JUDGMENT OF THE COURT (First Chamber)

14 December 2006 *

In Case C-97/05,

REFERENCE for a preliminary ruling under Article 234 EC, by the Verwaltungsgericht Darmstadt (Germany), made by order of 25 January 2005, received at the Court on 23 February 2005, in the proceedings

Mohamed Gattoussi

v

Stadt Rüsselsheim,

THE COURT (First Chamber),

composed of P. Jann, President of the Chamber, K. Lenaerts, J.N. Cunha Rodrigues, M. Ilešič and E. Levits (Rapporteur), Judges,

* Language of the case: German.

Advocate General: D. Ruiz-Jarabo Colomer,
Registrar: B. Fülöp, Administrator,

having regard to the written procedure and further to the hearing on 9 March 2006,

after considering the observations submitted on behalf of:

— Mr Gattoussi, by P. von Schumann, Rechtsanwältin,

— the German Government, by M. Lumma, C. Schulze-Bahr and U. Bender, acting as Agents,

— the Greek Government, by G. Karipsiadis and T. Papadopoulou, acting as Agents,

— the Commission of the European Communities, by G. Rozet and V. Kreuschitz, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 6 April 2006,

gives the following

Judgment

1 The reference for a preliminary ruling concerns the interpretation of Article 64(1) 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, done at 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 (OJ 1998 L 97, p. 1, hereinafter 'the Euro-Mediterranean Agreement').

2 The reference has been made in the context of a dispute between Mr Gattoussi, a Tunisian national, and Stadt Rüsselsheim (Municipality of Rüsselsheim, Germany) concerning the decision of the Mayor of Rüsselsheim retroactively to curtail the period of validity of Mr Gattoussi's residence permit. On the date of adoption of that decision, Mr Gattoussi held a work permit of unlimited duration and was in employment.

Legal context

The Euro-Mediterranean Agreement

3 Article 64 of the Euro-Mediterranean Agreement is to be found in Chapter I ('Workers') of Title VI ('Cooperation in Social and Cultural Matters') and is worded as follows:

'1. 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.

2. All Tunisian workers allowed to undertake paid employment in the territory of a Member State on a temporary basis shall be covered by the provisions of paragraph 1 with regard to working conditions and remuneration.

3. Tunisia shall accord the same treatment to workers who are nationals of a Member State and employed in its territory.'

4 Article 66 of the Euro-Mediterranean Agreement further provides:

'The provisions of this Chapter shall not apply to nationals of the Parties residing or working illegally in the territory of their host countries.'

5 The Joint Declaration relating to Article 64(1) of the Euro-Mediterranean Agreement, adopted by the Contracting Parties and annexed to the Final Act of the Agreement ('the Joint Declaration') additionally specifies:

'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 ...'

6 Pursuant to Article 91 of the Euro-Mediterranean Agreement, the Joint Declaration forms an integral part of that agreement.

The relevant provisions of German law

7 Paragraph 12(2) of the Law on Aliens (Ausländergesetz), as it stood at 23 July 2004 (BGBl. 2004 I, p. 1842, 'the AuslG'), provides that:

'Permission to remain shall be granted for a limited period or, where the law so provides, for an unlimited period. Where, in the case of permission for a limited period, one of the essential conditions for granting or for extending that permission, or for fixing its period of validity, is no longer satisfied, its duration may be retroactively curtailed.'

8 Pursuant to Paragraph 19(1) of the AuslG, in cases where marital cohabitation has ceased, the foreign spouse acquires an independent right to remain, inter alia if lawful marital cohabitation within Germany has lasted for at least two years or if it is necessary, in order to avoid placing the foreign spouse in a situation of particular hardship, to allow that person to extend his or her stay (in cases where there is no possibility of permission being granted for an unlimited period).

9 Under Paragraph 284 of Book Three of the Social Law Code (Sozialgesetzbuch), as it stood at 24 March 1997 (BGBl. I, p. 594, hereinafter 'the SGB III'), a foreigner may undertake employment only if issued with a permit to do so by the Employment Exchange and may not be employed unless in possession of such a permit. Paragraph 284(5) specifies that a work permit may be issued only if the foreigner holds a residence permit.

