final act of the agreement, relating to Article 64(1), which specifies: '[w]ith regard to the absence of discrimination as regards redundancy, Article 64(1) may not be invoked to obtain renewal of a residence permit. The granting, renewal or refusal of a residence

12 — See, in addition to the Agreement with Tunisia, referred to above, the most recent agreements concluded with Morocco, referred to in footnote 4 (OJ 2000 L 70, p. 2), the Palestinian Authority (OJ 1997 L 187, p. 3), the State of Israel (OJ 2000 L 147, p. 3), the Hashemite Kingdom of Jordan (OJ 2002 L 129, p. 3), the Arab Republic of Egypt (OJ 2004 L 304, p. 39), the Democratic Republic of Algeria (text available in French on http://www.deldza.cec.eu.int/fr/ue_algeria/accord_ association.htm) and the Lebanese Republic (text available on http://www.dellbn.cec.eu.int/en/eu_and_lebanon/textaa.htm).

13 — Flaesch-Mougin, C., 'Differentiation and association within the Pan-Euro-Mediterranean Area', *The EU's enlargement and Mediterranean strategies: A Comparative Analysis*, M. Maresceau and E. Lannon (eds.) Basingstoke-New York, 2001, p. 85 et seq.; and Debard, T., 'La conclusion d'accords d'association de 2e génération', *Le partenariat euro-méditerranéen — Le processus de Barcelone: Nouvelles perspectives*, Bruylant, Brussels, 2003, p. 161 et seq.

14 — Article 96(2) of the Agreement.

15 — Under Article 66 of the Agreement, the provisions of Chapter I do not apply 'to nationals of the Parties residing or working illegally in the territory of their host countries'. This requirement of legality is also to be found in other association agreements, such as the agreements with Morocco (Articles 64 and 66) and Israel (Article 64), both referred to above.

permit shall be governed by the legislation of each Member State and the bilateral agreements and conventions in force between Tunisia and the Member State'.

14. Disputes arising within the framework of the Agreement are examined by the Association Council, a body composed of representatives of both parties and with the power to take decisions, [16] assisted by the Association Committee, which also has the power to take decisions, [17] although, to the best of my knowledge, they have not ruled on the employment situation of Tunisians in the Community, [18] unlike the Association Council's decisions in respect of Turkey. [19]

B — *The German legislation*

1. Residence permits

15. The Law on Aliens (Ausländergesetz, 'the AuslG') [20] permits a foreigner to join his German spouse by issuing him with a permit to reside in Germany which, unless it is granted for an indefinite period, [21] is granted initially for three years, renewable for limited periods. [22]

16. However, the foreign spouse acquires an independent right to remain if the marriage lasts in Germany for a minimum of two years. [23]

17. The residence permit may be curtailed retroactively if any of the essential conditions of the grant, extension or fixing of the period of validity are not satisfied. [24]

2. Work permits

18. The conditions for granting a work permit to a non-German spouse are to be

16 — Articles 79 and 80 of the Agreement.

17 — Articles 81 to 83 of the Agreement.

18 — The Association Council has adopted the following Decisions: No 1/98 of 14 July 1998 adopting its rules of procedure and those of the Committee (OJ 1998 L 300, p. 20); No 1/1999 of 25 October 1999 on the implementation of the provisions on processed agricultural products laid down in Article 10 of the Agreement (OJ 1999 L 298, p. 16); No 1/2003 of 30 September 2003 setting up subcommittees of the Association Committee (OJ 2003 L 311, p. 14); and No 1/2005 of 14 July 2005 derogating from the provisions concerning the definition of the concept of 'originating products' and methods of administrative cooperation laid down in the Agreement (OJ 2005 L 190, p. 3).

19 — Decision No 1/80 of the Association Council of 19 September 1980 on the development of the association between the European Community and Turkey, which has given rise to copious case-law. The text has not been published officially but may be found in *EEC Turkey Association Agreement and Protocols and other basic texts*, Council of the European Communities, Brussels, 1992, p. 327 et seq.

20 — Gesetz über die Einreise und den Aufenthalt von Ausländern im Bundesgebiet, BGBl. 1990 I, p. 1354.

