OPINION OF ADVOCATE GENERAL LÉGER

delivered on 19 May 1998 *

1. The Immigration Adjudicator has asked the Court to give a preliminary ruling on the effect of the first paragraph of Article 40 of the Cooperation Agreement between the European Economic Community and the Kingdom of Morocco (hereinafter 'the Agreement') 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. [1]

2. The questions referred to the Court have arisen in proceedings relating to the refusal by the competent authorities to extend the residence permit of a Moroccan worker wishing to remain gainfully employed in a Member State.

Relevant provisions of the Agreement

3. According to Article 1, the object of the Agreement is to '... promote overall cooperation between the Contracting Parties with a view to contributing to the economic and social development of Morocco and helping to strengthen relations between the Parties. To this end provisions and measures will be adopted and implemented in the field of economic, technical and financial cooperation, and in the trade and social fields.'

4. Such cooperation was to be established in the field of economic, technical and financial matters (Title I), trade (Title II) and labour (Title III).

5. The first paragraph of Article 40, which forms part of Title III, 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 or remuneration, in relation to its own nationals.'

Facts

6. On 1 January 1989 Mr El Yassini was given leave to enter the United Kingdom as a visitor, with a prohibition on taking up employment.

* Original language: French.

1 — OJ 1978 L 264, p. 1.

7. While an application to extend his leave to remain was refused on 16 May 1990, his marriage to a British national in October 1990 enabled him to obtain, on 12 March 1991, leave to remain in the United Kingdom which, in accordance with standard immigration practice, was valid for an initial period of 12 months and was not accompanied by a restriction on employment.

8. The couple separated within a year. It appears, moreover, that Mr El Yassini's wife left Britain in order to settle in Canada. However, nobody claims that the marriage was arranged in order to enable Mr El Yassini to remain in the United Kingdom lawfully.

9. Since the grant of leave to remain, Mr El Yassini has been in gainful employment.

10. On 5 March 1992 Mr El Yassini applied for an extension of leave to remain as the spouse of a British national. That application was refused by decision of 18 November 1992, against which he appealed to the competent national authority on 23 November 1992.

11. At the same time, Mr El Yassini applied for leave to remain on the basis of the first paragraph of Article 40 of the Agreement. On 5 November 1993 that application was likewise refused. The reason given by the Secretary of State for the Home Department for that refusal was that the reference to 'working conditions or remuneration' in the first paragraph of Article 40 of the Agreement could not be interpreted as granting Mr El Yassini the right to continue in employment in a Member State and that, accordingly, a right of residence could not be derived therefrom.

12. Mr El Yassini appealed to an immigration adjudicator against that decision, claiming essentially that the first paragraph of Article 40 of the Agreement had to be interpreted as giving a Moroccan worker the right to reside in the host Member State for so long as he continued to be lawfully employed. In support of his claims he referred to various judgments given by the Court in the context of, first, Article 48 of the EC Treaty and, secondly, the Agreement establishing an Association between the European Economic Community and Turkey (hereinafter 'the EEC-Turkey Agreement') [2] and the Additional Protocol annexed to the EEC-Turkey Agreement (hereinafter 'the Additional Protocol'). [3]

13. Since the Immigration Adjudicator was in doubt as to the interpretation to be placed on the term 'working conditions' within the

2 — Signed on 12 September 1963, it entered into force on 1 December 1964, having been approved on behalf of the Community by Council Decision 64/732/EEC of 23 December 1963 (OJ 1973 C 113, p. 1).

