JUDGMENT OF THE COURT (Grand Chamber)

16 November 2004 *

In Case C-327/02,

REFERENCE for a preliminary ruling under Article 234 EC from the Rechtbank te 's-Gravenhage (Netherlands), made by decision of 16 September 2002, received at the Court on 18 September 2002, in the proceedings

Lili Georgieva Panayotova,

Radostina Markova Kalcheva,

Izabella Malgorzata Lis,

Lubica Sopova,

Izabela Leokadia Topa,

* Language of the case: Dutch.

Jolanta Monika Rusiecka,

v

Minister voor Vreemdelingenzaken en Integratie,

THE COURT (Grand Chamber),

composed of: V. Skouris, President, P. Jann, C.W.A. Timmermans, A. Rosas and R. Silva de Lapuerta (Presidents of Chambers), J.-P. Puissochet (Rapporteur), R. Schintgen, S. von Bahr and J.N. Cunha Rodrigues, Judges,

Advocate General: M. Poiares Maduro,
Registrar: M.-F. Contet, Principal Administrator,

having regard to the written procedure and further to the hearing on 2 December 2003,

after considering the observations submitted on behalf of:

— Ms Panayotova, Ms Kalcheva and Ms Lis, by R. van Asperen, advocaat,

— the Netherlands Government, by S. Terstal and J. van Bakel, acting as Agents,

— the Greek Government, by M. Apessos et K. Boskovits, acting as Agents,

— the French Government, by C. Bergeot-Nunes, acting as Agent,

— the Commission of the European Communities, by P.J. Kuijper and H. van Vliet, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 19 February 2004,

gives the following

Judgment

1 The reference for a preliminary ruling relates to the interpretation of Articles 45(1) and 59(1) of the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Bulgaria, of the other part, approved by Decision 94/908/EC, ECSC, Euratom of the Council and the Commission of 19 December 1994 (OJ 1994 L 358, p. 1; 'the

Communities-Bulgaria Agreement'), Articles 44(3) and 58(1) of the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Poland, of the other part, approved by Decision 93/743/EC, ECSC, Euratom of the Council and the Commission of 13 December 1993 (OJ 1993 L 348, p. 1; 'the Communities-Poland Agreement') and Articles 45(3) and 59(1) of the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Slovak Republic, of the other part, approved by Decision 94/909/EC, ECSC, Euratom of the Council and the Commission of 19 December 1994 (OJ 1994 L 359, p. 1; 'the Communities-Slovakia Agreement' and, together with the other agreements, 'the Association Agreements').

2 The reference was made in proceedings brought by Ms Panayotova and Ms Kalcheva, who are Bulgarian nationals, Ms Lis, Ms Topa and Ms Rusiecka, who are Polish nationals, and Ms Sopova, a Slovak national, against the Minister voor Vreemdelingenzaken en Integratie (Minister for Aliens' Affairs and Integration) concerning the latter's refusal to grant their applications for full residence permits with a view to working in a self-employed capacity.

Legal context

Community legislation

3 Article 45(1) of the Communities-Bulgaria Agreement, which is to be found in Title IV of that agreement, provides:

'Each Member State shall grant, from entry into force of the Agreement, for the establishment of Bulgarian companies and nationals and for the operation of Bulgarian companies and nationals established in its territory, a treatment no less favourable than that accorded to its own companies and nationals, save for matters referred to in Annex XVa.'

4 Article 59(1) of the agreement states:

'For the purpose of Title IV, nothing in the Agreement shall prevent the Parties from applying their laws and regulations regarding entry and stay, work, labour conditions and establishment of natural persons and supply of services, provided that, in so doing, they do not apply them in a manner as to nullify or impair the benefits accruing to any Party under the terms of a specific provision of the Agreement. ...'

5 The wording of Articles 44(3) and 58(1) of the Communities-Poland Agreement and of Articles 45(3) and 59(1) of the Communities-Slovakia Agreement resembles closely that of Articles 45(1) and 59(1) of the Communities-Bulgaria Agreement.