21 — Paragraph 25, in conjunction with Paragraph 24, of the AuslG.

22 — Paragraph 23 of the AuslG.

23 — Paragraph 19(1)(1) of the AuslG.

24 — Paragraph 12(2) of the AuslG.

found in Book Three of the Social Law Code (Sozialgesetzbuch) ('the SGB III') [25] and in the Regulation on work permits for Foreign Employees (Arbeitsgenehmigungsverordnung) ('the ArGV'). [26]

19. The SGB III stipulates that foreigners wishing to take up gainful employment must first obtain a work permit, which is conditional on possession of a residence permit. [27]

20. Under the ArGV, the period of validity of a work permit may be curtailed for specific reasons, [28] and expires in the event of loss of the residence permit, [29] which shows that, under German law, the former always depends on the latter. [30]

21. Furthermore, it follows from the case-law of the German courts that, under German law, a contract of employment may be concluded for a limited period of time only where an objective ground exists for such a limitation. [31]

25 — Book Three (III) — Aid to employment, 24 March 1997, BGBl. 1997 I, p. 594, subsequently amended and in force until 31 December 2004.

26 — Verordnung über die Arbeitsgenehmigung für ausländische Arbeitsnehmer of 17 September 1998, BGBl. 1998 I, p. 2899.

27 — Paragraph 284 of the SGB III.

28 — Paragraph 4 of the ArGV.

29 — Paragraph 8(1) of the ArGV.

30 — The German Government emphasises this point in its observations.

31 — This is stated by Advocate General Jacobs in the Opinions he delivered in Case C-272/92 *Spotti* [1993] ECR I-5185, and Case C-162/00 *Pokrzeptowicz-Meyer* [2002] ECR I-1049.

III — The facts, the main proceedings and the questions referred for a preliminary ruling

22. On 30 August 2002, Mr Gattoussi, a Tunisian national, married a German citizen in Tunisia.

23. On 21 September 2002 he entered his wife's country on a visa issued for the purposes of family reunification, which was valid until 20 December 2002. However, a few days after his arrival, the mayor of Darmstadt issued him with a residence permit which was valid until 23 September 2005.

24. On 22 October 2002 the Employment Exchange (Arbeitsamt) a issued Mr Gattoussi a work permit of indefinite duration and, on 11 March 2003, he entered into a fixed-term contract of employment with TNT Express GmbH which was extended up to 31 March 2005.

25. In a notice of 23 June 2004, the Mayor of Darmstadt curtailed the period of validity of Mr Gattoussi's residence permit to the date on which that administrative decision was notified, ordering him to leave Germany within three months of the decision becoming enforceable. The factual grounds stated were that Mr Gattoussi's wife had informed the population register that they had been

living apart since 1 April 2004. The legal grounds cited were that, where there is no longer marital cohabitation, a residence permit can be retroactively curtailed under Paragraph 12 of the AuslG, since the claimant does not have an independent right to remain under Paragraph 19(1) of the AuslG.

26. On 17 September 2004, the Regierungspräsidium Darmstadt (Regional Council, Darmstadt) dismissed Mr Gattousi's objection to that decision.

27. An action was brought before the Verwaltungsgericht Darmstadt (which decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Does Article 64 of the Euro-Mediterranean Agreement with Tunisia ... have any effect on the entitlement to remain?

(2) If Question 1 is answered in the affirmative: can it be inferred from the prohibition of discrimination laid down in Article 64 of the Euro-Mediterranean Agreement with Tunisia ... that the legal position in relation to the right to remain precludes making that right subject to a time-limit in the case of a Tunisian citizen who holds a work permit of indefinite duration, is actually in employment and, on the date of the decision under the law on aliens, already has a right to remain for a specified period?

(3) If Question 2 is answered in the affirmative: can the legal position relating to the right to remain and construed in the light of Article 64 of the Euro-Mediterranean Agreement with Tunisia ..., be determined by reference to a date subsequent to the decision under the law on aliens making the right to remain subject to a time-limit?