3 — Signed on 23 November 1970, it entered into force on 1 January 1973, having been approved on behalf of the Community by Council Regulation (EEC) No 2760/72 of 19 December 1972 (OJ 1973 C 113, p. 17).

meaning of the first paragraph of Article 40 of the Agreement, he referred the following questions to the Court for a preliminary ruling:

'(1) In a case of a Moroccan national, who is lawfully resident in a Member State and who is lawfully employed in that Member State, does the term "working conditions" in Article 40 of the EC-Morocco Cooperation Agreement include security of such employment for the duration of the employment as freely determined between the employer and the employee (i. e. length of employment) and the benefits arising from such security, such as a career structure providing the possibility of promotion, vocational training and pay and retirement pensions commensurate to the seniority of the applicant, applying *mutatis mutandis* the reasoning used by the European Court of Justice in *inter alia* Case C-272/92 *Spotti* v *Freistaat Bayern* [1994] 3 CMLR 29, [1993] ECR I-5185 and Case 225/85 *Commission* v *Italy* [1987] ECR 2625?

(2) If so, does the fact that the length of the applicant's employment is subject to a *de facto* time-limit by the operation of the United Kingdom immigration laws and in the instant case is being terminated by the respondent's decision not to extend the applicant's leave to remain in the United Kingdom constitute discrimination in relation to such "working conditions" on grounds of nationality where the respondent could not impose such a *de facto* time-limit and/or forced termination of employment upon its own nationals?

(3) If the answer to Questions (1) and (2) is in the affirmative, does Article 40 of the EC-Morocco Cooperation Agreement require the Member State to grant the Moroccan worker leave to remain for the duration of his lawful employment?'

Preliminary observation on admissibility

14. The Immigration Adjudicator has asked the Court for confirmation that he constitutes a court or tribunal within the meaning of Article 177 of the EC Treaty.

15. It is, to my knowledge, the first time that an immigration adjudicator has sought a preliminary ruling from the Court.

16. The parties, the intervening Member States and the Commission do not dispute that the Immigration Adjudicator is a court or tribunal.

17. The case-law of the Court refers to the following criteria for determining whether a body is a court or tribunal: whether it is established by law, whether it is permanent, whether its jurisdiction is compulsory in the event of a dispute, whether it applies rules of law, whether its procedure is *inter partes*, whether it has jurisdiction to dispose of cases by a binding decision [4] and whether its members are independent. [5]

18. The office of immigration adjudicator is established under the Immigration Act 1971 (Part II). Under that Act, which sets out their powers, immigration adjudicators settle disputes relating to aliens' rights of entry and residence in the United Kingdom. [6] Depending on the importance of the public interests at stake, [7] determinations by immigration adjudicators are either given at first instance and not appealable or may be appealed against to the Immigration Appeal Tribunal. There is therefore no doubt that the office of immigration adjudicator is established by law and that the jurisdiction of immigration adjudicators is compulsory.

19. Immigration adjudicators constitute a permanent organ. [8] Their determinations are to be made 'in accordance with the law [9] [and] with any immigration rules applicable to the case'. [10]

20. Immigration adjudicators are subject to the rules of procedure set out in the Immigration Appeals (Procedure) Rules 1984. [11] That procedure is adversarial in nature and thus *inter partes*. Also, in parallel with the wide investigatory powers enjoyed by an immigration adjudicator (in particular the power to summon witnesses [12] and to ask for supplementary information), the parties may give him supplementary evidence, ask him to hear witnesses, and put any question which serves to establish the truth. [13] In addition, the parties to the proceedings may appear in person or be represented. [14] Immigration adjudicators are to give reasons for their determinations, [15] which are binding. [16]

21. The criterion concerning the independence of immigration adjudicators is also satisfied. [17] They are appointed by the Lord Chancellor, [18] usually, but not necessarily, from among lawyers who have specific professional experience, for a renewable ten-year [19] or one-year [20] term. During their period of office, of course, they enjoy the same guarantees of independence and impartiality as judges. [21]

4 — See, in particular, Case 61/65 *Vaassen* v *Beambtenfonds Mijnbedrijf* [1966] ECR 261, Case C-393/92 *Almelo and Others* v *Energiebedrijf IJsselmij* [1994] ECR I-1477 and Case C-54/96 *Dorsch Consult* v *Bundesbaugesellschaft Berlin* [1997] ECR I-4961.

5 — Case C-24/92 *Corbiau* v *Administration des Contributions* [1993] ECR I-1277.