Netherlands legislation

6 Article 16a(1) of the Vreemdelingenwet 1994 (Law on Aliens 1994; 'the Vreemdelingenwet') provides that an application for a full residence permit is to be considered only if the alien has a valid temporary residence permit. Article 16a(3) and (4) exempts certain categories of aliens from that requirement, while Article 16a (6) provides that applicants may be exempted from the requirement in very special individual cases.

7 Application for the temporary residence permit must be made by the alien to the Netherlands diplomatic or consular representation in his country of origin or in the country in which he is permanently resident. A permit shall be issued in so far as the applicant satisfies the substantive conditions required for grant of a full residence permit. Unless circumstances change after the temporary residence permit has been issued or it is apparent that it has been obtained on the basis of incorrect information, its holder may, after entering the Netherlands, obtain a full residence permit.

8 In the case of short stays not exceeding three months, Bulgarian nationals are required to obtain a visa whereas, under Article 8 of the Vreemdelingenwet in conjunction with Article 46(1)(c) of the Vreemdelingenbesluit 1994 (Decree on Aliens 1994), Polish and Slovak nationals are entitled freely to stay for a period of three months ('the free period'). However, Article 46(2) of the Vreemdelingenbesluit 1994 provides that the free period automatically expires if, in the course of its duration, the person concerned applies for a full residence permit.

The main proceedings and the questions referred for a preliminary ruling

9 The applications for full residence permits submitted by the plaintiffs in the main proceedings with a view to working in the Netherlands in a self-employed capacity were refused by the head of the regional police of Groningen (Netherlands) on the ground that the plaintiffs did not have the temporary residence permit required by Article 16a(1) of the Vreemdelingenwet. The objections lodged against those refusals were declared unfounded by decisions of the Minister voor Vreemdelingenzaken en Integratie made between 22 January and 1 May 2001.

10 The Rechtbank te 's-Gravenhage (District Court, The Hague), before which proceedings challenging those decisions were brought, held, first of all, that the plaintiffs cannot rely on any of the exceptions provided for in Article 16a(3), (4) and (6) of the Vreemdelingenwet.

11 That court then observes that, in its judgments in Case C-63/99 *Gloszczuk* [2001] ECR I-6369, at paragraph 86, Case C-235/99 *Kondova* [2001] ECR I-6427, at paragraph 91, and Case C-257/99 *Barkoci and Malik* [2001] ECR I-6557, at paragraph 83, which were delivered in the context of proceedings in which United Kingdom legislation was applicable, the Court of Justice held that the provisions governing the right of establishment which are contained in the association agreements concluded by the Communities do not prevent the Member States in principle from making entry into their territory subject to a requirement that a temporary residence permit first be obtained.

12 It observes in particular in this connection that, at paragraph 4 of the operative part of the judgment in *Barkoci and Malik*, the Court of Justice ruled as follows in relation to provisions drafted in terms identical to those of Articles 45(3) and 59(1) of the Communities-Slovakia Agreement, namely Articles 45(3) and 59(1) of the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Czech Republic, of the other part, approved by Decision 94/910/ECSC, EC, Euratom of the Council and the Commission of 19 December 1994 (OJ 1994 L 360, p. 1; 'the Communities-Czech Republic Agreement'):

'The condition set out at the end of the first sentence of Article 59(1) of that Association Agreement must be construed as meaning that the obligation on a Czech national, prior to his departure to the host Member State, to obtain entry clearance in his country of residence, grant of which is subject to verification of substantive requirements, such as those laid down in paragraph 212 of [the United Kingdom] Immigration Rules [(House of Commons Paper 395) "the Immigration Rules"], has neither the purpose nor the effect of making it impossible or excessively

difficult for Czech nationals to exercise the rights granted to them by Article 45(3) of that Agreement, provided that the competent authorities of the host Member State exercise their discretion in regard to applications for leave to enter for purposes of establishment, submitted pursuant to that Agreement at the point of entry into that State, in such a way that leave to enter can be granted to a Czech national lacking entry clearance on a basis other than that of the Immigration Rules if that person's application clearly and manifestly satisfies the same substantive requirements as those which would have been applied had he sought entry clearance in the Czech Republic.'

