JUDGMENT OF THE COURT
22 April 1997 *

In Case C-66/95,

REFERENCE to the Court under Article 177 of the EC Treaty by the High Court of Justice, Queen's Bench Division, England and Wales, for a preliminary ruling in the proceedings pending before that court between

The Queen

and

The Secretary of State for Social Security, ex parte Eunice Sutton

on the interpretation of Community law in regard to the right to obtain interest on arrears of a social security benefit falling within the scope 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 (OJ 1979 L 6, p. 24),

* Language of the case: English.

THE COURT,

composed of: G. C. Rodríguez Iglesias, President, G. F. Mancini (Rapporteur), J. C. Moitinho de Almeida and L. Sevón (Presidents of Chambers), P. J. G. Kapteyn, C. Gulmann, D. A. O. Edward, J.-P. Puissochet, G. Hirsch, P. Jann and H. Ragnemalm, Judges,

Advocate General: P. Léger,
Registrar: H. A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of:

— Mrs Sutton, by Richard Drabble QC, instructed by Carolyn George of the Child Poverty Action Group,

— the United Kingdom Government, by John E. Collins, Assistant Treasury Solicitor, acting as Agent, and Christopher Vajda, Barrister,

— the German Government, by Ernst Röder, Ministerialrat at the Federal Ministry of Economic Affairs, acting as Agent,

— the Swedish Government, by Lotty Nordling, Head of the Legal Secretariat, Department of Trade, Foreign Office, acting as Agent,

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

having regard to the Report for the Hearing,

after hearing the oral observations of Mrs Sutton, represented by Richard Drabble; the United Kingdom Government, represented by John E. Collins and Stephen Richards, Barrister; the Swedish Government, represented by Erik Brattgård, Head of the Department of Trade of the Foreign Office; and the Commission, at the hearing on 25 June 1996,

after hearing the Opinion of the Advocate General at the sitting on 19 September 1996,

gives the following

Judgment

1 By order of 12 October 1994, received at the Court on 13 March 1995, the High Court of Justice of England and Wales, Queen's Bench Division, referred to the Court for a preliminary ruling under Article 177 of the EC Treaty a question on the interpretation of Community law in regard to the right to obtain interest on arrears of a social security benefit falling within the scope 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 (OJ 1979 L 6, p. 24).

2 That question was raised in proceedings between Mrs Sutton and the Secretary of State for Social Security ('the Secretary of State') regarding the payment of interest on arrears of a social security benefit known as invalid care allowance ('ICA').

Directive 79/7

3 According to Article 1 of Directive 79/7, the purpose of the directive is the progressive implementation, in the field of social security and certain other elements of social protection provided for in Article 3, of the principle of equal treatment for men and women.

4 Article 2 provides that the directive applies to the working population, including self-employed persons, workers and self-employed persons whose activity is interrupted by illness, accident or involuntary unemployment and persons seeking employment, and to retired or invalided workers and self-employed persons.

5 According to Article 4, the principle of equal treatment means that there is to be no discrimination whatsoever on grounds of sex either directly, or indirectly by reference in particular to marital or family status, *inter alia* as concerns the scope of the social security schemes and the conditions of access thereto, the obligation to contribute and the calculation of contributions, the calculation of benefits and the conditions governing the duration and retention of entitlement to benefits.

6 Article 6 requires the Member States to introduce into their national legal systems the necessary measures to enable all persons who consider themselves wronged by failure to apply the principle of equal treatment to pursue their claims by judicial process, possibly after recourse to other competent authorities.

7 Article 7(1)(a) provides that the directive is without prejudice to the right of Member States to exclude from its scope the determination of pensionable age for the purposes of granting retirement pensions and the possible consequences thereof for other benefits.

The applicable national law

8 Article 37(1) of the Social Security Act 1975 ('the Act'), as amended, provides that a person is entitled to ICA for any day on which he is engaged in caring for a severely disabled person, if that activity is regular and substantial, he is not gainfully employed and the severely disabled person is a relative of the person concerned for the purposes of the Act. Section 37(5) of the Act provides that a person who has attained pensionable age is not entitled to ICA unless he was entitled or is considered to have been so entitled immediately before attaining that age. In the United Kingdom pensionable age is fixed at 60 for women and 65 for men.

