JUDGMENT OF THE COURT (Sixth Chamber)

11 November 1999 *

In Case C-179/98,

REFERENCE to the Court under Article 177 of the EC Treaty (now Article 234 EC) by the Cour du Travail de Bruxelles, Belgium, for a preliminary ruling in the proceedings pending before that court between

Belgian State

and

Fatna Mesbah

on the interpretation of Article 41(1) of the Cooperation Agreement between the European Economic Community and the Kingdom of Morocco signed in Rabat

* Language of the case: French.

on 27 April 1976 and approved on behalf of the Community by Council Regulation (EEC) No 2211/78 of 26 September 1978 (OJ 1976 L 264, p. 1),

THE COURT (Sixth Chamber),

composed of: R. Schintgen (Rapporteur), President of the Second Chamber, acting as President of the Sixth Chamber, P.J.G. Kapteyn and H. Ragnemalm, Judges,

Advocate General: S. Alber,

Registrar: D. Louterman-Hubeau, Principal Administrator,

after considering the written observations submitted on behalf of:

— Mrs Mesbah, through Mr Mikolajczak, of the Nivelles Bar,

— the Belgian Government, by J. Devadder, Director-General of the Legal Service of the Ministry of Foreign Affairs, External Trade and Development Cooperation, acting as Agent,

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

— the French Government, by K. Rispal-Bellanger, Head of the Sub-directorate for International Economic Law and Community Law in the Legal Affairs

Directorate of the Ministry of Foreign Affairs, and A. de Bourgoing, Chargé de Mission in the same directorate, acting as Agents,

— the United Kingdom Government, by S. Ridley, of the Treasury Solicitor's Department, acting as Agent, and M. Hoskins, Barrister,

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

having regard to the Report for the Hearing,

after hearing the oral observations of the Belgian Government, represented by A. Snoecx, Adviser at the Ministry of Foreign Affairs, External Trade and Development Cooperation, acting as Agent, of the French Government, represented by A. de Bourgoing, of the United Kingdom Government, represented by M. Hoskins, and of the Commission, represented by M. Wolfcarius, at the hearing on 25 March 1999,

after hearing the Opinion of the Advocate General at the sitting on 18 May 1999,

gives the following

Judgment

1 By judgment of 11 May 1998, received at the Court on 15 May 1998, the Cour du Travail de Bruxelles (Higher Labour Court, Brussels) referred to the Court for a preliminary ruling under Article 177 of the EC Treaty (now Article 234 EC) two questions on 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 1978 L 264, p. 1, hereinafter 'the Agreement').

2 These questions were raised in proceedings between Mrs Mesbah, a Moroccan national, and the Belgian State, concerning a refusal to grant disability allowance.

3 As is to be seen from the case-file in the main proceedings, Mrs Mesbah has lived in Belgium since 10 September 1985 and is part of the household of her daughter and son-in-law.

4 The latter are both of Moroccan origin and nationality and, according to the order for reference, acquired Belgian nationality by naturalisation 'apparently in the mid-1970s'. In response to a question put by the Court, the Belgian Government stated that Mrs Mesbah's son-in-law has had Belgian nationality since 2 September 1985. In addition, Mrs Mesbah's counsel enclosed with his written observations lodged at the Court a certificate from the Consulate General

of the Kingdom of Morocco in Brussels from which it appears that Mrs Mesbah's son-in-law still had Moroccan nationality as at 27 July 1998.

5 It is common ground that Mrs Mesbah's son-in-law worked in Belgium from 1964 to 1989 and that he continued to live there with his wife after his retirement.

6 On 22 March 1995 Mrs Mesbah, who is disabled and has never carried on any occupational activity in Belgium herself, applied for the disability allowance under the Belgian Law of 27 February 1987 (*Moniteur Belge* of 1 April 1987, p. 4832).

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

8 On 8 March 1996, the competent Belgian authorities refused Mrs Mesbah's application on the ground that she did not meet the nationality requirement laid down in Article 4(1) of the Law of 27 February 1987 as amended.

9 On 22 March 1996 Mrs Mesbah challenged that decision before the Tribunal du Travail (Labour Court), Nivelles, arguing that it was incompatible with Article 41(1) of the Agreement.

10 Under Article 41(1), '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'.

11 According to Mrs Mesbah, it follows that the Agreement prohibits the authorities of a Member State from refusing to award a claimant social security benefits on the ground that he is of Moroccan nationality.