6 — Sections 12 to 23.

7 — Whether for policy reasons or otherwise.

8 — S. Juss, 'Rule-making and the Immigration Rules — A Retreat from Law?', *Statute Law Review*, 1992, vol. 13, pp. 151, 152 and 153.

9 — In this context 'the law' must be understood as the Immigration Act and, more generally, the common law. I. Macdonald and N. Blake, *Immigration Law in the United Kingdom*, Butterworths, 1991, pp. 442 and 443.

10 — Section 19(1)(a)(i) of the Immigration Act.

11 — SI 1984 No 2041.

12 — Procedure Rules, Rule 27.

13 — Ibid., Rule 28(a).

14 — Ibid., Rule 26.

15 — Ibid., Rule 39(2).

16 — Sections 19(3) and 20(3) of the Immigration Act.

17 — For the factors to be taken into account in order to determine whether a body meets the criterion of independence, see *Dorsch Consult*, cited above, paragraph 36.

18 — Section 12(a) of the Immigration Act.

19 — Full-time adjudicators.

20 — Part-time adjudicators.

21 — In this connection, see, in particular, W. Wade and C. Forsyth, *Administrative Law*, Clarendon Press Oxford, 1994, p. 471 et seq.

22. The immigration adjudicator must therefore be considered to be a court or tribunal for the purposes of the Court's case-law.

Reply to the questions

23. As the three questions referred to the Court for a preliminary ruling cannot be separated from one another, I will answer them together. Those questions are concerned with the point whether the prohibition of all discrimination based on nationality as regards working conditions or remuneration, within the meaning of the first paragraph of Article 40 of the Agreement, gives a Moroccan worker the right to reside in the host Member State for so long as he has a job, irrespective of his position vis-à-vis the laws of the host State on the entry and residence of aliens in that State.

24. To my knowledge, this is the first time that the Court has been asked to rule on the meaning of the first paragraph of Article 40 of the Agreement, a provision which, it seems to me, undoubtedly satisfies the conditions laid down by the case-law of the Court in order for it to be given direct effect. The Court has held that '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'. [22]

25. Moreover, the Court held in *Kziber*: [23]

'... Articles 40 and 41 which form part of Title III relating to cooperation in the field of labour ... far from being purely programmatic in nature, [establish], in the field of working conditions and remuneration and in that of social security, a principle capable of governing the legal situation of individuals.'

26. More specifically, the Immigration Adjudicator is uncertain whether the effect of the prohibition of discrimination laid down in the first paragraph of Article 40 of the Agreement is identical, as regards the right of Moroccan workers to extend their stay, to that accorded by the Court to the same prohibition which appears, in particular, first, in Article 48(2) of the Treaty [24] and in Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community [25] and,

22 — Case 12/86 *Demirel* v *Stadt Schwäbisch Gmünd* [1987] ECR 3719, paragraph 14.

23 — Case C-18/90 *ONEM* v *Kziber* [1991] ECR I-199, paragraph 22.

24 — See, in particular, Case 48/75 *Royer* [1976] ECR 497, Case 157/79 *Regina* v *Pieck* [1980] ECR 2171, Case 33/88 *Allué and Coonan* v *Università degli studi di Venezia* [1989] ECR 1591 and *Spotti*, cited above.

25 — OJ, English Special Edition 1968 (II), p. 475.

secondly, in Article 38 of the Additional Protocol and in Article 6(1) of the Decision of 19 September 1980 of the Council of Association established by the EEC-Turkey Agreement on the development of the Association ('Decision No 1/80'). [26]

27. It is clear from the Court's settled case-law that the principle of equal treatment in Article 48(2) of the Treaty precludes the application of a provision of national law which sets a limit on the duration of an employment relationship between an employer of the host Member State and a worker who is a national of another Member State when there is, in principle, no such limit for workers who are nationals of the host Member State in question. [27]