13 The referring court points out that in *Barkoci and Malik*, at paragraph 69, the Court of Justice stated, however, as follows:

'... without even addressing the question whether Article 59(1) of the Association Agreement allows the competent authorities of the host Member State to refuse admission to its territory for a Czech national who does not hold entry clearance, it will be sufficient to examine whether the application by the United Kingdom authorities of national immigration legislation, including the exercise of the Secretary of State [for the Home Department]'s discretion to determine whether the condition relating to possession of entry clearance may be set aside in individual instances, appears on the whole to be in accordance with the condition set out at the end of the first sentence of Article 59(1) of the Association Agreement.'

14 In those circumstances, the referring court wonders whether the answer which is set out in paragraph 4 of the operative part of the judgment in *Barkoci and Malik*, read in the light of paragraph 69 of that judgment, was conceived solely in relation to the specific features of United Kingdom legislation. It observes that, in contrast to the latter, Netherlands law does not allow the competent authority, except in the cases expressly laid down by Article 16a of the Vreemdelingenwet, to issue a full residence permit to the plaintiffs in the main proceedings when they do not hold a temporary residence permit.

15 The referring court points out finally that, since they had failed to obtain the necessary visa, Ms Panayotova and Ms Kalcheva were present in the Netherlands illegally when they submitted their applications for a full residence permit with a view to establishment in that Member State. It states that the situation is, on the other hand, less clear so far as concerns the other plaintiffs in the main proceedings, who, since they were not subject to a visa requirement for a stay in the Netherlands of a duration not exceeding three months and were entitled to the free period referred to in paragraph 8 of this judgment, might have been legally resident in that State before they submitted their applications for full residence permits.

16 It was in those circumstances that the Rechtbank te 's-Gravenhage decided to stay proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'1. Must the answer given by the Court to question 4 in its judgment of 27 [September] 2001 in Case C-257/99 *Barkoci and Malik* be interpreted to mean that it is incompatible with Article 45(1) in conjunction with Article 59(1) of the Association Agreement with Bulgaria, Article 44(3) in conjunction with Article 58 of the Association Agreement with Poland and Article 45(3) in conjunction with Article 59 of the Association Agreement with the Slovak Republic for the competent authority, when assessing an application submitted in the Netherlands for a full residence permit with a view to establishment in accordance with the Association Agreement, to refrain from examining the contents of the application solely on the ground that the applicant does not have a temporary residence permit? Does the fact that the substantive entry requirements are clearly and manifestly satisfied make any difference to the answer to this question?

2. Is it relevant for the purposes of answering the first question, and if so how, whether the person applying for a full residence permit is legally resident in the Netherlands at the time of the application, whether or not on the basis of an entitlement other than a temporary residence permit, such as the "free period" referred to in Article 8 of the Vreemdelingenwet?'

Consideration of the questions referred

17 By its two questions, which it is appropriate to consider together, the referring court essentially asks whether the relevant provisions of the Association Agreements are to be interpreted as precluding legislation of a Member State under which an application for a full residence permit submitted in its territory with a view to establishment there as a self-employed person in accordance with those agreements must be rejected, without further examination, where the applicant does not have a temporary residence permit issued in advance by the diplomatic or consular services of that Member State in the country from which he originates or in which he is permanently resident, and even if he is lawfully present in that Member State by virtue of a status other than that of self-employed person on the date of submission of his application and he claims to satisfy clearly and manifestly the substantive requirements relating to grant of such a temporary residence permit and of the full residence permit for a self-employed person.

