JUDGMENT OF THE COURT (Fourth Chamber)
13 July 1995 *

In Case C-116/94,

REFERENCE to the Court under Article 177 of the EC Treaty by the Social Security Commissioner, London, for a preliminary ruling in the proceedings pending before that court between

Jennifer Meyers

and

Adjudication Officer

on the interpretation of Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (OJ 1976 L 39, p. 40),

THE COURT (Fourth Chamber),

composed of: P. J. G. Kapteyn (Rapporteur), President of the Chamber, C. N. Kakouris and H. Ragnemalm, Judges,

* Language of the case: English.

Advocate General: C. O. Lenz,
Registrar: L. Hewlett, Administrator,

after considering the written observations submitted on behalf of:

— Jennifer Meyers, by Richard Drabble, Barrister, instructed by David Thomas, Solicitor,

— the United Kingdom, by Stephen Braviner of the Treasury Solicitor's Department, acting as Agent, and by Christopher Vajda, Barrister,

— the Commission of the European Communities, by Marie Wolfcarius and Christopher Docksey, both of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Jennifer Meyers, the United Kingdom and the Commission at the hearing on 23 March 1995,

after hearing the Opinion of the Advocate General at the sitting on 11 May 1995,

gives the following

Judgment

1 By decision of 11 February 1994, received at the Court on 19 April 1994, the Social Security Commissioner, London, referred to the Court for a

preliminary ruling under Article 177 of the EC Treaty a question on the interpretation of Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (OJ 1976 L 39, p. 40).

2 That question was raised in proceedings between Jennifer Meyers and the Adjudication Officer concerning her right to deduct child-care costs from her gross income in order to obtain family credit.

3 Family credit is an income-related benefit which is awarded in order to supplement the income of low-paid workers who are responsible for a child.

4 According to Article 20 of the 1986 Social Security Act, a person in Great Britain is entitled to family credit if, when the claim for it is made or treated as made:

— his income does not exceed the applicable amount;

— he, or if he is a member of a married or unmarried couple, he or the other member of the couple, is normally engaged in remunerative work; and

— he, or if he is a member of a married or unmarried couple, he or the other member, is responsible for a member of the same household who is a child or a person of a prescribed description.

5 Article 20(6) provides that 'family credit shall be payable for a period of 26 weeks or such other period as may be prescribed and, subject to regulations, an award of family credit and the rate at which it is payable shall not be affected by any change of circumstances during that period (...)'.

6 Ms Meyers, who is a single parent, made an application for family credit in respect of herself and her daughter, then aged three. The application was rejected by the Adjudication Officer on the ground that her income, as calculated for the purposes of that benefit, was greater than the level conferring entitlement.

7 In her appeal against that decision to the Social Security Appeal Tribunal, Ms Meyers submitted that the non-deduction of child-care costs for the purposes of calculating her net income discriminated against single parents, since it is much easier for couples to arrange their working hours so that any children can be looked after by one of them. As most single parents are women, it also constitutes indirect discrimination against women.

8 The Social Security Appeal Tribunal accepted Ms Meyers' argument.

9 In the appeal proceedings before the Social Security Commissioner, however, the parties do not contend that the first tribunal incorrectly applied a provision of national law. The Social Security Commissioner observes that Ms Meyers will be able to rely on the direct effect of Article 2(1) of the directive if family credit falls within its scope.

10 Accordingly, the question referred, which concerns only the last point, is worded as follows:

'Does a benefit having the characteristics and purpose of family credit fall within the scope of Council Directive 76/207/EEC?'

11 The purpose of the directive, according to Article 1(1) thereof, is to put into effect in the Member States the principle of equal treatment for men and women as regards access to employment, including promotion, and to vocational training and as regards working conditions. Article 1(2) states that with a view to ensuring the progressive implementation of the principle of equal treatment in matters of social security, the Council, acting on a proposal from the Commission, is to adopt provisions defining its substance, its scope and the arrangements for its application.

12 The Court has consistently held that, in view of the fundamental importance of the principle of equal treatment, the exclusion of social security matters from the scope of the directive provided for in Article 1(2) must be interpreted strictly (see the judgments in Case 151/84 *Roberts* v *Tate & Lyle* [1986] ECR 703, paragraph 35, and in Case 152/84 *Marshall* v *Southampton and South-West Hampshire Area Health Authority* [1986] ECR 723, paragraph 36).