28. Likewise, the Court has consistently held [28] in the context of the third indent of Article 6(1) of Decision No 1/80 that '... even though that provision governs the situation of the Turkish worker only with respect to employment and not to the right of residence, those two aspects of the personal situation of a Turkish worker are closely linked and that, by granting to such a worker, after a specified period of legal employment in the Member State, access to any paid employment of his choice, the provision in question necessarily implies — since otherwise the right granted by it to the Turkish worker would be deprived of any effect — the existence, at least at that time, of a right of residence for the person concerned ...'. [29]

29. Recently the Court reiterated that '... the rights which the three indents of Article 6(1) [of Decision No 1/80] confer on a Turkish worker in regard to employment necessarily imply the existence of a right of residence for the person concerned, since otherwise the right of access to the labour market and the right to work as an employed person would be deprived of all effect (*Sevince*, paragraph 29, *Kus*, paragraphs 29 and 30, and *Bozkurt*, paragraph 28)'. [30]

30. From that, the Court concluded in *Kus* — where the facts were very similar to those of this case — that 'Decision No 1/80 does not encroach upon the competence retained by the Member States to regulate both the entry into their territories of Turkish nationals and the conditions under which they may take up their first employment, but merely regulates, particularly in Article 6, the situation of Turkish workers already integrated into the labour force of a Member State. That situation cannot, therefore, in the case of Turkish workers who are already in possession under the legislation of a Member State of a work permit and who, where required, hold a right of residence constitute justification for depriving them of the rights provided for in Article 6(1) of Decision No 1/80.

26 — Decision not published. See, in particular, Case C-192/89 *Sevince* v *Staatssecretaris van Justitie* [1990] ECR I-3461, Case C-237/91 *Kus* v *Landeshauptstadt Wiesbaden* [1992] ECR I-6781, Case C-355/93 *Eroglu* v *Land Baden-Württemberg* [1994] ECR I-5113, Case C-434/93 *Bozkurt* v *Staatssecretaris van Justitie* [1995] ECR I-1475, Case C-171/95 *Tetik* v *Land Berlin* [1997] ECR I-329 and Case C-98/96 *Ertanir* v *Land Hessen* [1997] ECR I-5179.

27 — See, in particular, *Allué and Coonan*, paragraph 18, and *Spotti*, paragraph 21, both cited above.

28 — Ever since its judgment in *Sevince*, cited above, paragraph 29.

29 — *Kus*, cited above, paragraph 29.

30 — *Tetik*, cited above, paragraph 24.

Accordingly ... the first indent of Article 6(1) of Decision No 1/80 must be interpreted as meaning that a Turkish national who obtained a permit to reside on the territory of a Member State in order to marry there a national of that Member State and has worked there for more than one year for the same employer under a valid work permit is entitled under that provision to renewal of his work permit even if at the time of determination of his application his marriage has been dissolved.' [31]

31. Like the intervening Member States and the Commission, I do not consider that case-law to be relevant in the context of the first paragraph of Article 40 of the Agreement.

32. The Court has consistently held [32] that 'the fact that the provisions of [an] agreement and the corresponding Community provisions are identically worded does not mean that they must necessarily be interpreted identically. An international treaty is to be interpreted not only on the basis of its wording, but also in the light of its objectives. Article 31 of the Vienna Convention of 23 May 1969 on the law of treaties stipulates in this respect that a treaty is to be interpreted in good faith in accordance with the ordinary meaning to be given to its terms in their context and in the light of its object and purpose.' [33]

33. A comparison of the three types of legislation at issue — that applicable to Community nationals, that applicable to Turkish nationals and that applicable to Moroccan nationals — reveals the different objectives which they pursue.

Objective of the Treaty

34. The right of Community workers to reside in the territory of the Union, without limitation of time, in order to take up gainful employment there — in other words, freedom of access to the internal labour market — is set out in Article 48 of the Treaty, in particular in its third paragraph which provides:

'[Freedom of movement for workers within the Community] shall entail the right, subject

31 — *Kus*, cited above, paragraphs 25 and 26.