(4) If Question 3 is answered in the affirmative: is it necessary to comply with the principles developed in relation to Article 39(3) EC when applying the proviso in respect of grounds relating to the protection of a legitimate national interest?'

IV — Procedure before the Court

28. Written observations were presented, within the time-limit laid down in Article 23 of the Statute of Court of Justice, by Mr

Gattoussi, the German and Greek Governments, and by the Commission.

29. The representatives of the parties who participated in the written stage of the procedure appeared at the hearing held on 9 March 2006 and presented oral argument.

V — Analysis of the questions referred for a preliminary ruling

30. The questions referred by the Verwaltungsgericht Darmstadt should be answered together because they all seek to establish whether the doctrine in *El-Yassini* should be applied to the case pending before the court.

A — *The judgment in El-Yassini*

1. Summary of its content

31. The legislative reference in *El-Yassini* is confined to Article 40 of the 1976 Agreement with Morocco, [32] which provides that '[t]he 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'.

32. The difficulty lay in determining whether that provision precludes a host Member State from refusing to extend the residence permit of a Moroccan national whom it has authorised to enter its territory and to take up gainful employment there, where the initial reason for the grant of his leave to stay no longer exists when his 12-month residence permit expires. [33]

33. The Court of Justice examined Article 40 from two angles: its direct effect and the scope of the prohibition on unequal treatment which it contains.

34. As regards the first aspect, it did not need lengthy argument to establish that the provision, far from being purely programmatic in nature, is directly applicable, since it

32 — The 1996 Agreement with Morocco, cited in footnote 4, is the one currently in force.

33 — *El-Yassini*, cited in footnote 5, paragraph 23.

complies with the requirements of the case-law, [34] prohibiting, in clear, precise and unconditional terms, discrimination based on nationality against migrant Moroccan workers as regards working conditions or remuneration. [35]

35. The second aspect, which was of more substance, held the attention of the Court, which made the following observations in that regard:

— Measures relating to residence permits in a country may not, by their very nature, be applied to the nationals of the Member States, since the authorities may not expel them from the territory or deny them access to it. This principle of international law implies that, in terms of equal treatment, the position of foreign workers cannot be compared with that of national workers. [36]

— The case-law relating to the Agreement with Turkey may not be applied by analogy to the Agreement with Morocco, as there are significant differences in the wording and objectives of each of those agreements. [37]

— Consequently, the authorities may refuse to renew the residence permit of a Moroccan national whom they have previously authorised to enter the territory and to take up gainful employment there, where the initial reason for the grant of his residence permit no longer exists by the time that it expires, [38] even if the adoption of that decision will oblige the person concerned to terminate his employment relationship before the contractual term agreed with his employer comes to an end. [39]

— The situation would be different if the Member State had granted the foreign national rights in relation to employment which were more extensive than those conferred in relation to residence [40] and if, before the work permit

34 — 'A provision in an agreement concluded by the Community with non-member countries must be regarded as being directly applicable when, regard being had to its wording and the purpose and nature of the agreement itself, the provision contains a clear and precise obligation which is not subject, in its implementation or effects, to the adoption of any subsequent measure', *Demirel*, cited in footnote 2, paragraph 14. See also Case C-18/90 *Kziber* [1991] ECR I-199, paragraph 15, and Case C-162/96 *Racke* [1998] ECR I-3655, paragraph 31.

35 — *El-Yassini*, cited in footnote 5, paragraphs 25 to 32. See also Blázquez Rodríguez, I., 'Alcance del principio de no discriminación en cuanto a las condiciones de trabajo y de remuneración de los nacionales marroquíes', *La Ley*, 1999-3, p. 1994; Melis, B., 'Case C-416/96, *Nour Eddline El-Yassini* v *Secretary of State for the Home Department*, Judgment of the European Court of Justice of 2 March 1999', *Common Market Law Review*, No 36, 1999, p. 1360; Rogers, N., 'Comments on *Nour Eddline El Yassini* v *Secretary of State for the Home Department*, 2 March 1999 (Case C-416/96)', *European Journal of Migration and Law*, No 1, 1999, pp. 367 and 368.

36 — *El-Yassini*, cited in footnote 5, paragraphs 45 and 46.