9 Under English law, no interest is payable on arrears of social security benefits in respect of a period prior to the decision of the competent body in favour of the claimant.

The main proceedings

10 Mrs Sutton cared for her daughter from 1968, the year in which the daughter fell ill. On 19 February 1987 Mrs Sutton, who was then 63, submitted an application for ICA which the Adjudication Officer, the competent national authority, rejected on the ground that Mrs Sutton had reached retirement age and could not be treated as if she had been entitled to ICA before reaching that age.

11 Mrs Sutton appealed against that decision to the Social Security Appeal Tribunal ('the Tribunal'), claiming that Article 37(5) of the Act was contrary to Directive 79/7, since it prevented her, on account of her age, from obtaining the social security benefits to which a man of the same age would have been entitled.

12 The Tribunal dismissed her appeal, holding, first, that Article 37(5) of the Act was not contrary to Directive 79/7, since the different treatment of men and women in the award of social benefits was a consequence of the determination of different pensionable ages and was therefore authorized by Article 7(1)(a) of the directive; second, that Mrs Sutton did not fall within the scope of Directive 79/7, as laid down in Article 2 thereof, since she had last worked in 1957.

13 Mrs Sutton then lodged an appeal against that decision with the Social Security Commissioner ('the Commissioner'), who decided to stay proceedings until higher courts and the Court of Justice had ruled on parallel cases. Following the judgment of the Court in Case C-328/91 *Secretary of State for Social Security* v *Thomas and Others* [1993] ECR I-1247, the Commissioner held that the Adjudication Officer could not rely on Article 7(1)(a) of Directive 79/7 to justify a refusal, by virtue of Article 37(5) of the Act, to award ICA to women aged over 60.

14 At the hearing before the Commissioner on 21 January 1994, Mrs Sutton was able to prove that she came within the scope of the directive, because she had been in part-time employment when her daughter fell ill. Exercising his power to backdate payment of ICA by one year prior to the date of the claim, the Commissioner therefore decided that Mrs Sutton was entitled to ICA with effect from 19 February 1986 until the date of her death and that payment of arrears of ICA was to be subject to set-off in respect of overpayments which had previously been made by way of other non-cumulative benefits. Mrs Sutton therefore received UKL 5 588.60 as arrears of ICA.

15 By letter of 8 February 1994 the Child Poverty Action Group wrote, in Mrs Sutton's name, to the Secretary of State and claimed interest on the arrears which had been awarded to her. The Secretary of State dismissed that claim on the ground that national law did not provide for payment of interest on social security benefits.

16 Mrs Sutton brought an action contesting that decision before the High Court of Justice, Queen's Bench Division, claiming that on the basis of the judgment in Joined Cases C-6/90 and C-9/90 *Francovich and Others* v *Italian Republic* [1991] ECR I-5357 she was entitled to compensation for the loss suffered as a result of the infringement of the directive by the United Kingdom. She also claimed that Article 6 of the directive requires interest to be paid on arrears of benefit in the same way as Article 6 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) requires interest to be paid on the amount paid by way of compensation for discriminatory dismissal (Case C-271/91 *Marshall* v *Southampton and SW Hampshire Area Health Authority* [1993] ECR I-4367, '*Marshall II*').

17 In that context, the High Court of Justice decided to stay proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Where a claimant is entitled to a national social security benefit by virtue of falling within the scope of Council Directive 79/7/EEC, does Community law, in the circumstances of the present case, entitle the claimant to interest on the award of benefit and, if so:

(i) from what date is interest payable?

(ii) what shall the rate of interest be?

(iii) is interest to be calculated only on the balance which falls due after offsetting, in accordance with national overlapping rules, any other benefit payments made for the same period?'

The national court's question

18 By its question, the national court seeks essentially to ascertain whether Community law requires that an individual should be able to obtain interest on arrears of a social security benefit, such as ICA, when the delay in payment of the benefit is the result of discrimination prohibited by Directive 79/7. If the answer is in the affirmative, it asks the Court to set out the rules on payment of that interest.

19 According to the order for reference, Mrs Sutton claims that the right to payment of interest in a situation of this kind may follow from Article 6 of Directive 79/7 or from the principle that the State is liable for infringements of Community law. Those two possibilities must be considered in turn.