12 By judgment of 16 May 1997 the Tribunal du Travail, Nivelles, declared Mrs Mesbah's action to be well founded and annulled the decision refusing her the disability allowance.

13 On 15 June 1997 the Belgian State brought an appeal before the Cour du Travail de Bruxelles on the ground that, as a Moroccan national, Mrs Mesbah is not entitled to the allowance under Belgian law.

14 That court found that, pursuant to settled case-law (see in particular Case C-18/90 *Kziber* [1991] ECR I-199 and Case C-58/93 *Yousfi* [1994] ECR I-1353), Article 41(1) of the Agreement has direct effect such that Mrs Mesbah can rely on it before the national courts. It also held that, by virtue of the same case-law, a disability allowance such as that provided for by the Belgian law of 27 February 1987, as amended, falls within the scope *ratione materiae* of that provision.

15 According to the Cour du Travail, however, the extent to which a 'member of [the] family' of a Moroccan worker who has never acquired rights to social

security benefits by means of an occupational activity falls within the scope *ratione personae* of Article 41(1) by virtue of an activity currently or previously pursued by a member of his family, remains to be determined.

16 In that connection, the national court found that Article 41(1) applies to workers, whether still working or retired, of Moroccan nationality and to members of their family living with them in the host Member State. Furthermore, relying on *Babahenini* (Case C-113/97 [1998] ECR I-183, paragraph 32), it rejected the Belgian State's argument that Mrs Mesbah, who has never been a worker herself, cannot claim disability allowance under Belgian law on the ground that, under the relevant national legislation, the allowance is regarded as a personal right, not as a derived right which Mrs Mesbah can acquire by virtue of the fact that she is a member of the family of a migrant worker.

17 The Cour du Travail none the less pointed out, first, that on 22 March 1995, the date on which the application for disability allowance was made, Mrs Mesbah was the only person in the household of her son-in-law and daughter to have retained Moroccan nationality. Her son-in-law and daughter acquired Belgian nationality before that date. The question therefore arose whether Mrs Mesbah was still to be regarded as a member of the family of a 'Moroccan worker' for the purposes of Article 41(1) of the Agreement. Secondly, since Article 41(1) did not define the term 'member of the family', it must be asked to what degree of relationship that term can extend and whether it can apply to those who, as in the case in point in the main proceedings, are related only by marriage.

18 Since it considered that the case thus raised issues of interpretation of Community law, the Cour du Travail de Bruxelles decided to stay proceedings and refer the following questions to the Court for a preliminary ruling:

'(1) Can a member of the family of a worker, who was originally Moroccan but subsequently acquired Belgian nationality, still rely on 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 and on the principle of non-discrimination with regard to "Moroccan workers" and "members of their family" living with them, which is contained therein?

(2) What degree of relationship — vertical and/or horizontal — is covered by the term "family", contained in Article 41(1) of the EEC-Morocco Agreement, and can that term also be applied to persons of Moroccan nationality who are related only by marriage?'

The first question

19 It is common ground that Mrs Mesbah was a Moroccan national, both when the application for disability allowance was made and from 1992 to 1995, which is the reference period under national law for the award of the allowance.

20 However, that circumstance is not sufficient for a member of the family of a Moroccan migrant worker established in the host Member State to be able to rely on the principle of non-discrimination in the field of social security laid down in Article 41(1) of the Agreement.

21 As is clear from the wording of that provision, that principle benefits workers of Moroccan nationality and members of their family living with them in the host Member State.

22 It is not in dispute that, under applicable national law, Mrs Mesbah was indeed, at the material time, part of a migrant worker's household in the Member State where that worker is or was employed, namely her son-in-law's household in Belgium where, having carried on an occupational activity, he receives an old-age pension. The dispute in the case turns on the nationality of that worker, from whom the respondent in the main proceedings may derive rights to a disability allowance under the law of the host Member State and under the same conditions as its nationals.

23 Under Article 41(1) of the Agreement, as worded, the member of the family cannot rely on the rule of non-discrimination on grounds of nationality laid down in that provision unless the migrant worker with whom he is living is of Moroccan nationality.

24 In that connection, the Cour du Travail pointed out in its order for reference that Mrs Mesbah's son-in-law and daughter acquired Belgian nationality by naturalisation 'apparently in the mid-1970s'. The national court started from the premiss that, because he acquired Belgian nationality, Mrs Mesbah's son-in-law must necessarily have lost Moroccan nationality, since it pointed out that on 22 March 1995, the date on which the application for disability allowance was made, Mrs Mesbah was the only person in the household comprising herself, her daughter and her son-in-law to have retained Moroccan nationality.

