COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

CASE OF EL MAJJAOUI & STICHTING TOUBA MOSKEE v. THE NETHERLANDS

(Application no. 25525/03)

JUDGMENT
(Strike out)

STRASBOURG

20 December 2007

COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

This judgment is final but may be subject to editorial revision.

In the case of El Majjaoui & Stichting Touba Moskee v. the Netherlands,

The European Court of Human Rights, sitting as a Grand Chamber composed of:

Mr J.-P. COSTA, *President*,
Mr C.L. ROZAKIS,
Sir Nicolas BRATZA,
Mr B.M. ZUPANČIČ,
Mr P. LORENZEN,
Mrs F. TULKENS,
Mr I. CABRAL BARRETO,
Mr C. BÎRSAN,
Mrs N. VAJIĆ,
Mrs M. TSATSA-NIKOLOVSKA,
Mr V. ZAGREBELSKY,
Mrs E. STEINER,
Mr S. PAVLOVSCHI,
Mrs A. GYULUMYAN,
Mrs L. MIJOVIĆ,
Mr E. MYJER,
Mr DAVID THÓR BJÖRGVINSSON, *judges*,
and Mr V. BERGER, *Jurisconsult*,

Having deliberated in private on 13 June and 28 November 2007,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 25525/03) against the Kingdom of the Netherlands lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Moroccan national, Mr Lamaiz El Majjaoui (“the applicant”), and a foundation with legal personality under Netherlands law, Stichting Touba Moskee (“the applicant foundation”), on 18 August 2003. Where the text of this judgment concerns the applicant and the application foundation jointly, they will be referred to as “the applicants”.

2. The applicants were represented first by Mr J.A. Platteeuw, succeeded by Mr F.R. Heijstek, both lawyers practising at the same law firm in Middelburg. The Dutch Government (“the Government”) were represented by their Agent, Ms J. Schukking, of the Ministry of Foreign Affairs.

3. The applicants alleged that the refusal to issue a work permit to the applicant in order for him to work as imam for the application foundation

constituted an unjustified interference with their right to freedom of religion as guaranteed by Article 9 of the Convention and was also in violation of Article 18 of the Convention.

4. The application was allocated to the Third Section of the Court (Rule 52 § 1 of the Rules of Court). On 14 February 2006 it was declared admissible by a Chamber of that Section composed of the following judges: Mr B.M. Zupančič, Mr J. Hedigan, Mr C. Bîrsan, Mrs M. Tsatsa-Nikolovska, Mr V. Zagrebelsky, Mr E. Myjer and Mr David Thór Björgvinsson, and also of Mr V. Berger, Section Registrar. On 7 December 2006 the Chamber, excluding Mrs Tsatsa-Nikolovska but including Mrs A. Gyulumyan, relinquished jurisdiction in favour of the Grand Chamber, neither of the parties having objected to relinquishment (Article 30 of the Convention and Rule 72).

5. The composition of the Grand Chamber was determined according to the provisions of Article 27 §§ 2 and 3 of the Convention and Rule 24 of the Rules of Court.

6. The applicants and the Government each filed a memorial on the merits.

7. A hearing took place in public in the Human Rights Building, Strasbourg, on 13 June 2007 (Rule 59 § 3).

There appeared before the Court:

(a) *for the Government*
Ms J. SCHUKKING, *Agent*,
Ms N. HOOGSTRATE,
Ms L.J.A. VAN AMERSFOORT, *Advisers*;

(b) *for the applicants*
Mr F. HEIJSTEK, *Counsel*,
Mr M. KRIJGER, *Adviser*,
Mr L. EL MAJJAOUI, *Applicant*,
Mr M. BOUZAMBOU, *Chairman of the applicant foundation*,
Mr F. BOUZAMBOU, *Employee of the applicant foundation*.

The Court heard addresses by Mr Heijstek and Ms Schukking as well as their replies to questions put by judges.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Facts as submitted by the parties

8. The applicant was born in 1965 and lives in Flushing. The applicant foundation, also based in Flushing, operates a mosque in Flushing serving Muslim believers belonging to the local Moroccan community.

9. On 2 December 1999 the applicant foundation applied, via the District Employment Services Authority (*Regionaal Bureau voor de Arbeidsvoorziening*), for a work permit (*tewerkstellingsvergunning*) under the Foreign Nationals (Employment) Act (*Wet Arbeid Vreemdelingen*), which would allow it to appoint the applicant as its imam.