37 — *El-Yassini*, cited in footnote 5, paragraphs 49 to 61.

38 — *El-Yassini*, cited in footnote 5, paragraph 62.

39 — *El-Yassini*, cited in footnote 5, paragraph 63.

40 — *El-Yassini*, cited in footnote 5, paragraph 64.

expired, it then refused to extend the residence permit without justifying its refusal on grounds relating to the protection of a legitimate national interest, such as public policy, public security or public health, [41] since the first paragraph of Article 40 of the Agreement with Morocco applies throughout the period of validity of the work permit. [42]

permit for a limited period and a work permit of indefinite duration. In other words, they granted him the right to remain in the national territory for a shorter period than that conferred by his work permit, subsequently curtailing the period of validity of the former for reasons unrelated to public policy, public security or public health, and ordered him to leave the country, which meant that he had to leave his employment.

2. Applicability to the circumstances of the present case

38. The German and Greek Governments argue that there are factual and legal differences between the two cases. I must therefore consider those arguments in order to establish whether they invalidate the position taken above.

(a) Initial assessment

36. It was held in *El-Yassini* that the Agreement with Morocco did not preclude the power of the Member States to adjust the period of residence of foreign nationals, unless the work permit was granted for a longer period than the residence permit.

(b) Comparison of the facts

37. The situation in the present falls squarely within that exception, since Article 64(1) of the Agreement with Tunisia is similar to the provision examined in *El-Yassini* and, furthermore, the German authorities granted Mr Gattoussi a residence

39. *El-Yassini* concerned the renewal of the residence permit of a Moroccan national, the refusal of which entailed the end of his employment relationship; no reference was made in that case to the period of validity of the work permit, whereas in the present case it concerns the revocation of the work permit as a consequence of the curtailment of the period of residence.

41 — *El-Yassini*, cited in footnote 5, paragraph 65.

42 — *El-Yassini*, cited in footnote 5, paragraph 66, which refers to points 63 to 66 of Advocate General Léger's Opinion.

40. However, as regards residence, the two situations considered — extension and revocation — have the same basis: presence in the national territory. It makes no difference whether the person concerned has to leave it because the permit is not extended or because its period of validity is curtailed.

41. As regards employment, the two scenarios were considered in *El-Yassini*, which formulated the general rule that a contract concluded between a foreign national and his employer does not affect the application of the rules concerning foreign nationals, and noted the particular circumstance of a work permit being granted for a longer period than a residence permit.

42. Consequently, none of the factual differences calls for the situation to be dealt with differently than as follows from *El-Yassini*.

(c) Legal comparison

43. The judgment of 1 July 1993 in *Metalsa* [43] made the scope of interpretation of a Treaty provision drafted in similar, in fact virtually identical, terms in an agreement concluded by the Community with a non-member country, subject to the purpose pursued by each of those provisions in its own particular context, noting that '[a] comparison between the objectives and context of the agreement and those of the Treaty is of considerable importance in that regard'.

44. This rule also applies to similar provisions contained in similar types of agreements.

45. The wording of Article 64(1) of the Agreement with Tunisia is almost identical to that of the first paragraph of Article 40 of the Agreement with Morocco. The two agreements also have the same 'objectives and context'. In principle, therefore, the observations of the Court of Justice, in particular those concerning the direct effect, effectiveness and scope of the principle of equal treatment, may be applied to both agreements.

46. The only differences are that Article 64(1) extends the prohibition on unequal treatment to dismissal [44] and that, annexed to the Final Act of the Agreement with

43 — Case C-312/91 [1993] ECR I-3751, paragraph 11. See also Case C-63/99 *Gloszczuk* [2001] ECR I-6369, paragraph 49; Case C-235/99 *Kondova* [2001] ECR I-6427, paragraph 52; Case C-257/99 *Barkoci and Malik* [2001] ECR I-6557; and *Pokrzeptowicz-Meyer*, paragraph 33.

44 — As does Article 64 of the 1996 Agreement with Morocco, now in force, cited above, which is the same as Article 64 of the Agreement with Tunisia.