25 During the proceedings before the Court, however, both Mrs Mesbah and the Belgian Government claimed that Mrs Mesbah's son-in-law has been a Belgian national since 2 September 1985, and they produced, respectively, a certificate of nationality drawn up by the civil status officer of the municipality where he lives, and a certified extract from the national register. A certificate issued by the Consulate General of the Kingdom of Morocco in Brussels was also produced

from which it appears that, as at 27 July 1998, Mrs Mesbah's son-in-law had Moroccan nationality.

26 That being so, in order to provide the national court with an answer that will be helpful to it in deciding the case in the main proceedings and in view of the fact that all those who presented written and oral argument before the Court expressly stated their position on the matter, it must be determined in this case whether a member of the family of a migrant worker of Moroccan nationality, where that worker acquired the nationality of his host Member State before the date on which the member of his family began to live with him there and applied for a social security benefit under the law of that State, may, in reliance on Article 41(1) of the Agreement, invoke that worker's Moroccan nationality as a basis for claiming the benefit of the principle of equal treatment in the field of social security laid down in Article 41(1).

27 In that connection, the Belgian Government argues that, even if under Moroccan law the migrant worker is considered to have retained Moroccan nationality, he must still be treated as having only Belgian nationality for the purposes of Belgian law. Members of his family cannot therefore rely on his Moroccan nationality in Belgium for the purposes of awarding a social security benefit provided for by Belgian law.

28 The Commission replies that, if the worker from whom the member of his family derives rights to a social security benefit such as that in point in the main proceedings has the nationality of both his Member State of origin and his host Member State, it follows by analogy with *Micheletti and Others* (Case C-369/90 [1992] ECR I-4239) that Community law precludes the host State from preventing that family member from invoking the worker's Moroccan nationality to obtain the benefit of the principle of equal treatment in the field of social

security conferred on that family member by Article 41(1) of the Agreement, solely on the ground that, under the law of the host State, the worker is regarded as a national of that Member State alone.

29 As the Court observed at paragraph 10 of the judgment in *Micheletti and Others*, under international law, it is for each Member State, having due regard to Community law, to lay down the conditions for the acquisition and loss of nationality.

30 Thus, the Court ruled in *Micheletti and Others* that the provisions of Community law on freedom of establishment preclude a Member State from denying a national of another Member State who possesses at the same time the nationality of a non-member country entitlement to that freedom on the ground that the law of the host State deems him to be a national of the non-member country.

31 The Court held that it is not permissible for the legislation of a Member State to restrict the effects of the grant of the nationality of another Member State by imposing an additional condition for obtaining recognition of that nationality with a view to the exercise of the fundamental freedoms provided for in the Treaty, such as the habitual residence of the person concerned in the territory of the Member State of which he was a national before his arrival in the host Member State. That conclusion is rendered all the more necessary by the fact that the consequence of allowing such a possibility would be that the class of persons covered by the Community rules on freedom of establishment might vary from one Member State to another (*Micheletti and Others*, paragraphs 10 to 12).

32 Thus, the Court held that once the person concerned has established his status as a national of a Member State, the other Member States are not entitled to challenge that status on the ground that the person concerned might also have the

nationality of a non-member country which, under the legislation of the host Member State, overrides that of the Member State (*Micheletti and Others*, paragraph 14).

33 However the circumstances of the case in the main proceedings are different from those in the *Micheletti* case.

34 Thus, in the case in the main proceedings, in addition to the nationality of a non-member country, the migrant worker holds the nationality of the Member State in which he set up home and carried on his occupational activity.

35 Furthermore, that host Member State is denying to a member of the worker's family who derives her rights from the worker's status under Article 41(1) of the Agreement the right to take advantage, not of that worker's being a national of another Member State, but of his possession of the nationality of a non-member country.

36 In addition, unlike the situation in point in the *Micheletti* case, which had to do with freedom of establishment under the Treaty, the legislation of the Member State resisting Mrs Mesbah's claim does not affect any fundamental freedom of movement since the purpose of the Agreement is not to enable Moroccan nationals to move freely within the Community but only to consolidate the social-security position of Moroccan workers and members of their families living with them in the host Member State.