10. On 30 October 2000 the General Directors of the Employment Services Authority (*Algemene Directie voor de Arbeidsvoorzieningen*), to whom the application had been forwarded, gave a decision refusing such a permit. It was considered that since the job vacancy had not been reported, it had to be assumed that there was an adequate supply of priority labour (i.e. nationals of member States of the European Union or the European Economic Area, or others with equivalent status as regards residence and the right to work, possessing the requisite qualifications). In addition, it had not been shown that the applicant would earn the statutory minimum wage. Furthermore, it had not been demonstrated that the applicant foundation had made sufficient efforts to fill the position with priority labour available on the labour market, for example by advertising the position in the local and national press.

11. The applicants lodged an objection with the General Directors of the Employment Services Authority on 29 November 2000. It was stated, among other things, that the applicant had already been admitted to the Netherlands in November 1998, so that section 8 (1) (d) of the Foreign Nationals (Employment) Act did not apply to him, and that it was well known that there was a severe shortage of imams in the Netherlands.

12. The General Directors of the Employment Services Authority gave their decision on 19 September 2001. It was found that the applicant foundation had not investigated the labour market at the time when the application for a work permit was made, and that moreover the vacant position had not been reported to the Employment Services Organisation (*Arbeidsvoorzieningsorganisatie*) at least five weeks before the date of the application. The applicant had previously been admitted to the country to work as a teacher of religion, not as an imam, and although the applicants had submitted a draft contract of employment naming a sufficient monthly

wage it was not stated that this wage was linked to the statutory index. The information supplied by the applicants as to the alleged shortage of suitably qualified persons on the Netherlands and European Union labour markets was not persuasive. Finally, two training establishments for imams existed in the Netherlands; it had not been shown that the applicant foundation had tried to recruit its imam from one of these.

13. The applicant appealed to the Regional Court (*arrondissementsrechtbank*) of The Hague on 16 October 2001 and submitted his grounds of appeal on 29 November 2001. So did the applicant foundation, as a "third party" with an interest in the decision. It was stated, among other things, that already in September or October 1999 the applicant foundation had made unsuccessful attempts to find a suitable imam through the Labour Exchange (*Arbeidsbureau*). Given the unreasonable length of time taken up by the pending proceedings (by this time, nearly two years already) and in the absence of any other candidate for the position, the applicant had in the meantime started work as the imam of the applicant foundation's mosque, to the satisfaction of all concerned. Moreover, the applicants submitted that, at the time the decision on the objection was taken, a policy had been in force of not applying the requirement relating to the reporting of a vacancy for a minister of religion; a failure on the part of the applicant foundation – if failure there was – ought therefore not to have been held against it. It was also argued that the decision of 19 September 2001 violated Article 9 of the Convention.

14. Having held a hearing on 30 August 2002, the Regional Court gave its decision on 11 October 2002. The Regional Court repeated the findings of the General Directors of the Employment Services Authority – which had meanwhile been replaced by the Central Organisation for Work and Income (*Centrale Organisatie voor Werk en Inkomen*) – that the applicant foundation had not sufficiently investigated the availability of suitable alternative candidates, that the vacancy had not been reported to the Employment Services Organisation at least five weeks before a work permit was applied for, and – notwithstanding the submission of a bank statement and proof of payment in kind (viz. free housing) – that it had not been demonstrated that the applicant was entitled to the statutory minimum wage. Whether or not the failure to report the vacancy could have been used as an independent ground for the refusal of the work permit, the fact remained that that failure contributed to the conclusion that the applicant foundation had in any event not sufficiently investigated the availability of alternative candidates. As to Article 9 of the Convention, the Regional Court found that any interference that might have occurred was prescribed by law and necessary in a democratic society for the protection of public order – an expression construed by the Regional Court as encompassing the labour market.

15. The applicant and the applicant foundation each lodged appeals with the Administrative Jurisdiction Division of the Council of State (*Afdeling Bestuursrechtspraak van de Raad van State*) on 27 November 2002. They alleged that the Regional Court had erred in finding that the vacancy for a qualified imam had not been duly reported to the Employment Services Organisation. Prior to the application for a work permit, efforts had been made to find an imam with residence rights through the informal circuit, as was customary in the case of Moroccan imams. It was only after the Labour Exchange had failed to produce a suitable candidate that the applicant's name had been put forward and a work permit applied for. The applicant was being paid the statutory after-tax minimum wage, but the tax authorities were refusing to accept payment of the various withholding taxes and social-security contributions. Of the two institutions in the Netherlands which trained imams, one had ceased its activities because it was not recognised by the muslim community in the Netherlands and the other did not train imams capable of functioning within Moroccan religious communities. Finally, the applicant foundation invoked Article 9 of the Convention.