32 — See, in particular, Case 270/80 *Polydor and RSO* v *Harlequin Record Shops* [1982] ECR 329, paragraph 8, and Case 104/81 *Hauptzollamt Mainz* v *Kupferberg* [1982] ECR 3641, paragraphs 29, 30 and 31. See also point 13 of the Opinion of Advocate General Tesauro in Case C-103/94 *Krid* v *CNAVTS* [1995] ECR I-719.

33 — Opinion 1/91 [1991] ECR I-6079, paragraph 14.

to limitations justified on grounds of public policy, public security or public health:

...

(c) to stay in a Member State for the purpose of employment in accordance with the provisions governing the employment of nationals of that State laid down by law, regulation or administrative action;

(d) to remain in the territory of a Member State after having been employed in that State, subject to conditions which shall be embodied in implementing regulations to be drawn up by the Commission.'

35. In addition, Regulation No 1612/68, which implements the prohibition of discrimination based on a Community worker's nationality, states in Article 1:

'1. Any national of a Member State, shall, irrespective of his place of residence, have the right to take up an activity as an employed person, and to pursue such activity, within the territory of another Member State in accordance with the provisions laid down by law, regulation or administrative action governing the employment of nationals of that State.

2. He shall, in particular, have the right to take up available employment in the territory of another Member State with the same priority as nationals of that State.'

Article 7 of that regulation provides:

'1. A worker who is a national of a Member State may not, in the territory of another Member State, be treated differently from national workers by reason of his nationality in respect of any conditions of employment and work, in particular as regards remuneration, dismissal, and should he become unemployed, reinstatement or re-employment.'

36. Article 48(1) of the Treaty lays down the principle of freedom of movement for Community workers while Article 48(2) and (3) defines that principle. The prohibition of discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment is therefore merely an instrument for achieving a specific purpose: the actual implementation of freedom of movement for Community workers.

37. Furthermore, the Court has held that 'the provisions of the Treaty relating to the free movement of persons are thus intended to facilitate the pursuit by Community citizens of occupational activities of all kinds throughout the Community, and preclude national legislation which might place Community citizens at a disadvantage when they wish to extend their activities beyond the territory of a single Member State' [34] and that, 'for that purpose, nationals of Member States have in particular the right, which they derive directly from Articles 48 and 52 of the Treaty, to enter and reside in the territory of other Member States in order to pursue an economic activity there as envisaged by those provisions.' [35]

38. Finally, the Court has consistently ensured [36] that the priority to be accorded to Community workers as regards access to available jobs in the internal market is observed.

39. In conclusion, the right of Community workers to move freely in the territory of the Union necessarily entails the right of access to the internal labour market and the right freely to reside in that territory without limitation of time in order to work there.

Objective of the EEC-Turkey Agreement

40. The position of a Turkish worker under the EEC-Turkey Agreement, the Additional Protocol and Decision No 1/80 is different from that of a Community worker. He benefits neither from a right of access to the internal labour market nor from the principle of freedom of movement for Community workers.

41. The first paragraph of Article 38 of the Additional Protocol merely states: 'While freedom of movement for workers between Member States of the Community and Turkey is being brought about by progressive stages, the Council of Association may review all questions arising in connection with the geographical and occupational mobility of workers of Turkish nationality, in particular *the extension of work and residence permits, in order to facilitate the employment of those workers in each Member State.*'

34 — Case 143/87 *Stanton* v *INASTI* [1988] ECR 3877, paragraph 13.

35 — Case C-370/90 *The Queen* v *Immigration Appeal Tribunal and Singh* ex parte *Secretary of State for the Home Department* [1992] ECR I-4265, paragraph 17.

36 — See, in particular, *Eroglu*, cited above, paragraph 14, and Case C-386/95 *Eker* v *Land Baden-Württemberg* [1997] ECR I-2697, paragraph 23.

