

JUDGMENT OF THE COURT

24 March 1987*

In Case 286/85

REFERENCE to the Court under Article 177 of the EEC Treaty by the High Court, Dublin, for a preliminary ruling in the proceedings pending before that court between

Norah McDermott and Ann Cotter

and

Minister for Social Welfare and Attorney-General,

on the interpretation of Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security (Official Journal 1979, L 6, p. 24),

THE COURT

composed of: Lord Mackenzie Stuart, President, Y. Galmot, C. Kakouris, T. F. O'Higgins and F. Schockweiler (Presidents of Chambers), G. Bosco, T. Koopmans, O. Due, U. Everling, K. Bahlmann, R. Joliet, J. C. Moitinho de Almeida and G. C. Rodríguez Iglesias, Judges,

Advocate General: G. F. Mancini

Registrar: D. Louterman, Administrator

after considering the observations submitted on behalf of

Mrs Cotter and Mrs McDermott, the prosecutrices in the main proceedings, by M. Robinson, Senior Counsel, and G. Durcan, Barrister-at-law,

the Irish Government, the respondent in the main proceedings, by V. A. Landy, Senior Counsel, and A. O'Caoimh, Barrister-at-law,

* Language of the Case: English.

the Commission of the European Communities, by J. Currall, a member of its Legal Department,

the Netherlands Government, by I. Verkade, for the Minister of Foreign Affairs, acting as Agent,

having regard to the Report for the Hearing and further to the hearing on 15 October 1986,

after hearing the Opinion of the Advocate General delivered at the sitting on 27 January 1987,

gives the following

Judgment

- 1 By an order of 13 May 1985, which was received at the Court Registry on 23 September 1985, the High Court, Dublin, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty two questions on the interpretation of Article 4 of Council Directive 79/7 of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security (Official Journal 1979, L 6, p. 24), in order to determine whether that provision could be regarded as having direct effect in the Republic of Ireland as from 23 December 1984, the date on which the Member States should have taken the measures necessary to implement it.
- 2 Those questions were raised in the course of two actions brought before the High Court by Mrs McDermott and Mrs Cotter against the Minister for Social Welfare and the Attorney General. In those actions the High Court was asked to quash decisions made by or on behalf of the Minister for Social Welfare terminating the payment of unemployment benefit to the prosecutrices after a period of 312 days and hence, in the case of Mrs Cotter, automatically terminating the pay-related benefit. The prosecutrices in the main proceedings argued that if they had been men or single women they would have been entitled to unemployment benefit for a further period of 78 days. They also pointed out that, as married women, they received lower unemployment benefits than men in respect of all contribution periods.

- 3 On 4 February 1985 the prosecutrices made application to the High Court for an order to quash those decisions terminating the payment of benefits, on the ground that the decisions infringed their rights under Article 4 (1) of Council Directive 79/7 (hereinafter referred to as 'the directive').
- 4 It is not disputed that under the provisions of Chapters 4 and 6 of Part 2 of the Social Welfare (Consolidation) Act 1981 the unemployment benefit received by married women is less than that paid to married men and single persons and is paid for a shorter period.
- 5 However, it appears from the documents before the Court that before the national court the respondents argued that Article 4 of the directive did not impose clear and precise obligations on Ireland and that Ireland thus had considerable discretion in determining the manner of implementation. In their view Article 4 could not therefore be relied on in the Irish courts.
- 6 Since the High Court entertained doubts as to the effect of the directive, it stayed the proceedings and submitted the following questions to the Court for a preliminary ruling:
 - '1. Do the provisions of Directive 79/7/EEC, and in particular Article 4 thereof, have direct effect in the Republic of Ireland as and from the 23rd day of December 1984 so as to confer enforceable Community rights upon married women such as the prosecutrices in the circumstances of the present cases?
 2. If the answer to Question 1 is in the affirmative, does this mean that national provisions such as those contained in Chapters 4 and 6 of Part 2 of the Social Welfare (Consolidation) Act 1981, as amended, are inactable and that the prosecutrices, as married women living in a Member State which had failed to repeal or adapt such provisions, are entitled to equal treatment in relation to the relevant social welfare benefits as and from the 23rd day of December 1984 and have rights of action in that regard which are enforceable by them against such Member States?'
- 7 It appears from the documents before the Court that Section 34 (6) of the Social Welfare (Consolidation) Act 1981 was repealed by Section 6 (c) of the Social Welfare (No 2) Act of 14 July 1985, which provides that married women are to be entitled to unemployment benefits and pay-related benefits for the same period as other claimants. Section 6 of the 1985 Act came into force on 15 May 1986, and

gave limited retroactive effect to the repeal inasmuch as only married women who had received unemployment benefits within the period of 78 days ending on the date on which the section came into force were entitled to take advantage of it. Consequently, the two prosecutrices in the main proceedings, who ceased to receive unemployment benefits in January 1985, were unable to benefit.