Article 6 of Directive 79/7

20 As to the first possibility, Mrs Sutton and the Commission have pointed out that in *Marshall II* the Court held that Article 6 of Directive 76/207 must be interpreted as meaning that reparation of loss and damage sustained by a person injured as a result of discriminatory dismissal may not be limited by excluding an award of interest to compensate for the loss sustained by the recipient of the compensation, as a result of the effluxion of time, until the capital sum awarded is actually paid.

21 Mrs Sutton and the Commission have observed, first, that the wording of Article 6 of Directive 79/7 is practically identical to that of Article 6 of Directive 76/207, with which the judgment in *Marshall II* was concerned. Second, both directives pursue the same objective, namely real equality of treatment for men and women.

Third, Directive 79/7 gives effect to the legislative programme initiated by the adoption of Directive 76/207, which states in the fourth recital in its preamble and in Article 1(2) that subsequent instruments will be adopted with a view to ensuring the progressive implementation of the principle of equal treatment in matters of social security. Consequently, Article 6 of Directives 76/207 and 79/7 should be interpreted in the same way.

22 It follows, in their submission, that Article 6 of Directive 79/7 requires interest to be paid on arrears of social benefits when the delay in payment of the benefits is the result of discrimination on grounds of sex, which is prohibited by the directive.

23 That interpretation cannot be adopted. The judgment in *Marshall II* concerns the award of interest on amounts payable by way of reparation for loss and damage sustained as a result of discriminatory dismissal. As the Court observed in paragraph 31 of that judgment, in such a context full compensation for the loss and damage sustained cannot leave out of account factors, such as the effluxion of time, which may in fact reduce its value. The award of interest, in accordance with the applicable national rules, must therefore be regarded as an essential component of compensation for the purposes of restoring real equality of treatment.

24 By contrast, the main proceedings concern the right to receive interest on amounts payable by way of social security benefits. Those benefits are paid to the person concerned by the competent bodies, which must, in particular, examine whether the conditions laid down in the relevant legislation are fulfilled. Consequently, the amounts paid in no way constitute reparation for loss or damage sustained and the reasoning of the Court in its judgment in *Marshall II* cannot be applied to a situation of that kind.

25 Accordingly, although Article 6 of Directive 79/7 requires the Member States to adopt the measures necessary to enable all persons who consider themselves to have been wronged by discrimination prohibited under the directive in the context of the award of social security benefits to establish the unlawfulness of such discrimination and to obtain the benefits to which they would have been entitled in the absence of discrimination, the payment of interest on arrears of benefits cannot be regarded as an essential component of the right as so defined.

26 That conclusion cannot be rebutted by the Commission's argument based on the judgments in Joined Cases C-63/91 and C-64/91 *Jackson and Cresswell* v *Chief Adjudication Officer* [1992] ECR I-4737 and in Case C-116/94 *Meyers* v *Chief Adjudication Officer* [1995] ECR I-2131, to the effect that a social security benefit relating to employment may fall within the scope of Directive 76/207. According to the Commission, when such benefits are awarded belatedly on account of discrimination prohibited by Directive 76/207, interest is payable on the arrears of benefit in conformity with the principle laid down in *Marshall II*. There is nothing to suggest that in the case of a social security benefit falling under Directive 79/7, the principle of equal treatment is narrower in scope than that laid down by Directive 76/207, so that the conclusion drawn in the case of both directives should be the same.

27 That reasoning is based on a false premiss. Although it follows from the judgments in *Jackson and Cresswell* and in *Meyers* that certain social security benefits do fall within the scope of Directive 76/207, that does not mean that Article 6 of that directive, as interpreted in the judgment in *Marshall II*, requires interest to be paid on arrears of benefit when the delay in payment is due to discrimination on grounds of sex prohibited by the directive. Whichever directive applies, amounts paid by way of social security benefit are not compensatory in nature, with the result that payment of interest cannot be required on the basis either of Article 6 of Directive 76/207 or of Article 6 of Directive 79/7.

The principle that a Member State is liable for breach of Community law

28 It is therefore necessary to consider the second possibility referred to in the order for reference, according to which the right to payment of interest on arrears of social security benefits flows from the principle that a State is liable for breach of Community law.