42. In addition, Article 6(1) of Decision No 1/80 provides:

'... a Turkish worker duly registered as belonging to the labour force of a Member State:

— shall be entitled in that Member State, after one year's legal employment, to the renewal of his permit to work for the same employer, if a job is available;

— shall be entitled in that Member State, after three years of legal employment and subject to the priority to be given to workers of Member States of the Community, to respond to another offer of employment, with an employer of his choice, made under normal conditions and registered with the employment services of that State, for the same occupation;

— shall enjoy free access in that Member State to any paid employment of his choice, after four years of legal employment.'

43. It is, however, clear from an analysis of those provisions that, while Community law does not give Turkish workers freedom of access to the internal labour market, it grants them certain rights where they are duly registered as belonging to the labour force of a Member State.

44. On the basis of those provisions, the Court has held, in particular, that a Turkish worker duly registered as belonging to the labour force of a Member State [37] may have his residence permit extended in order to continue to work in that State.

45. The Court has also stated that the very rights conferred on Turkish workers vary and are subject to conditions which differ according to the duration of legal employment in the relevant Member State. [38]

46. The aim of the EEC-Turkey Agreement thus extends beyond mere economic, technical and financial, or trade cooperation intended solely to contribute to Turkey's economic and social development.

47. That is why the Court takes the view that the provisions of Decision No 1/80, in particular Article 6(1), 'constitute a further stage

37 — See, in particular, *Kus*, cited above, paragraphs 25 and 26.

38 — See, in particular, *Eroglu*, paragraph 12, and *Tetik*, paragraph 23, both cited above.

in securing freedom of movement for workers on the basis of Articles 48, 49 and 50 of the Treaty (see paragraphs 14 and 19 of *Bozkurt*, cited above). The Court accordingly considered it essential to transpose, so far as possible, the principles enshrined in those Treaty articles to Turkish workers who enjoy the rights conferred by Decision No 1/80 (see *Bozkurt*, paragraph 20).' [39]

48. In short, Article 6(1) of Decision No 1/80 also confers on Turkish workers who satisfy its conditions rights which may be relied upon directly before the courts of the Member States concerned, in particular the right to have their residence permit extended. Furthermore, under the third indent of Article 6(1) of Decision No 1/80, a Turkish worker who has worked for more than four years in a Member State enjoys freedom of access to any paid employment of his choice in that Member State. [40]

Objective of the EEC-Morocco Agreement

49. By contrast, the objective of this Agreement is, as I have already stated, [41] to promote overall cooperation between the Contracting Parties with a view to contributing to the economic and social development of Morocco and helping to strengthen relations between the Parties.

50. The Agreement in no way contains rules of the kind laid down by the EEC-Turkey Agreement and by Decision No 1/80, in particular Article 6(1) thereof. As the Immigration Adjudicator points out, the Agreement does not constitute a stage in securing freedom of movement for Moroccan workers. [42]

51. Nor does it contain any provision governing the personal situation of a Moroccan worker as regards his right of residence.

52. Furthermore, Moroccan workers, unlike Community workers and, to a lesser extent, Turkish workers, are not entitled to any priority as regards access to the internal labour market.

53. Nor, finally, does the Agreement contain any provisions requiring the Member States to adopt common rules regarding the rights of Moroccan workers to enter their territory and reside there.

39 — *Tetik*, cited above, paragraph 20.
40 — Ibid., paragraphs 22 and 25.
41 — Point 3 of this Opinion.
42 — See paragraph 10 of the order for reference.

54. That leads me to conclude that, as Community law stands at present, the Member States alone are competent to define their immigration policies. The first paragraph of Article 40 of the Agreement therefore cannot be interpreted as limiting the competence of the Member States to regulate either the entry of Moroccan nationals on their territory and the conditions under which they may take up their first employment or the position of Moroccan workers belonging to their labour force.