- 8 It also appears that Section 2 of the 1985 Act amended in particular Chapters 4 and 6 of the 1981 Act by providing that the rate of unemployment benefit was to be the same for men and for women. That section also came into force on 15 May 1986 in so far as it concerns unemployment benefits.
- 9 Reference is made to the Report for the Hearing for the observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

The first question

- 10 In its first question the High Court seeks in essence to ascertain whether Article 4 (1) of the directive confers rights on individuals in a Member State upon the expiry of the period within which the Member States were to implement it.
- 11 As the Court has consistently held, in particular in its judgment of 19 January 1982 (Case 8/81 *Becker v Finanzamt Münster-Innenstadt* [1982] ECR 53), wherever the provisions of a directive appear, as far as their subject-matter is concerned, to be unconditional and sufficiently precise, individuals may rely on those provisions in the absence of implementing measures adopted within the prescribed period as against any national provision which is incompatible with the directive or in so far as the provisions define rights which individuals are able to assert against the State.
- 12 That conclusion is based on the fact that directives are binding on the Member States and on the principle that a Member State which has not taken measures to

implement the directive within the prescribed period may not, as against individuals, plead its own failure to fulfil such obligations.

- 13 As the Court pointed out in its judgment of 24 June 1986 (Case 150/85 *Drake v Chief Adjudication Officer* [1986] ECR 1955), the objective set out in Article 1 of Directive 79/7 is given practical expression by Article 4 (1), which provides that in matters of social security there shall be no discrimination whatsoever on ground of sex either directly or indirectly, by reference in particular to marital or family status, in particular as concerns the scope of social security schemes and the conditions of access thereto.
- 14 Furthermore, in its judgment of 4 December 1986 (Case 71/85 *Netherlands v FNV* [1986] ECR 3855) the Court held that standing by itself, and in the light of the objective and contents of the directive, Article 4 (1) is sufficiently precise to be relied upon in legal proceedings and applied by a court. Moreover, that article in no way permits Member States to restrict or place conditions on the application of the principle of equal treatment in its particular area of application.
- 15 With regard to the argument to the effect that the multiplicity of alternatives available for the purpose of achieving equal treatment makes it impossible for the directive to confer rights on individuals, it will suffice to point out that, as the Court has already held in its aforesaid judgment of 19 January 1982 in *Becker*, the fact that directives leave to the national authorities the choice of the form and methods for achieving the required result cannot constitute a ground for denying all effect to those provisions which may be relied upon before a court.
- 16 It follows from the foregoing that Article 4 (1) is sufficiently precise and unconditional to allow individuals, in the absence of implementing measures, to rely upon it before the national courts as from 23 December 1984, in order to preclude the application of any national provision inconsistent with that article.

- 17 The answer to the first question must therefore be that where Council Directive 79/7/EEC of 19 December 1978 has not been implemented Article 4 (1) of the directive, which prohibits all discrimination on grounds of sex in matters of social security, could be relied upon as from 23 December 1984 in order to preclude the application of any national provision inconsistent with it.

The second question

- 18 With regard to the second question raised by the High Court, which seeks in essence to determine whether, where no measures have been taken to implement Article 4 (1) of the directive, married women barred by national legislation are entitled as from 23 December 1984 to benefits under the same conditions as men, it will suffice to point out that, as the Court held in its judgment of 4 December 1986 referred to above, until such time as the national government adopts the necessary implementing measures women are entitled to have the same rules applied to them as are applied to men who are in the same situation, since in such circumstances those rules remain the only valid point of reference.

- 19 The answer to the second question must therefore be that in the absence of measures implementing Article 4 (1) of the directive women are entitled to have the same rules applied to them as are applied to men who are in the same situation, since, where the directive has not been implemented, those rules remain the only valid point of reference.

Costs

- 20 The costs incurred by the Netherlands Government and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the questions submitted to it by the High Court, Dublin, by order of 13 May 1985, hereby rules:

- (1) Where Council Directive 79/7/EEC of 19 December 1978 has not been implemented, Article 4 (1) of the directive, which prohibits all discrimination on grounds of sex in matters of social security, could be relied on as from 23 December 1984 in order to preclude the application of any national provision inconsistent with it.
- (2) In the absence of measures implementing Article 4 (1) of the directive women are entitled to have the same rules applied to them as are applied to men who are in the same situation, since, where the directive has not been implemented, those rules remain the only valid point of reference.

Mackenzie Stuart

Galmot

Kakouris

O'Higgins

Schockweiler

Bosco

Koopmans

Due

Everling

Bahlmann

Joliet

Moitinho de Almeida

Rodríguez Iglesias

Delivered in open court in Luxembourg on 24 March 1987.

P. Heim

A. J. Mackenzie Stuart

Registrar

President