JUDGMENT OF THE COURT (Second Chamber)
19 November 1992 *

In Case C-226/91,

REFERENCE to the Court under Article 177 of the EEC Treaty by the Raad van Beroep (Social Security Court), Amsterdam, for a preliminary ruling in the proceedings pending before that court between

Jan Molenbroek

and

Bestuur van de Sociale Verzekeringsbank,

on the interpretation of Article 4(1) 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),

THE COURT (Second Chamber),

composed of: J. L. Murray, President of the Chamber, G. F. Mancini and F. A. Schockweiler, Judges,

Advocate General: G. Tesauro,
Registrar: L. Hewlett, Administrator,

after considering the written observations submitted on behalf of:

— J. Molenbroek, by L. Andringa, of the Amsterdam Bar;

* Language of the case: Dutch.

— the Bestuur van de Sociale Verzekeringsbank, by E. H. Pijnacker, of the Amsterdam Bar, and G. R. J. de Groot, of the Hague Bar;

— the Netherlands Government, by T. P. Hofstee, acting Secretary General at the Ministry of Foreign Affairs, acting as Agent;

— the Commission of the European Communities, by K. Banks and B. M. P. Smulders, of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of J. Molenbroek, represented by M. Steinmetz, of the Amsterdam Bar, the Bestuur van de Sociale Verzekeringsbank, the Netherlands Government, represented by J. W. de Zwaan, Deputy Legal Adviser at the Ministry of Foreign Affairs, and the Commission of the European Communities at the hearing on 9 July 1992,

after hearing the Opinion of the Advocate General at the sitting on 17 September 1992,

gives the following

Judgment

1 By order of 24 July 1991, which was received at the Court on 10 September 1991, the Raad van Beroep, Amsterdam, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a number of questions 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.

2 Those questions were raised in proceedings between Jan Molenbroek, an old-age pensioner, and the Bestuur van de Sociale Verzekeringsbank (Board of the Social Insurance Bank) (hereinafter 'the SVB') concerning the determination of the amount of a supplement granted to the pensioner concerned in respect of his dependent spouse, who had not yet reached pensionable age.

3 It is apparent from the documents before the Court that in the Netherlands, according to the Algemene Ouderdomswet (General Law on old-age insurance, hereinafter 'the AOW'), every married person, whether man or woman, is entitled on reaching the age of 65 to an old-age pension which, if the person concerned has completed the full insurance period of 50 years, amounts to 50% of the net minimum salary in force. A pensioner whose spouse is aged under 65 is entitled to a supplement which, at the spouse's request, may be paid directly to the latter.

4 Since 1 April 1988 the maximum pension of a married person whose dependent spouse is under the age of 65 has been equivalent to that of an unmarried person, that is to say 70% of the net minimum salary, while the maximum supplement which that person can receive in respect of a dependent spouse amounts to 30% of the net minimum salary. Since that date, however, the grant of the supplement and the amount thereof have, subject to certain transitional measures, depended on the spouse's own income. A proportion of the spouse's income from or in connection with employment or self-employment is deducted from the supplement.

5 Under the AOW, Mr Molenbroek was granted as from 1 May 1990, on reaching the age of 65, a full married man's pension amounting to 70% of the net minimum salary. Since his spouse, who was younger, continued to receive an allowance on account of incapacity for work, the SVB deducted that income, within the limits allowed, from the supplement to which Mr Molenbroek was entitled under the AOW, with the result that the supplement finally came to only 27.70% of the maximum provided for.

6 When Mr Molenbroek brought an action against the SVB's decision reducing the supplement, the Raad van Beroep decided to stay the proceedings pending a ruling from the Court of Justice on the following questions:

'(1) Is Article 4(1) of Council Directive 79/7/EEC of 19 December 1978 to be interpreted as precluding national legislation on old-age pensions which, regardless of sex, makes the award to a pensioner of a supplement, and the amount thereof, in respect of a spouse under the age of 65 depend exclusively on whether the younger spouse receives income from or in connection with work, if the effect of that legislation is that far more men than women qualify for the supplement?