13 Thus, the Court has held that a scheme of benefits cannot be excluded from the scope of the directive solely because, formally, it is part of a national social security system. Such a scheme may come within the scope of the directive if its subject-matter is access to employment, including vocational training and promotion, or working conditions. However, the directive is not rendered applicable simply because the conditions of entitlement for receipt of benefits may be such as to affect the ability of a single parent to take up employment (see the judgment in Joined Cases C-63/91 and C-64/91 *Jackson and Cresswell* v *Chief Adjudication Officer* [1992] ECR I-4737, paragraphs 27, 28 and 31).

14 The question whether the characteristics of a benefit such as family credit are such as to bring it within the scope of the directive must therefore be resolved in the light of those considerations.

15 According to the United Kingdom, family credit is excluded from the scope of the directive by Article 1(2) thereof. Family credit is intended to supplement the income of persons with insufficient means to meet their needs. Classifying it as income support is justified on the ground that, where a couple applies for it, family credit is paid to the woman, whether or not she is working. Moreover, the United Kingdom points out that the benefit continues to be paid for a period of 26 weeks even where the circumstances change, and that appeals against decisions concerning that benefit are brought before a tribunal with jurisdiction in social security matters. Finally, it claims that family credit has nothing to do either with access to employment, since it is awarded to persons who are already employed, or with working conditions, because those are merely conditions in the contract of employment or measures applied by an employer to a worker in respect of the latter's employment.

16 Those arguments cannot be accepted.

17 According to the *Jackson and Cresswell* judgment, cited above, the fact that a scheme of benefits is part of a national social security system, which makes national remedies in the field of social security applicable in the main proceedings, cannot exclude it from the scope of the directive.

18 In its judgment in Case C-78/91 *Hughes* v *Chief Adjudication Officer* [1992] ECR I-4839, paragraph 19, the Court noted that family credit in Northern Ireland performed the dual function of keeping poorly paid workers in employment and of meeting family expenses. It considered that by virtue of that second function (paragraph 20), a benefit such as family credit fell within the scope of Council

Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, self-employed persons and members of their families moving within the Community, as amended and updated by Council Regulation (EEC) No 2001/83 of 2 June 1983 (OJ 1983 L 230, p. 6).

19 However, that classification cannot prevent a benefit of the same kind, where its function is to keep poorly paid workers in employment, from coming within the scope of the directive, in so far as it concerns access to employment and working conditions.

20 It is not disputed in the main proceedings that one of the conditions for the award of family credit is that the claimant should be engaged in remunerative work. According to the legislation referred to by the United Kingdom in its written observations, the aim of the benefit is to ensure that families do not find themselves worse off in work than they would be if they were not working. It is therefore intended to keep poorly paid workers in employment.

21 That being so, family credit is concerned with access to employment, as referred to in Article 3 of the directive.

22 Furthermore, it is not only the conditions obtaining before an employment relationship comes into being which are involved in the concept of access to employment. As the Advocate General has pointed out in paragraph 47 of his Opinion, the prospect of receiving family credit if he accepts low-paid work encourages an unemployed worker to accept such work, with the result that the benefit is related to considerations governing access to employment.

23 That finding is not invalidated by the United Kingdom's other arguments which seek to show that there is no link with an employment relationship. It

is precisely the existence of an employment relationship which confers entitlement to the benefit, even though the worker is not the direct recipient of that benefit, as in the case of a woman who is married or cohabiting and is unemployed, but who receives the benefit by virtue of her husband's or partner's work. The fact that entitlement to family credit is not affected by loss of employment or an increase in salary during the 26 weeks following the award cannot detract from the finding that the benefit is awarded only when the claimant is engaged in remunerative work and is not in receipt of income exceeding a specified amount.

24 Furthermore, compliance with the fundamental principle of equal treatment presupposes that a benefit such as family credit, which is necessarily linked to an employment relationship, constitutes a working condition within the meaning of Article 5 of the directive. To confine the latter concept solely to those working conditions which are set out in the contract of employment or applied by the employer in respect of a worker's employment would remove situations directly covered by an employment relationship from the scope of the directive.

25 Consequently, the answer to the question referred to the Court must be that a benefit with the characteristics and purpose of family credit is concerned with both access to employment and working conditions and falls, therefore, within the scope of the directive.

Costs

26 The costs incurred by the United Kingdom and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, 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 (Fourth Chamber),

in answer to the question referred to it by the Social Security Commissioner, London, by decision of 11 February 1994, hereby rules:

A benefit with the characteristics and purpose of family credit is concerned with both access to employment and working conditions and falls, therefore, within the scope of Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.

Kapteyn Kakouris Ragnemalm

Delivered in open court in Luxembourg on 13 July 1995.

R. Grass

Registrar

P. J. G. Kapteyn

President of the Fourth Chamber