16. Having held a hearing on 17 February 2003, the Administrative Jurisdiction Division gave its decision on 28 February 2003. The applicants were held not to have corroborated with documentary evidence their allegation that the applicant foundation had sought to find a suitably qualified imam prior to lodging the application for a work permit, nor had they shown sufficient diligence in trying to find priority labour available on the labour market to fill the vacancy. The applicants' statement that it would have been pointless for the applicant foundation to approach the one remaining training institute for imams operating in the Netherlands was also found to be unsubstantiated. Article 9 of the Convention could not be construed as entitling a religious community to employ as a teacher and minister of religion a foreign national who did not meet statutory requirements set for the purpose of preserving peace and public order.

17. Following the issuing of an expulsion order, the applicant returned to Morocco on 4 August 2005.

B. Developments subsequent to the Chamber's decision to relinquish jurisdiction in favour of the Grand Chamber

18. In a letter of 21 February 2007 the Government informed the Court that on 27 January 2006 the applicant foundation had lodged a new application for a work permit on behalf of the applicant. This application had been successful and on 3 March 2006 a work permit had been issued, valid until 6 March 2009, as the applicant foundation had established that the conditions of sections 8 and 9 of the Foreign Nationals (Employment) Act had been fulfilled: the applicant foundation had showed evidence of

having made sufficient efforts to fill the position with priority labour and of having reported the availability of the position to the Employment Services Organisation at least five weeks before the new application for the work permit was lodged, and had submitted an employment contract showing that the applicant's wages met the minimum wage requirement. In addition, on 16 November 2006 the applicant had been granted a temporary residence permit, also valid until 6 March 2009.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Foreign Nationals (Employment) Act

19. Relevant sections of the Foreign Nationals (Employment) Act provide as follows:

Section 2

"1. It is forbidden for an employer to employ a foreign national in the Netherlands without a work permit. ..."

Section 8

"1. A work permit shall be refused:

a. if, for the position (*arbeidsplaats*) concerned, there is a supply of priority labour available on the labour market;

b. if the position is one whose availability has not been reported to the Employment Services Organisation at least five weeks before the application was lodged;

...

d. if the foreign national concerned is one who has not been admitted [to the country] before, and who does not earn, from the work concerned, for a period of one month a sum equal to the minimum wage ..."

Section 9

"A work permit may be refused:

a. if the employer cannot show evidence of sufficient efforts to fill the position with priority labour available on the labour market;

..."

B. Practice

20. From 1 February until 31 December 2001 the Central Organisation for Work and Income followed a policy of not applying section 8 (1) (b) of the Foreign Nationals (Employment) Act to ministers of religion.

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 9 AND 18 OF THE CONVENTION

21. The applicants claimed that they were victims of a violation of their rights under Articles 9 and 18 of the Convention, the relevant parts of which provide:

Article 9

> "1. Everyone has the right to freedom of ... religion; this right includes ... freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
>
> 2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

Article 18

> "The restrictions permitted under [the] Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed."

22. During the proceedings before the Grand Chamber the Government raised an objection, submitting that, in view of intervening developments (see paragraph 17 above), the applicants could no longer claim to be "victims" within the meaning of Article 34 of the Convention. Moreover, since the matter had been effectively resolved, the application should be struck out of the Court's list of cases in accordance with Article 37 § 1 (b) of the Convention.

A. The parties' submissions

1. The applicants

23. The applicants submitted that the legislation at issue – making the issuing of a work permit to a minister of religion dependent on the fulfilment of certain requirements – as well as the application of that legislation to their particular case contravened their Convention rights guaranteed by Articles 9 and 18.