55. In addition, the Treaty of Amsterdam introduces a significant amendment by inserting in Part Three of the EC Treaty a Title IIIa headed 'Visas, asylum, immigration and other policies related to free movement of persons'. In particular, under Article 73k(3) and (4), the Council is to adopt, within a period of five years after the entry into force of the Treaty of Amsterdam:

'(3) measures on immigration policy within the following areas:

(a) conditions of entry and residence, and standards on procedures for the issue by Member States of long-term visas and residence permits, including those for the purpose of family reunion,

(b) illegal immigration and illegal residence, including repatriation of illegal residents;

(4) measures defining the rights and conditions under which nationals of third countries who are legally resident in a Member State may reside in other Member States.' [43]

56. This means that the personal situation of Moroccan workers is distinct from that of Community or Turkish workers; it cannot be argued that the host Member State discriminates against Moroccan workers contrary to the first paragraph of Article 40 of the Agreement by failing, at the end of the period of employment which it has duly authorised, to extend the residence permit which they need in order to be in gainful employment lawfully. That is why I consider that a Moroccan worker is unable to claim that the judgments of the Court on the right of residence of Community workers or on extending the right of residence of Turkish workers, [44] given on the basis of the Treaty and of Decision No 1/80 respectively, should be applied by analogy.

43 — Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts, signed at Amsterdam on 2 October 1997 (OJ 1997 C 340, p. 1).

44 — See, in particular, *Kus*, paragraphs 29 and 30, and *Tetik*, paragraph 24, both cited above.

57. 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 at Brussels on 26 February 1996, which has not yet entered into force, [45] does not in any way alter that assessment. The joint declaration relating to the application of Article 64 of the new agreement [46] states by way of explanation of the meaning to be given to that provision:

'1. Without prejudice to the conditions and procedures applicable in each Member State, the Parties will examine the matter of access to a Member State's labour market of the spouse and children, legally resident under family reunification arrangements, of Moroccan workers legally employed on the territory of a Member State, except for seasonal workers, those on secondment or on placement, for the duration of the worker's authorised stay.

2. With 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 permit shall be governed by the legislation of each Member State and the bilateral agreements and conventions in force between Morocco and the Member State.*' [47]

58. It follows from all of the foregoing that the personal situation of a Moroccan worker as regards his right of residence does not fall within the scope of Community law. He cannot therefore derive from Community law any rule which might entitle him to the extension of his residence permit so that he may be employed by a Community employer. In other words, the fact that an employer in the host State draws up for a Moroccan national an employment contract of a duration exceeding the period of employment authorised by the host Member State in no way commits that State to the grant of a residence permit to that national.

59. To decide otherwise would have two major consequences.

60. First, it would be tantamount to placing a serious restriction on the powers of the Member States as regards immigration policy. If, in circumstances such as those of this case, the Court were to require the host Member State to permit Moroccan workers to remain on its territory in order to work there beyond the period freely set by that State — in the

45 — Not published.

46 — Which essentially repeats the wording of Article 40, cited above.

47 — Emphasis added.

face, therefore, of the clearly expressed intention of that State to authorise employment for a limited period only — the Court would give individuals the right to upset all the projections which that State took into account when it drew up its immigration policy.

61. Secondly, the host 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.

62. *For the sake of completeness*, I wish to point out that the adoption of this solution does not render the principle of non-discrimination laid down by the first paragraph of Article 40 of the Agreement devoid of substance.

63. In my view, where a Member State has authorised a Moroccan worker, in accordance with its national law, to take up gainful employment in its territory, that principle requires it to grant that worker — who satisfies the same conditions as those imposed by the legislation of the host Member State for its own nationals, with the exception of the condition relating to nationality [48] — the rights and benefits arising from the employment contract and the applicable national legislation [49] which correspond to those accorded to its own nationals carrying on the same activity, [50] since those rights and benefits must be understood to be those relating to working conditions or remuneration. If the State grants that authorisation for a fixed period, the Moroccan worker is to enjoy the benefit of the principle of equal treatment laid down by the first paragraph of Article 40 of the Agreement for the whole of that period.