18 The direct effect which Article 45(1) of the Communities-Bulgaria Agreement, Article 44(3) of the Communities-Poland Agreement and Article 45(3) of the Communities-Slovakia Agreement must be recognised as having means that Bulgarian, Polish and Slovak nationals relying on those provisions have the right to invoke them before the courts of the host Member State, notwithstanding the fact that the authorities of that State remain competent to apply to those nationals their own national laws and regulations regarding entry, stay and establishment, in accordance with Article 59(1) of the Communities-Bulgaria Agreement, Article 58 (1) of the Communities-Poland Agreement and Article 59(1) of the Communities-Slovakia Agreement (see *Gloszczuk*, cited above, paragraph 38, *Kondova*, cited above, paragraph 39, and Case C-268/99 *Jany and Others* [2001] ECR I-8615, paragraph 28).

19 While the right of establishment, as defined by the first three provisions cited in the preceding paragraph, entails the conferral of rights of entry and residence as corollaries of that right, it nevertheless follows from the final three provisions cited there that those rights of entry and residence are not absolute privileges, inasmuch as their exercise may, in some circumstances, be limited by the rules of the host Member State concerning the entry, stay and establishment of such nationals (*Gloszczuk*, paragraph 51, *Kondova*, paragraph 54, and *Jany*, paragraph 28).

20 In order to be compatible with the condition set out in Article 59(1) of the Communities-Bulgaria Agreement, Article 58(1) of the Communities-Poland Agreement and Article 59(1) of the Communities-Slovakia Agreement, the restrictions imposed on the right of establishment by the host Member State's immigration legislation must, however, be appropriate for achieving the objective in view and not constitute, in regard to that objective, measures which would strike at the very substance of the rights which Articles 45(1), 44(3) and 45(3) of the respective Association Agreements grant to Bulgarian, Polish and Slovak nationals by making exercise of those rights impossible or excessively difficult (*Gloszczuk*, paragraph 56, and *Kondova*, paragraph 59).

21 In this connection, provisions such as Articles 45(1) and 59(1) of the Communities-Bulgaria Agreement, read together, Articles 44(3) and 58(1) of the Communities-Poland Agreement, read together, and Articles 45(3) and 59(1) of the Communities-Slovakia Agreement, read together, do not in principle preclude a system of prior control which makes the issue by the competent immigration authorities of leave to enter and remain subject to the condition that the applicant must show that he genuinely intends to take up an activity as a self-employed person without at the

same time entering into employment or having recourse to public funds, and that he possesses, from the outset, sufficient financial resources for carrying out the activity as a self-employed person and has reasonable chances of success (*Gloszczuk*, paragraph 86, *Kondova*, paragraph 91, and *Jany*, paragraph 31).

22 Such a national system of control to check the exact nature of the activity contemplated by applicants, put into operation before they leave for the host Member State, has a legitimate objective in so far as it makes it possible to restrict the exercise of rights of entry and residence by nationals of the countries concerned who invoke those provisions to persons to whom the provisions apply (*Gloszczuk*, paragraph 58, *Kondova*, paragraph 61, and *Barkoci and Malik*, paragraph 62).

23 Furthermore, such a system of control is capable in particular of being justified in light of the fact that it is easier to check the substantive conditions, and to carry out the detailed investigations which that entails, in the State of origin, having regard in particular to both considerations of language and considerations related to access to information concerning the situation of foreign nationals wishing to become established in a Member State (see *Barkoci and Malik*, paragraphs 65 and 66).

24 To require a host Member State which has set up a system of prior control of that kind to provide in addition that its authorities are obliged to examine any application submitted in its territory under the Association Agreements would involve in particular the risk of an influx of applications made during stays for

tourism or other purposes that are supposed to be of short duration only. As the Netherlands, Greek and French Governments have pointed out, such a situation would be liable to undermine the system of obligatory prior control set up by the Member State concerned and, given the periods for consideration of the applications and of any actions brought against decisions refusing them, the freedom of that Member State to allow free or simplified access to its territory solely if the proposed stay is of short duration. Also, the effectiveness of Article 58(1) of the Communities-Poland Agreement, Article 59(1) of the Communities-Bulgaria Agreement and Article 59(1) of the Communities-Slovakia Agreement would be impaired.