24. They submitted that they could still claim to be "victims" of the alleged violations and opposed the striking-out of the application. They were of the opinion that the work permit that had been granted could not erase the fact that sections 8 and 9 of the Foreign Nationals (Employment) Act were incompatible with Articles 9 and 18 of the Convention. The initial refusal of a work permit, based on those provisions, had resulted in the applicant foundation being forced to terminate the applicant's contract of employment on 28 February 2003, the date on which the Administrative Jurisdiction Division of the Council of State had upheld that refusal. Even though the applicant had stayed on in the Netherlands for some time after that and lived off gifts from the community, he had effectively been deprived of his work as an imam, and the local Moroccan community had been deprived of an imam, until the work permit was finally issued. Moreover, the breaches of the Convention had not been acknowledged and neither had any redress been offered, both being conditions which, according to the Court's case-law, had to be met before a decision or measure favourable to the applicants could divest them of their "victim" status (see *Eckle v. Germany*, judgment of 15 July 1982, Series A no. 51, pp. 30-31, § 66).

2. The Government

25. In view of the fact that the applicant had now been issued a work permit, the Government argued that the applicants could not still be considered "victims" within the meaning of Article 34 of the Convention, for two reasons. Firstly, the applicant, notwithstanding the absence of the required permits, had apparently worked for the applicant foundation as an imam until his departure from the Netherlands at the beginning of August 2005. Secondly, and as far as the eight-month period during which the applicant did not work for the applicant foundation was concerned, the Government submitted that victim status could not arise as a result of individuals failing to complete certain formalities in time. The situation that had arisen was entirely the result of negligence on the part of the applicants and they were thus not victims of acts or omissions by the authorities.

26. The Government further argued that the case had, in any event, been resolved and requested the Court to strike it out of its list of cases in accordance with Article 37 § 1 (b) of the Convention.

B. The Court's assessment

27. After the Chamber's decision to relinquish jurisdiction in favour of the Grand Chamber (7 December 2006), the Government brought a new fact to the attention of the Court: the applicant foundation had lodged another application for a work permit on 27 January 2006, which application had been successful and had resulted in such a permit being issued to the applicant on 3 March 2006. The Court observes that the applicants did not see fit to apprise it of this development. The Government argued that, with the applicant now being allowed to work as imam for the applicant foundation, the applicants could no longer claim to be "victims" within the meaning of Article 34 of the Convention.

28. As pointed out by the applicants, the Court held in the aforementioned *Eckle* judgment that a decision or measure favourable to the applicant was not sufficient to deprive him of his status as a "victim" unless the national authorities acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see also *Amuur v. France*, judgment of 25 June 1996, *Reports* 1996-III, p. 846, § 36; *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI; *Labita v. Italy* [GC], no. 26772/95, § 142, ECHR 2000-IV; and *Ilaşcu and Others v. Moldova and Russia* (dec.) [GC], no. 48787/99, 4 July 2001). However, the Court's case-law also shows that it will examine events that have occurred subsequent to the lodging of an application with a view to determining whether the case should be struck out of its list on one or more of the grounds set out in Article 37 of the Convention, notwithstanding the fact that the applicant can still claim "victim" status (see *Pisano v. Italy* (striking out) [GC], no. 36732/97, § 39, 24 October 2002), or even irrespective of the question whether the applicant can still claim such status (see *Sisojeva and Others v. Latvia* (striking out) [GC], no. 60654/00, § 96, ECHR 2007-...; *Association SOS Attentats and De Boëry v. France* (dec.) [GC], no. 76642/01, § 41, ECHR 2006-...).

29. Indeed, in the instant case, the Court does not consider it necessary to reach a conclusion on the question whether the applicants can still claim to be "victims" of a violation of Articles 9 and 18 of the Convention. In the light of the new developments brought to its attention since 21 February 2007 (see paragraph 18 above), the Court considers that, for the reasons set out below, there is no objective justification for continuing to examine these complaints and that it is thus appropriate to apply Article 37 § 1 of the Convention, which provides as follows:

> “The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that
>
> (a) the applicant does not intend to pursue his application; or
>
> (b) the matter has been resolved; or
>
> (c) for any other reason established by the Court, it is no longer justified to continue the examination of the application.
>
> However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires.”

30. In order to ascertain whether Article 37 § 1 (b) applies to the present case, the Court must answer two questions in turn: first, whether the circumstances complained of directly by the applicants still obtain and, second, whether the effects of a possible violation of the Convention on account of those circumstances have also been redressed (see *Pisano*, cited above, § 42, *Sisojeva and Others*, cited above, § 97). In the present case, that entails first of all establishing whether the refusal to allow the applicant to work as imam of the mosque operated by the applicant foundation persists; after that, the Court must consider whether the measures taken by the authorities constitute sufficient redress for the applicants' complaint.