37 That being so, the determination in the *Micheletti* case, which relates to a legal situation different from that in the main proceedings, cannot be transposed to this case.

38 The argument advanced by the Commission in that connection cannot therefore be upheld.

39 It follows that Community law does not preclude a host Member State from preventing a member of the family of a worker of Belgian nationality who has retained Moroccan nationality under Moroccan law from relying on that worker's Moroccan nationality in order to obtain the benefit of the principle of equal treatment in the field of social security conferred on that worker by Article 41(1) of the Agreement, on the sole ground that under the legislation of that host State the worker is considered to be a national of that State alone.

40 It is therefore for the national court alone, in the exercise of its exclusive power to interpret and apply its national law in the proceedings before it, to determine the nationality of Mrs Mesbah's son-in-law in accordance with the Belgian law, in particular the nationality legislation and private international law, applicable at the time when the application for disability allowance was made and during the relevant reference periods for assessing entitlement to that social-security benefit.

41 In the light of all of the foregoing considerations, the answer to the first question must be that a member of the family of a migrant worker of Moroccan nationality, where that worker has acquired the nationality of his host Member State before the date on which the said member of his family began to live with him there and applied for a social security benefit under the legislation of that State, cannot rely on Article 41(1) of the Agreement as a ground for invoking that worker's Moroccan nationality for the purposes of obtaining the benefit of the principle of equal treatment in the field of social security laid down in that provision.

Such a member of the family of a Moroccan migrant worker, where that worker also has the nationality of the host Member State, could invoke his Moroccan

nationality, for the purposes of the application of Article 41(1) of the Agreement, solely on the basis of the law of the Member State concerned, which it is for the national court alone, however, to interpret and apply in the proceedings before it.

The second question

42 In order to reply to this question, it should be noted at the outset that Article 41(1) of the Agreement confers the benefit of the principle of non-discrimination in the field of social security not only on the Moroccan migrant worker himself but also on members of his family living with him.

43 Article 41(1) does not, however, define the term 'members of the family' of the worker.

44 However, it follows from the very wording of that provision that the rule of equal treatment which it lays down is not exclusively for the benefit of the migrant worker's spouse and children. Article 41(1) of the Agreement uses the more general expression 'members of the family' of the worker. That expression is thus capable of covering other relatives of the worker, such as, in particular, relatives in the ascending line.

45 There is, moreover, nothing in that provision to suggest that the term 'members of the family' is confined to members of the same blood as the worker.

46 It follows from the foregoing that the term 'members of the family' in Article 41(1) of the Agreement 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, subject, however, to the express provision that those persons do in fact live with the worker.

47 It follows that a person such as the respondent in the main proceedings, who is the mother of the migrant worker's spouse and who has since 1985 been continuously resident in the household of her daughter and son-in-law in the host Member State, must be considered to be a member of the family of that worker within the meaning of Article 41(1) of the Agreement.

48 The reply to the second question must therefore be that the term 'members of the family', within the meaning of the Article 41(1) of the Agreement, of a Moroccan migrant worker extends to relatives in the ascending line of that worker and of his spouse who live with him in the host Member State.

Costs

49 The costs incurred by the Belgian, German, French and United Kingdom Governments and by the Commission, 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 proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Sixth Chamber),

in answer to the questions referred to it by the Cour du Travail de Bruxelles by judgment of 11 May 1998, hereby rules:

1. **A member of the family of a migrant worker of Moroccan nationality, where that worker has acquired the nationality of his host Member State before the date on which the said member of his family began to live with him there and applied for a social security benefit under the legislation of that State, cannot rely on 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, as a ground for invoking that worker's Moroccan nationality for the purposes of obtaining the benefit of the principle of equal treatment in the field of social security laid down in that provision.**

Such a member of the family of a Moroccan migrant worker, where that worker also has the nationality of the host Member State, could invoke his Moroccan nationality, for the purposes of the application of Article 41(1) of

the Agreement, solely on the basis of the law of the Member State concerned, which it is for the national court alone, however, to interpret and apply in the proceedings before it.

2. **The term 'members of the family', within the meaning of Article 41(1) of the Agreement, of a Moroccan migrant worker extends to relatives in the ascending line of that worker and of his spouse who live with him in the host Member State.**

Schintgen Kapteyn Ragnemalm

Delivered in open court in Luxembourg on 11 November 1999.

R. Grass

Registrar

J.C. Moitinho de Almeida

President of the Sixth Chamber