25 Since the order for reference does not contain any information concerning the substantive requirements to which issue of a temporary residence permit is subject under the applicable Netherlands rules, it will be for the referring court to check, if necessary, that those requirements are indeed appropriate for ensuring that the objective recalled in paragraph 22 of the present judgment is attained (see, as regards the Netherlands rules in force at the material time in *Jany*, paragraph 31 of that judgment).

26 It should also be pointed out that the procedural rules governing issue of such a temporary residence permit must themselves be such as to ensure that exercise of the right of establishment conferred by the Association Agreements is not made impossible or excessively difficult.

27 It follows in particular that the scheme applicable to such temporary residence permits must be based on a procedural system which is easily accessible and capable of ensuring that the persons concerned will have their applications dealt with objectively and within a reasonable time, and refusals to grant a permit must be

capable of being challenged in judicial or quasi-judicial proceedings (see, by analogy, Case C-157/99 *Smits and Peerbooms* [2001] ECR I-5473, paragraph 90). It should be remembered, in this last respect, that Community law requires effective judicial scrutiny of the decisions of national authorities taken pursuant to the applicable provisions of Community law, and that this principle of effective judicial protection constitutes a general principle which stems from the constitutional traditions common to the Member States and is enshrined by the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950, in Articles 6 and 13 of the Convention (see, in particular, Case 222/84 *Johnston* [1986] ECR 1651, paragraphs 18 and 19, and Case C-467/01 *Eribrand* [2003] ECR I-6471, paragraph 61).

28 It follows from all of the foregoing reasoning that, when a Member State has opted for a system which makes grant of a right of residence for the purposes of establishment on the basis of the provisions of the Association Agreements dependent on a mechanism of control prior to entry on its territory, it is in principle permissible for that Member State to provide that its immigration authorities are to reject, without further examination, applications for full residence permits made for those purposes on its territory by Bulgarian, Polish or Slovak nationals where they lack the requisite temporary residence permit which they should have obtained from the diplomatic or consular services of that Member State in their country of origin or in the country where they are permanently resident before they left for that Member State.

29 The referring court asks, however, whether such a rejection is still consistent with those provisions of the Association Agreements where the person concerned is legally resident in the host Member State by virtue of a status other than that of self-employed person at the time of submitting his application for a full residence permit with a view to establishment and where he claims that he satisfies clearly and manifestly the substantive requirements relating to grant of the temporary residence permit and the full residence permit for a self-employed person.

30 As regards, first, the circumstance that the persons concerned were legally resident in the Netherlands under the free period provided for by Netherlands legislation, it should be noted at the outset that, in the context of a national system based on appropriate verification measures prior to a foreign national's departure to the host Member State with a view to establishment there as a self-employed person, the foreign national's temporary admission into the territory of the host Member State on another basis, when he lacks the entry clearance which may be given after that verification, is in no way equivalent to such clearance, so that he cannot effectively rely on the mere fact of such temporary admission in order to contend that he has acquired the right to become established in that Member State as a self-employed person (see, by analogy, *Barkoci and Malik*, paragraphs 77 to 79).

31 It is, furthermore, apparent from the Court's case-law that it is compatible with Article 58(1) of the Communities-Poland Agreement, and therefore with Article 59(1) of the Communities-Bulgaria Agreement and of the Communities-Slovakia Agreement, for the competent authorities of the host Member State to reject an application made under Article 44(3), Article 45(1) or Article 45(3) of those agreements respectively on the ground that, when that application was made, the applicant was residing illegally within its territory by reason of false representations made to those authorities for the purpose of obtaining initial leave to enter that Member State on a separate basis or of the failure to comply with an express condition attached to that entry and relating to the authorised duration of his stay in that Member State (*Gloszczuk*, paragraph 77).

32 The same must apply where it appears that the application made pursuant to those provisions is incompatible with the express conditions attached to the entry of the person concerned into the host Member State and in particular those relating to the authorised duration of the stay in that State.