31. As to the first question, it is not in doubt that there is no longer any question of the applicant being prevented from working as imam of the mosque operated by the applicant foundation and of the foundation not being allowed to employ him in that capacity.

32. As regards the second question, the Court considers that the mere fact that the applicant foundation had to comply with certain requirements before it was able to employ the applicant does not as such raise an issue under Article 9. The Court agrees with the former Commission that that provision does not guarantee foreign nationals a right to obtain a residence permit for the purposes of taking up employment in a Contracting State, even if the employer is a religious association (see *Hüsnü Öz v. Germany*, no. 32168/96, Commission decision of 3 December 1996). After all, the Convention does not lay down for the Contracting States any given manner for ensuring within their internal law the effective implementation of the Convention. The choice as to the most appropriate means of achieving this is in principle a matter for the domestic authorities, who are in continuous contact with the vital forces of their countries and are better placed to assess the possibilities and resources afforded by their respective domestic legal systems (see *Swedish Engine Drivers' Union v. Sweden*, judgment of 6 February 1976, Series A no. 20, p. 18, § 50; *Chapman v. the United Kingdom* [GC], no. 27238/95, § 91, ECHR 2001-I; and *Sisojeva and Others*, cited above, § 90).

33. Since a work permit has been granted and the applicant is now lawfully employed by the applicant foundation, the Court considers, in the light of all the relevant circumstances of the case, that their complaints have been adequately and sufficiently remedied (see, *mutatis mutandis*, *Sisojeva and Others*, cited above, § 102).

34. Having regard to the above, the Court finds that both conditions for the application of Article 37 § 1 (b) of the Convention are met. The matter giving rise to the applicants' complaints can therefore now be considered to be "resolved" within the meaning of Article 37 § 1 (b). Finally, no particular reason relating to respect for human rights as defined in the Convention requires the Court to continue its examination of the application under Article 37 § 1 *in fine*.

35. Accordingly, the application should be struck out of the Court's list of cases.

II. APPLICATION OF RULE 43 § 4 OF THE RULES OF COURT

36. Rule 43 § 4 of the Rules of Court provides:

> "When an application has been struck out, the costs shall be at the discretion of the Court. ..."

37. The applicants, in their claims under Article 41 of the Convention, sought reimbursement of costs and expenses incurred in attempting to forestall and/or secure redress for the alleged violations of the Convention both through the domestic legal system and in the proceedings before the Court to a total amount of 59,881.36 euros (EUR). In so far as can be ascertained from the documents submitted, the sum claimed in respect of the Strasbourg proceedings amounted to EUR 27,590.66 for the first applicant and EUR 19,091.79 for the applicant foundation, that is a total of EUR 46,682.45

38. The Government considered that the costs claimed for legal representation seemed excessive.

39. The Court reiterates that the general principles governing reimbursement of costs under Rule 43 § 4 are essentially the same as under Article 41 of the Convention (see *Pisano*, cited above, §§ 53-54). In other words, in order to be reimbursed, the costs must relate to the alleged violation or violations and be reasonable as to quantum. Furthermore, under Rule 60 § 2 of the Rules of Court, itemised particulars of any claim made under Article 41 of the Convention must be submitted, together with the relevant supporting documents or vouchers, failing which the Court may reject the claim in whole or in part (see, for example, *Lavents v. Latvia*, no. 58442/00, § 154, 28 November 2002).

40. In addition, it is clear from the structure of Rule 43 § 4 that, when the Grand Chamber makes a decision on the award of expenses, it must do

so with reference to the entire proceedings before the Court (see *Sisojeva and Others*, cited above, § 133). However, in the present case the Court notes that when the decision to relinquish jurisdiction was taken – on 7 December 2006 –, the applicant had already been in possession of a work permit for some nine months.

41. Having regard to the information in its possession and to the criteria set out above, the Court considers it reasonable to award the applicants jointly EUR 5,000 for costs and expenses.

42. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank to which should be added three percentage points.

FOR THESE REASONS, THE COURT

1. By fourteen votes to three *holds* that the matter giving rise to the applicants' complaints has been resolved and *decides* to strike the application out of its list of cases;

2. *Holds* unanimously

   (a) that the respondent State is to pay the applicants jointly, within three months, EUR 5,000 (five thousand euros) for costs and expenses, plus any tax that may be chargeable;

   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 20 December 2007.