The facts in the main proceedings and the questions referred

10 On 30 August 2002 Mr Gattoussi married a German citizen. For the purpose of his entry into Germany he was issued with a visa by the Embassy of the Federal Republic of Germany in Tunis for the purpose of family reunification.

11 On 24 September 2002 Mr Gattoussi was granted a residence permit valid for three years by the Mayor of Rüsselsheim, the municipality in which the couple had decided to settle.

12 On 22 October 2002 the Arbeitsamt (Employment Exchange), Darmstadt, granted Mr Gattoussi a work permit of indefinite duration, on which it was indicated that Paragraph 284 of the SGB III applied.

13 On 11 March 2003 Mr Gattoussi entered into a one-year fixed-term contract of employment, the duration of which was later extended up to 31 March 2005.

14 On being informed by Mr Gattoussi's wife that she had been living apart from her husband since 1 April 2004, the Mayor of Rüsselsheim, by decision of 23 June 2004, curtailed the period of validity of Mr Gattoussi's residence permit to the date on which that decision was notified, and required Mr Gattoussi to leave Germany without delay, failing which he would be deported to Tunisia.

15 The grounds for that decision were, first, that the original justification for granting Mr Gattoussi a residence permit was now lacking in so far as he was no longer living with his wife and, secondly, that a work permit of indefinite duration does not give rise under German law to any right — independent of and prevailing over the terms of the residence permit — to continue in employment and to remain for a longer period of time in the country.

16 The decision also took into account the fact that Mr Gattoussi had no independent right to remain. He could not rely on the provisions of the AuslG since, in the first place, his lawful cohabitation in Germany with his spouse had not lasted for at least two years, that is to say, for the period required by law, and, secondly, his circumstances did not amount to a situation of particular hardship within the terms of the AuslG.

17 Nor, lastly, could Mr Gattoussi rely on any right deriving from the Euro-Mediterranean Agreement, since the prohibition of discrimination laid down in Article 64(1) thereof does not confer on Tunisian nationals any right to remain.

18 Mr Gattoussi lodged an objection to the decision with the Regierungspräsidium (Regional Council), Darmstadt, claiming that termination of his stay in Germany would place him in a situation of particular hardship since, in those circumstances, it would be difficult, if not impossible, for him to succeed in his efforts to resume cohabitation with his wife and to settle the debts arising from their wedding.

19 Mr Gattoussi's objection was dismissed by decision of 17 September 2004 on the grounds that, in his case, there was no basis in German law for recognition of a right to remain, and that the Mayor of Rüsselsheim had not exceeded his discretion by adopting a decision curtailing the period of validity of Mr Gattoussi's residence permit.

20 Mr Gattoussi has challenged that decision before the Verwaltungsgericht Darmstadt (Administrative Court, Darmstadt), claiming that, in so far as he is engaged in full-time gainful employment in Germany, has become fully integrated in the German way of life and plans to remarry as soon as his divorce is finalised, a return to Tunisia would place him in a situation of particular hardship both financially and in terms of family relationships.

21 In the course of that action, the Verwaltungsgericht Darmstadt decided to suspend proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Does Article 64 of the Euro-Mediterranean Agreement ... have any effect on the right 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 ... 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 ..., 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?'

The questions

22 By its questions, which should be examined together, the national court is essentially asking whether it is appropriate to apply in the main proceedings the approach adopted by the Court in its judgment in Case C-416/96 *El-Yassini* [1999] ECR I-1209 concerning the interpretation of 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 (OJ 1978 L 264, p. 1, 'the EEC-Morocco Agreement') and, more specifically, whether Article 64(1) of the Euro-Mediterranean Agreement precludes the host Member State from curtailing the period of validity of the residence permit of a Tunisian national, to whom it has granted leave to remain in its territory for a specified period and to undertake gainful employment there for a period of indefinite duration, in the case where the original justification for his right to remain lapses before the date on which the validity of his residence permit expires.