33 As has been found in paragraph 24 of the present judgment, if Bulgarian, Polish or Slovak nationals were allowed to submit in the host Member State an application for establishment under the Association Agreements, notwithstanding the fact that they entered its territory on the express condition that they stay there only for a maximum of three months, those nationals could easily circumvent the national rules relating to entry and stay of foreign nationals, consequently depriving Article 58(1) of the Communities-Poland Agreement, Article 59(1) of the Communities-Bulgaria Agreement and Article 59(1) of the Communities-Slovakia Agreement of their practical effect.

34 Bulgarian, Polish or Slovak nationals who do not submit to the relevant controls of the national authorities, by failing to comply with the conditions on which they were granted the right to enter that territory, cannot invoke the protection of the provisions of the Association Agreements relating to the right of establishment in order to escape such conditions.

35 As regards, second, the circumstance that the Bulgarian, Polish or Slovak national who applies in the Netherlands for a full residence permit with a view to establishment on the basis of the Association Agreements claims to satisfy clearly and manifestly the substantive requirements which should have been checked within the framework of the system of prior control set up by the Netherlands legislation, it is admittedly true that the Court held in *Barkoci and Malik*, at paragraph 74, that Articles 45(3) and 59(1) of the Communities-Czech Republic Agreement do not preclude the competent immigration authorities of the host Member State from requiring a Czech national, prior to his departure to that State, to obtain entry clearance, grant of which is subject to verification of substantive requirements

relating to establishment, such as those set out in paragraph 212 of the Immigration Rules, provided that those authorities exercise their discretion in regard to applications for leave to enter for the purpose of becoming established, submitted pursuant to that agreement at the point of entry into that State, in such a way that leave to enter can be granted to a Czech national, on a basis other than that of the Immigration Rules, if that person's application clearly and manifestly satisfies the same substantive requirements as those which would have been applied had he sought entry clearance in the Czech Republic.

36 However, as the Court stated at paragraph 72 of the judgment in *Barkoci and Malik*, it is to the extent to which the competent immigration authorities in the host Member State adopt a policy of setting aside the mandatory requirement of entry clearance that it appears to be in line with the logic of the system of prior control, as well as justified in regard to the Communities-Czech Republic Agreement, that, in the exercise of their discretion as to an applicant's individual position, those authorities carry out an assessment of an application to become established submitted pursuant to that agreement at the point of entry into that Member State which is less extensive than that carried out in the case of an application for entry clearance submitted by the Czech national in his country of residence.

37 As the referring court and the governments which have submitted observations to the Court of Justice have pointed out, in the Netherlands legal order, in contrast to the situation obtaining in the United Kingdom, the immigration authorities do not have such a discretion. Without the temporary residence permit issued by the Netherlands diplomatic or consular services in the State of origin of the person concerned, by virtue of domestic law those authorities in principle have no power to issue a full residence permit with a view to establishment in accordance with the Association Agreements and to check, for that purpose, whether the substantive requirements to which issue of such a permit is subject are met.

38 Without prejudice to the ability of the Member States to lay down a system of prior control coupled with a possibility of examination of applications made directly in national territory, it is consistent with the logic of a system of prior control such as that applied by the Kingdom of the Netherlands and permissible under the Association Agreements for that Member State to provide in its legal order that, where the requirement to submit, in advance, in their country of origin or the country where they are permanently resident an application for a temporary residence permit with a view to establishment is not met, the competent authorities of that Member State are to refuse Bulgarian, Polish or Slovak nationals, relying respectively on Article 45(1) of the Communities-Bulgaria Agreement, Article 44(3) of the Communities-Poland Agreement and Article 45(3) of the Communities-Slovakia Agreement, the full residence permit which they seek, irrespective of whether the substantive requirements to which grant of such a temporary residence permit is subject are in fact met (see, by analogy, *Gloszczuk*, paragraph 70, and *Kondova*, paragraph 75).