Tunisia is a 'Joint declaration' relating to that provision, to the effect that '[w]ith regard to the absence of discrimination as regards redundancy, Article 64(1) may not be invoked to obtain renewal of a residence permit' which, like the granting or refusal of a residence permit, is to be governed 'solely' by the legislation of each Member State.

47. That additional consideration is important, in the light of Article 31 of the Vienna Convention on the law of treaties of 23 May 1969, [45] which provides that declarations of the kind referred to are to be taken into account for the purposes of interpreting international agreements. [46]

48. No such declaration is to be found in the 1976 Agreement with Morocco, but there can be no doubt that the Court had it in mind in *El-Yassini*, because there is a similar declaration in the Final Act of the 1996 Agreement, which replaced the 1976 one. [47]

49. Furthermore, the interpretative rule does not go so far as to prohibit discrimination in the three areas referred to in Article 64(1), namely working conditions, remuneration and dismissal, since the declaration refers only to dismissal.

50. In the same vein, the prohibition laid down in the Joint declaration was considered in *El-Yassini*, since, after stating that the refusal to extend the residence permit is not prohibited where the initial reason for granting it no longer exists, the Court then went to hold that the fact that the measure will oblige the person concerned 'to terminate his employment relationship in the host Member State before the contractual term agreed with his employer comes to an end' will not affect that conclusion. [48]

51. The objective thus envisaged is to avoid a situation where individual contracts interfere with the exercise of public powers or even Community interests. [49]

45 — *United Nations Treaty Series*, vol. 1155, p. 331. Although Article 1 of the Convention states that it applies to treaties between States — the convention applying to treaties concluded with and between international organisations is not yet in force — it serves as a guideline, since it codifies principles of common international law; Dienelt, K., 'Rechte aus den Europa-Mittelmeer-Abkommen', *Informationsbrief Ausländerrecht 2004*, p. 49.

46 — Under Article 91 of the Agreement with Tunisia, 'Protocols Nos 1 to 5, Annexes 1 to 7 and the declarations' are to form an integral part of the Agreement.

47 — Advocate General Léger called attention to its existence, reproducing it in point 57 of his Opinion in *El-Yassini*.

48 — *El-Yassini*, cited in footnote 5, paragraphs 62 and 63.

49 — I agree wholeheartedly with the views expressed by Advocate General Léger in this regard in his Opinion in *El-Yassini*, where he warned that if a Member State were required to grant a residence permit to a foreign national because an employer had concluded a contract with him for a term extending beyond the period set by the authorities, 'it would be tantamount to placing a serious restriction on the powers of the Member States as regards immigration policy ...' and 'would give individuals the right to upset all the projections' taken into account for drawing up that policy (point 60); also, that Member State 'would no longer be able to ensure observance of the priority as regards access to the available jobs which, as we have seen, the Treaty accords to Community workers and Decision No 1/80 grants, to a lesser extent, to Turkish workers' (point 61).

52. There is no issue of termination of an employment relationship in the present case; consequently, the aforementioned joint declaration in no way impedes application of the *El-Yassini* case-law.

B — *Residence permit 'versus' work permit*

53. Furthermore, I consider that the Court of Justice does not need to veer from the path indicated.

54. The permits which a country issues to foreign nationals enabling them to enter, reside and work in its territory are closely linked, although they may be subject to different conditions. [50]

55. There are many ways of structuring them, which vary from making them separate, according to their subject-matter, to granting a single permit to cover all three aspects. [51]

56. The choice of separate forms of permit means, in general, that a work permit cannot be granted unless a residence permit has already been issued, [52] and prior to that an entry permit, though they may sometimes be applied for and granted at the same time. Similarly, it may be decided that they should be linked in other ways or, alternatively, that they should follow different courses.

57. In principle, it is the Member States which are responsible for carrying out this task, which concerns immigration policy, with a wide margin of discretion the boundaries of which are set by their respective legal orders, their international obligations and Community law.