64. It also follows from that principle that where, under the national legislation at issue, a Moroccan worker is authorised to take up gainful employment in a Member State for a given period, he also has the right to reside in that State during that period if that principle is not to be rendered entirely ineffective. [51]

65. The restriction of, or derogation from, fundamental principles laid down by Community law, such as the principle of equal treatment in the first paragraph of Article 40 of the Agreement, 'must ... be interpreted strictly, so that its scope cannot be determined unilaterally by each Member State without being subject to control by the institutions of the Community.' [52] The Court has held that only measures intended to protect the legitimate interests of the Member States, such as

48 — See in particular, by analogy, *Kziber*, cited above, paragraph 28, Case C-126/95 *Hallouzi-Choho* v *Bestuur van de Sociale Verzekeringsbank* [1996] ECR I-4807, paragraphs 35 and 36, and *Spotti*, cited above, paragraph 21.

49 — See in particular, by analogy, Case 63/76 *Inzirillo* v *Caisse d'Allocations Familiales de l'Arrondissement de Lyon* [1976] ECR 2057.

50 — See also, by analogy, *Kziber*, paragraph 28, and *Hallouzi-Choho*, paragraphs 35, 36 and 37.

51 — See in particular, by analogy, *Kus*, cited above, paragraph 30.

52 — By analogy, Case 36/75 *Rutili* v *Minister for the Interior* [1975] ECR 1219, paragraph 27. See also, by analogy, *Commission* v *Italy* and *Spotti*, both cited above.

those based on reasons of public policy, public security or public health, meet that requirement. [53]

66. That is why I take the view that, in the light of that case-law, economic problems in particular cannot amount to a legitimate reason for terminating a Moroccan worker's lawful right of residence — and thus his right to work. To hold otherwise would give rise to the, not insignificant, risk that, in the event of mere economic difficulties of a short-term nature, that worker would effectively be deprived of his employment contract. As we have seen, the principle of equality laid down by the first paragraph of Article 40 of the Agreement requires the Member States to guarantee a Moroccan worker, in the context of his employment contract, the same protection as that accorded to a national worker. That protection would manifestly not be guaranteed if only the Moroccan worker lost his job.

67. I therefore consider that if a host Member State took the course of action, criticised at the hearing by counsel for Mr El Yassini, involving the adoption — in the event of excessive financial burdens being placed on the undertakings concerned (for example, a negotiated pay increase) — of adverse measures essentially affecting Moroccan workers, such as the withdrawal of all the residence permits granted to Moroccan workers, that course of action would be caught by the prohibition of discrimination laid down by the first paragraph of Article 40 of the Agreement as it could never concern national workers.

68. With regard to those various points, I can find no valid justification for different treatment of the identical circumstances of foreign workers engaged in gainful employment of the same kind in a host Member State. That is why, in my view, a Moroccan worker finding himself in those circumstances could validly claim that the judgments given by the Court in the context of Article 48(2) of the Treaty and Article 6 of Decision No 1/80 should be applied by analogy.

69. *In view of those considerations*, I propose that the Court should rule that the prohibition of discrimination as regards working conditions or remuneration laid down by the first paragraph of Article 40 of the Agreement must be interpreted as not conferring on Moroccan workers the right to obtain an extension of their right of residence even if they are actually employed. In order for the prohibition of discrimination laid down by the first paragraph of Article 40 of the Agreement to apply, the requirements of national law on the entry and residence of aliens must first be observed.

53 — See in particular, by analogy, Case C-292/89 *The Queen* v *Immigration Appeal Tribunal* ex parte *Antonissen* [1991] ECR I-745 and *Kus*, cited above, paragraph 34.

Conclusion

70. For those reasons I suggest the following answer be given to the Immigration Adjudicator:

The prohibition of discrimination based on nationality as regards working conditions or remuneration between Moroccan workers and national workers, laid down by the first paragraph of Article 40 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, must be interpreted as not conferring on Moroccan workers the right to obtain an extension of their right of residence even if they are actually employed.

In order for that prohibition to apply, the law of the host Member State on the entry and residence of aliens must first be observed.