29 Mrs Sutton claims that the United Kingdom did not properly transpose Directive 79/7 into national law and that she has suffered loss on account of the belated payment of the ICA to which she was entitled. Inflation has eroded the real value of the amount in question. She concludes from this that the United Kingdom is required to compensate her, by paying a sum corresponding to the interest due, for the loss it caused to her through infringement of that directive.

30 For its part, the United Kingdom Government considers that the principle that a Member State is liable for an infringement of Community law cannot apply in the present case. In a situation of this kind, and in contrast to *Francovich and Others*, the result prescribed by the directive, namely the payment of social security benefits, has been achieved.

31 First of all, it should be noted that, as the Court has repeatedly held, the principle that the State is liable for loss and damage caused to individuals as a result of breaches of Community law for which the State can be held responsible is inherent in the system of the Treaty (judgments in *Francovich and Others*, paragraph 35; Joined Cases C-46/93 and C-48/93 *Brasserie du Pêcheur and Factortame* [1996] ECR I-1029, paragraph 31; Case C-392/93 *The Queen* v *HM Treasury* ex parte *British Telecommunications* [1996] ECR I-1631, paragraph 38; Case C-5/94 *Hedley Lomas* [1996] ECR I-2553, paragraph 24; Joined Cases C-178/94, C-179/94, C-188/94, C-189/94 and C-190/94 *Dillenkofer and Others* [1996] ECR I-4845, paragraph 20).

32 According to the abovementioned case-law, a Member State's obligation to make reparation for the loss and damage so caused is subject to three conditions: the rule of law infringed must be intended to confer rights on individuals; the breach must be sufficiently serious; and there must be a direct causal link between the breach of the obligation resting on the State and the damage sustained by the injured parties (judgments in *Brasserie du Pêcheur and Factortame*, paragraph 51; *British Telecommunications*, paragraph 39; *Hedley Lomas*, paragraph 25; *Dillenkofer and Others*, paragraph 21). Those conditions are to be applied according to each type of situation (judgment in *Dillenkofer and Others*, paragraph 24).

33 Finally, since the judgment in *Francovich and Others*, it has been settled law that, while the right to reparation is founded directly on Community law where the three conditions set out above are fulfilled, the national law on liability provides the framework within which the State must make reparation for the consequences of the loss and damage caused, provided always that the conditions laid down by national law relating to reparation of loss and damage must not be less favourable than those relating to similar domestic claims and must not be so framed as to make it virtually impossible or excessively difficult to obtain reparation (paragraphs 41 to 43).

34 It is for the national court to assess, in the light of the foregoing, whether in the context of the dispute before it and of the national procedure Mrs Sutton is entitled to reparation for the loss which she claims to have suffered as a result of the breach of Community law by the Member State concerned, and, if appropriate, to determine the amount of such reparation.

35 The answer to the question submitted by the High Court of Justice must therefore be that Article 6 of Directive 79/7 does not require that an individual should be able to obtain interest on arrears of a social security benefit such as invalid care allowance, when the delay in payment of the benefit is the result of discrimination

prohibited by Directive 79/7. However, a Member State is required to make reparation for the loss and damage caused to an individual as a result of the breach of Community law. Where the conditions for State liability are fulfilled, it is for the national court to apply that principle.

Costs

36 The costs incurred by the United Kingdom, German and Swedish Governments 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,

in answer to the question referred to it by the High Court of Justice of England and Wales, Queen's Bench Division by order of 12 October 1994, hereby rules:

Article 6 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 does not require that an individual should be able to obtain interest on arrears of a social security benefit such as invalid care allowance, when the delay in payment of the benefit is the result of discrimination prohibited by Directive 79/7. However, a Member State is required to make reparation for the loss and damage caused to an individual as a result of the breach of Community law. Where the conditions for State liability are fulfilled, it is for the national court to apply that principle.

Rodríguez Iglesias	Mancini		Moitinho de Almeida
Sevón	Kapteyn	Gulmann	Edward
Puissochet	Hirsch	Jann	Ragnemalm

Delivered in open court in Luxembourg on 22 April 1997.

R. Grass

Registrar

G. C. Rodríguez Iglesias

President