23 In order to provide a useful reply to the national court, it is necessary first to examine whether Article 64(1) of the Euro-Mediterranean Agreement may be relied on by an individual before the courts of a Member State and, if so, to determine the scope of the principle of non-discrimination which that provision lays down.

The direct effect of Article 64(1) of the Euro-Mediterranean Agreement

24 It should be pointed out that, as the question of the effect of the Euro-Mediterranean Agreement within the legal systems of the parties thereto has not been addressed in the Agreement itself, it is for the Court to resolve that question in the same way as any other question of interpretation concerning the application of

agreements within the Community (see inter alia, by way of analogy, Case C-149/96 *Portugal* v *Council* [1999] ECR I-8395, paragraph 34, and Case C-265/03 *Simutenkov* [2005] ECR I-2579, paragraph 20).

25 According to well-established case-law, a provision in an agreement concluded by the Communities with a non-member country must be regarded as having direct effect where, regard being had to its wording and to the purpose and nature of the agreement, the provision lays down a clear and precise obligation which is not subject, in its implementation or its effects, to the adoption of any subsequent measure (see to that effect, inter alia, Case C-63/99 *Gloszczuk* [2001] ECR I-6369, paragraph 30; Case C-171/01 *Wählergruppe Gemeinsam* [2003] ECR I-4301, paragraph 54; and *Simutenkov*, paragraph 21).

26 As regards, first, the wording of Article 64(1) of the Euro-Mediterranean Agreement, it appears that Article 64(1) is framed in terms that are almost identical to those of the first paragraph of Article 40 of the EEC-Morocco Agreement and merely extends the principle of non-discrimination laid down therein to the conditions governing dismissal. The Court has accepted that the first paragraph of Article 40 satisfies the requirements necessary for being accorded direct effect (see *El-Yassini*, paragraph 27).

27 Secondly, as regards the purpose and nature of the Euro-Mediterranean Agreement, it should be pointed out that, under Article 96(2) thereof, that Agreement replaces the Cooperation Agreement between the European Economic Community and the Republic of Tunisia, which was approved on behalf of the Community by Council Regulation (EEC) No 2212/78 of 26 September 1978 concerning the conclusion of the Cooperation Agreement between the European Economic Community and the Republic of Tunisia (OJ 1978 L 265, p. 2, hereinafter 'the EEC-Tunisia Agreement'), which it follows in stating that its aim is to promote cooperation in the economic, social, cultural and financial fields. That Cooperation Agreement was itself substantially identical to the EEC-Morocco Agreement, the purpose and nature of which have been held by the Court to be compatible, particularly as regards

cooperation in the field of labour, with the direct effect deriving from the terms of the first paragraph of Article 40 thereof (see *El-Yassini*, paragraphs 28 to 31). That is *a fortiori* the position in the case of the Euro-Mediterranean Agreement which, by contrast with the EEC-Morocco Agreement, establishes under Article 1(1) an association between the Community and its Member States, of the one part, and Tunisia, of the other part.

28 In those circumstances, it must be held that Article 64(1) of the Euro-Mediterranean Agreement has direct effect.

The scope of Article 64(1) of the Euro-Mediterranean Agreement

29 By way of a preliminary point, it should be noted that in *El-Yassini* the Court ruled that, as Community law stood at the time of that judgment, the first paragraph of Article 40 of the EEC-Morocco Agreement had to be interpreted as not precluding in principle 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, for the entire period during which he has that employment there, where the initial reason for the grant of his leave to stay no longer exists by the time at which his residence permit expires. The Court made it clear that the situation would be different only if, in the absence of grounds relating to the protection of a legitimate national interest, such as public policy, public security or public health, that refusal were to affect the right actually to engage in employment conferred on the person concerned in that Member State by a work permit duly granted by the competent national authorities for a period exceeding that of his residence permit (see *El-Yassini*, paragraph 67).

30 It is clear from the order for reference that the circumstances in the main proceedings are comparable to those examined by the Court in its judgment in *El-Yassini*.