Vincent BERGER
Jurisconsult

Jean-Paul COSTA
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the joint dissenting opinion of Mr Zupančič, Mr Zagrebelsky and Mr Myjer is annexed to this judgment.

J.-P.C.
V.B.

JOINT DISSENTING OPINION OF JUDGES ZUPANČIČ, ZAGREBELSKY AND MYJER

1. We did not vote with the majority to strike the application out of the Court's list of cases. In our opinion the result of this case – as far as the applicant foundation (Stichting Touba Moskee) is concerned – shows that an extensive application of the criteria established in paragraph 97 of the judgment in the case of *Sisojeva and Others v. Latvia* ((striking out) [GC], no. 60654/00, ECHR 2007-...) may lead to an undesirable outcome.

2. We can accept that the position of Mr El Majjaoui may be compared with that of the applicants in the Sisojeva case. As far as this applicant is concerned the case is essentially about the admission of a foreign national to the domestic labour market. According to the standard case-law, the Contracting States have a legitimate interest in controlling the entry, residence and expulsion of aliens. Article 9 of the Convention does not as such guarantee foreign nationals a right to obtain a residence permit for the purposes of taking up employment, even if the employer is a religious association (see, *mutatis mutandis, Hüsnü Öz v. Germany,* no. 32168/96, Commission decision of 3 December 1996). We agree with the conclusion of the majority that since he is now allowed to stay in The Netherlands and a work permit has been issued, the matter giving rise to his complaints may be considered to have been resolved within the meaning of Article 37 § 1 (b).

3. We have, however, serious doubts that the same can be said about the applicant foundation. Is the fact that Mr El Majjaoui was eventually issued a work permit enough to conclude that this was adequate and sufficient to remedy or resolve the initial complaint of the applicant foundation? The case of the applicant foundation should, in our opinion, not be considered solely as one involving the admission of a foreign national to the domestic labour market. In certain circumstances a measure which results in a religious community being prevented from appointing the minister of religion of its choice may constitute an interference with that community's rights under Article 9, even if the minister concerned is a foreign national. And looking at the facts of this case it is clear that between 28 February 2003 (the date on which the Administrative Jurisdiction Division of the Council of State upheld the refusal to issue a work permit to the applicant) and 3 March 2006 (the date on which a work permit was issued) the applicant foundation – and the local Moroccan community – were effectively deprived of the services of the imam they had sought to employ. Is it acceptable to simply disregard what happened in the past and conclude that everything has now been remedied and resolved?

4. It is not unrealistic to think that the Chamber relinquished jurisdiction to the Grand Chamber so that it would determine the issue whether it was acceptable from the standpoint of Article 9 for a Contracting State to apply the same requirements for the delivery of a work permit to a foreign national who is invited to work as a religious minister as to foreign nationals who work in other professions. Is it permissible under Article 9 that a Contracting State, which according to the Court's abundant case-law has the duty of neutrality as regards the regulation of religious groups, should require that the foreign national who is to be appointed as a religious minister must earn the statutory minimum wage (see in respect of The Netherlands: Ineke Hendrickx and Tessel de Lange, *Toelating van vreemdelingen voor verblijf bij religieuze organisaties* ("Admission of aliens for the purpose of residence with religious organisations"), Wolf Legal Publishers, Centrum voor Migratierecht, WODC Ministerie van Justitie 2004)? And does Article 9 stand in the way of a Contracting State requiring, as far as religious ministers are concerned, that an employer first make sufficient efforts to fill the post by recourse to the domestic labour market, for example by advertising the position in the local and national press? Can such a requirement be considered legitimate when regard is had to the fact that in the choice of a religious minister/pastor/rabbi/imam much will depend on whether the religious community would have confidence in the person concerned? The answer given by the majority in paragraph 32 ("The Court considers that the mere fact that the applicant foundation had to comply with certain requirements before it was able to employ the applicant does not as such raise an issue under Article 9") does little to clarify these issues.

5. We have no difficulty in accepting that some requirements should be complied with even in such cases. And it is also clear that the restrictions laid down in paragraph 2 of Article 9 may apply. From the standpoint of Article 9 the central issue in the present case calls for an examination of the legitimacy of the requirements imposed and a determination of those conditions which are objectionable. In our opinion the Court should have examined the merits and should have tried to give a clearer answer to these questions.