39 It follows from all of the foregoing that the questions referred should be answered as follows:

— Articles 45(1) and 59(1) of the Communities-Bulgaria Agreement, read together, Articles 44(3) and 58(1) of the Communities-Poland Agreement, read together, and Articles 45(3) and 59(1) of the Communities-Slovakia Agreement, read together, do not in principle preclude legislation of a Member State involving a system of prior control which makes entry into the territory of that Member State with a view to establishment as a self-employed person conditional on the issue of a temporary residence permit by the diplomatic or consular services of that Member State in the country of origin of the person concerned or in the country where he is permanently resident. Such a system may legitimately make

grant of that permit subject to the condition that the person concerned must show that he genuinely intends to take up an activity as a self-employed person without at the same time entering into employment or having recourse to public funds, and that he possesses, from the outset, sufficient financial resources for carrying out the activity as a self-employed person and has reasonable chances of success. The scheme applicable to such residence permits issued in advance must, however, be based on a procedural system which is easily accessible and capable of ensuring that the persons concerned will have their applications dealt with objectively and within a reasonable time, and refusals to grant a permit must be capable of being challenged in judicial or quasi-judicial proceedings;

— those provisions of the Association Agreements must be interpreted as likewise not in principle precluding such national legislation from providing that the competent authorities of the host Member State are to reject an application for a full residence permit with a view to establishment in accordance with the Association Agreements submitted in the territory of that State when the applicant lacks the temporary residence permit thus required by that legislation;

— it is immaterial in this regard that the applicant claims to satisfy clearly and manifestly the necessary substantive requirements for grant of the temporary residence permit and the full residence permit with a view to such establishment or that the applicant is legally resident in the host Member State on another basis on the date of his application where it appears that the latter is incompatible with the express conditions attached to his entry into that Member State and in particular those relating to the authorised duration of the stay.

Costs

40 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Grand Chamber) rules as follows:

1. **Articles 45(1) and 59(1) of the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Bulgaria, of the other part, approved by Decision 94/908/EC, ECSC, Euratom of the Council and the Commission of 19 December 1994, read together, Articles 44(3) and 58(1) of the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Poland, of the other part, approved by Decision 93/743/EC, ECSC, Euratom of the Council and the Commission of 13 December 1993, read together, and Articles 45(3) and 59(1) of the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Slovak Republic, of the other part, approved by Decision 94/909/EC, ECSC, Euratom of the Council and the Commission of 19 December 1994, read together, do not in principle preclude legislation of a Member State involving a system of prior control which makes entry into the territory of that Member State with a view to establishment as a self-employed person conditional on the issue of a temporary residence permit by the diplomatic or consular services of that Member State in the country of origin of the person concerned or in the country where he is permanently resident. Such a system may legitimately make grant of that permit subject to the condition that the person**

concerned must show that he genuinely intends to take up an activity as a self-employed person without at the same time entering into employment or having recourse to public funds, and that he possesses, from the outset, sufficient financial resources for carrying out the activity as a self-employed person and has reasonable chances of success. The scheme applicable to such residence permits issued in advance must, however, be based on a procedural system which is easily accessible and capable of ensuring that the persons concerned will have their applications dealt with objectively and within a reasonable time, and refusals to grant a permit must be capable of being challenged in judicial or quasi-judicial proceedings.

2. **Those provisions of the Association Agreements must be interpreted as likewise not in principle precluding such national legislation from providing that the competent authorities of the host Member State are to reject an application for a full residence permit with a view to establishment in accordance with the Association Agreements submitted in the territory of that State when the applicant lacks the temporary residence permit thus required by that legislation.**

3. **It is immaterial in this regard that the applicant claims to satisfy clearly and manifestly the necessary substantive requirements for grant of the temporary residence permit and the full residence permit with a view to such establishment or that the applicant is legally resident in the host Member State on another basis on the date of his application where it appears that the latter is incompatible with the express conditions attached to his entry into that Member State and in particular those relating to the authorised duration of the stay.**

Signatures.