31 In both cases, by curtailing the right to remain, the host Member State has restricted the right accorded to a national of a non-member country to engage in employment, even though the person had been granted that right through the issue of a work permit.

32 The German Government, however, contends that there are a number of differences between Article 64(1) of the Euro-Mediterranean Agreement and the first paragraph of Article 40 of the EEC-Morocco Agreement which preclude the interpretation espoused in relation to the latter provision in *El-Yassini* from being applied in relation to Article 64(1) of the Euro-Mediterranean Agreement.

33 First, it argues, the Joint Declaration relating to Article 64(1) of the Euro-Mediterranean Agreement reflects the intention of the Contracting Parties to that agreement to prevent Tunisian nationals from relying on the prohibition of discrimination laid down in that provision for the purposes of claiming a right to remain.

34 Secondly, it submits, in view of the terms used in Article 64(1) of the Euro-Mediterranean Agreement, the practical effect to which it is in essence directed, and its conceptual framework, it cannot be recognised as having any effect whatsoever on the right to remain of Tunisian nationals.

35 As the German Government points out, it is clear from the actual wording of Article 64(1) of the Euro-Mediterranean Agreement, as it is from the wording of the Joint Declaration relating to that provision, that the aim of that provision *per se* is not to regulate the position of Tunisian nationals as regards the right to remain in the Member States.

36 It must therefore be held, along the same lines as the ruling in *El-Yassini* concerning the EEC-Morocco Agreement, that the Euro-Mediterranean Agreement, not being designed to secure any kind of freedom of movement for workers, does not in

principle prohibit a Member State from taking measures concerning the right to remain of a Tunisian national whom it has previously authorised to enter its territory and to engage in gainful employment there (see *El-Yassini*, paragraphs 58 to 62).

37 The fact that the adoption of such a 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, as a general rule, affect that conclusion (see *El-Yassini*, paragraph 63).

38 However, contrary to the contention of the German Government, it does not follow from that interpretation that a Tunisian national will never be able to rely on the prohibition of discrimination laid down in Article 64(1) of the Euro-Mediterranean Agreement for the purposes of contesting a measure taken by a Member State in limitation of his right to remain.

39 Indeed, it would be quite unacceptable for the Member States to deal with the principle of non-discrimination laid down in Article 64(1) of the Euro-Mediterranean Agreement by using provisions of national law to limit its effectiveness. In the first place, to do so would undermine the provisions of an agreement entered into by the Community and its Member States and, secondly, would jeopardise the uniform application of that principle.

40 In particular, as the Court has already held, if the host Member State has previously granted the migrant worker specific rights in relation to employment which are more extensive than the rights of residence conferred on him by that State, it cannot then reopen the question of that worker's situation on grounds unrelated to the protection of a legitimate national interest such as public policy, public security or public health (*El-Yassini*, paragraphs 64, 65 and 67).

41 On that point, it is settled case-law that the concept of public policy presupposes the existence of a genuine and sufficiently serious threat to one of the fundamental interests of society (see, to that effect, Case 36/75 *Rutili* [1975] ECR 1219, paragraph 28; Case C-340/97 *Nazli* [2000] ECR I-957, paragraph 57; and Case C-459/99 *MRAX* [2002] ECR I-6591, paragraph 79).

42 In the light of the principles of the protection of legitimate expectations and of legal certainty, the rule referred to in paragraph 40 applies a fortiori in cases, such as that before the national court, in which permission to remain has been limited by the host Member State retroactively.

43 It follows from all of the foregoing that, on a proper construction of Article 64(1) of the Euro-Mediterranean Agreement, that provision may have effects on the right of a Tunisian national to remain in the territory of a Member State in the case where that person has been duly permitted by that Member State to work there for a period extending beyond the period of validity of his permission to remain.

Costs

44 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (First Chamber) hereby rules:

On a proper construction of Article 64(1) 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, done at 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, that provision may have effects on the right of a Tunisian national to remain in the territory of a Member State in the case where that person has been duly permitted by that Member State to work there for a period extending beyond the period of validity of his permission to remain.

[Signatures]