58. In this last sphere Member States must comply with the rules laid down by the Union where there is also national legislation on the matter, as in respect of employment, an area which is part of one of the fundamental freedoms. The Member States may not use immigration measures to infringe Community principles on the free movement of workers or international obligations of the Community. [53]

50 — This has been recognised, in respect of Turkish workers, in Case C-192/89 *Sevince* [1990] ECR I-3461, paragraph 29, and Case C-237/91 *Kus* [1992] ECR I-6781, paragraph 29.

51 — The German Immigration Law (Zuwanderungsgesetz) of 30 July 2004 (BGBl. 2004 I, p. 1950), which entered into force on 1 January 2005, partly follows the latter option since, usually, the work permit forms part of the residence permit.

52 — As occurs in German Law, under Paragraph 284 of the SGB III and Paragraph 8 of the ArGV.

53 — In Case 104/81 *Kupferberg* [1982] ECR 3641, paragraphs 11 to 14, it was held that the effects of the provisions of agreements must not be diminished by national measures.

59. In other words, at the moment [54] the revocation, curtailment or the refusal to renew a residence permit, and the links between that permit and the work permit, do not come within the sphere of Community law, unless those measures affect powers or obligations which it must protect, such as where national authorities curtail the period of validity of a work permit granted *sine die*, by making it contingent on the residence permit, thereby disregarding the longer period for which the work permit was granted and calling into question the right to engage in paid employment which it conferred. In those circumstances, such an absolute conditional link is to be avoided. [55]

60. Community law does not require Member States specifically to combine the permits to reside and work in their territory or to grant them to a foreign national for a definite or indefinite period; once they have done so, however, they must abide by the consequences. This notion underlies the judgment in *El-Yassini* and is linked to the principle of legitimate expectations since, depending on the circumstances in which it is issued, a work permit provides its holder with a temporary legal status, if it is for a specific period, or an indefinite legal status, if it has no expiry date. In the latter case, that principle is of great importance.

61. Furthermore, the conditional link with the residence permit created uncertainty as to the situation of the person concerned, which affects his employment situation, since it restricts the clauses in the contracts he concludes, especially as regards their term.

62. However, the above considerations must be applied flexibly to actual situations, so that, once a permanent work permit has been issued, it does not have to remain thus forever, since its clauses may be amended on any of the grounds expressly referred to by the Court of Justice: public policy, public security or public health. In the present case, however, there is no evidence that the German authorities have invoked the protection of any of those legitimate interests. [56]

54 — Since the Treaty on European Union (OJ 1992 C 191, p. 1), and following on the European Council meeting in Tampere, Finland, on 15 and 16 October 1999, consideration has been given to establishing a common migration policy, under which the entry, movement and residence of foreigners in the Member States are to depend on uniform Community criteria. The result of that impetus is Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents (OJ 2004 L 16, p. 44).

55 — This view is also shared by Rittstieg, H., 'Gerichtshof der Europäischen Gemeinschatten, Urteil vom 2.3.199 — Rs. C-416/96 (El-Yassini)', *Informationsbrief Ausländerrecht*, No 5, 1999, p. 222; the opposing view is expressed by Gutmann, R., 'Europarechtliches Diskriminierungsverbot und Aufenthaltsrecht', *Neue Zeitschrift für Verwaltungsrecht*, No 3, 2000, p. 282, who cannot understand why the residence permit should depend on the work permit instead of the opposite. Melis, B., op. cit., p. 1362 et seq., points out that the two kinds of permit have to be linked.

56 — At the hearing, the representative of the German Government, in reply to a question which I asked in that regard, stated that none of the grounds indicated had been raised.

VI — Conclusion

63. In the light of the foregoing considerations, I suggest that the Court of Justice give the following answer to the questions referred for a preliminary ruling by the Verwaltungsgericht Darmstadt:

Article 64 of the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Tunisia, of the other part, signed in Brussels on 17 July 1995 and approved on behalf of the European Community and the European Coal and Steel Community by Decision 98/238/EC, ECSC of the Council and the Commission of 26 January 1998, precludes a Member State from rendering nugatory, as a consequence of the curtailment of the period of validity of a residence permit, a work permit granted for an indefinite period to a Tunisian national, without justifying that measure on grounds of protection of a legitimate interest of the State, namely public policy, public security or public health.