(2) (a) Is Article 4(1) of Council Directive 79/7/EEC of 19 December 1978 to be interpreted as precluding application of the legislation described in Question 1, the purpose of which is to guarantee a minimum income for pensioners with a younger dependent spouse, but which also results in a supplement being granted for the younger spouse who has no income from work, or very little, even if in addition to a pension under the AOW the pensioner receives income of his own from or in connection with work, such as a supplementary occupational pension or investment income, in which case guaranteeing a minimum income is in principle unnecessary?

(b) Can the application of the national legislation described in Question 1, the result of which is that far more men than women qualify for the supplement payable for the younger spouse, be justified under Directive 79/7 by the fact that the AOW is a basic minimum scheme, regardless of the fact that the supplement may also be paid when it is not essential in order to guarantee an adequate means of subsistence for the pensioner and the younger spouse?

(3) In a case such as this, does a breach of Article 4(1) of Directive 79/7 have the result that pensioners with spouses under the age of 65 may also, regardless of any income received by the younger spouse from or in connection with work, claim the supplement (in full)?'

7 By order of 9 July 1992, the Court (Second Chamber) granted the application of the plaintiff in the main proceedings for legal aid.

8 Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the procedure and the written observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

9 In the first two questions, which should be considered together, the national court seeks to ascertain whether Article 4(1) of Directive 79/7 precludes national legislation on old-age insurance from making the grant and the amount of a supplement payable to a pensioner whose dependent spouse has not yet reached retirement age depend, regardless of sex, exclusively on the income earned by the spouse from or in connection with work, excluding any other income of the pensioner, if the result is that far more men than women qualify for the supplement and that it may be granted even where it is not essential in order to guarantee a minimum income for the pensioner and his spouse.

10 In the first place it is important to note that, as the Court held in its judgment in Case 30/85 *Teuling* v *Bedrijfsvereniging voor de Chemische Industrie* [1987] ECR 2497, paragraph 12, it is clear from the very wording of Article 4(1) of Directive 79/7 that the grant of a pension supplement in respect of a dependent spouse is prohibited if it is directly or indirectly based on the sex of the beneficiaries.

11 In that judgment (paragraph 13) the Court stated that a system of benefits in which supplements are provided for that are not directly based on the sex of the beneficiaries but take account of their marital status or family situation and from which it transpires that a considerably smaller proportion of women than of men are entitled to such supplements is contrary to Article 4(1) of the directive if that system of benefits cannot be justified by reasons which exclude any discrimination on grounds of sex.

12 As is clear from the order for reference and from the written observations submitted to the Court, there is no dispute that in the main it is men who qualify for the supplement referred to in the main proceedings. That is because, on the one hand, men are generally older than their spouses and, on the other, even where the man is younger than his spouse, he receives, far more often than a woman in the same situation, income from work such as to preclude the grant of a supplement to a female pensioner.

13 In those circumstances, legislation of the kind at issue, which makes the grant and the amount of a pension supplement to the pensioner depend exclusively on income from work earned by the younger spouse, leads in principle to indirect discrimination against women in relation to men, contrary to Article 4(1) of Directive 79/7, unless such legislation is justified by objective factors unconnected with any discrimination on grounds of sex. It follows from the case-law of the Court that this is the case if the means chosen correspond to a legitimate aim of the social policy of the Member State whose legislation is at issue and are suitable and requisite for attaining the aim pursued (see the judgment in Case C-229/89 *Commission* v *Belgium* [1991] ECR I-2205).

14 In the first place, it follows from the case file that the allowance granted under the AOW is in the nature of a basic allowance, in that it is intended to guarantee those concerned an income equal to the social minimum, irrespective of any income which they receive from other sources.

15 Furthermore, the Court has already held that the allocation of an income equal to the social minimum formed an integral part of the social policy of the Member States and that those States enjoyed a reasonable margin of discretion as regards both the nature of the protective measures in the social sphere and the detailed arrangements for their implementation (judgment in *Commission* v *Belgium*, cited above, paragraphs 22 and 23).

16 Finally, in leaving out of account any other income received by an old-age pensioner when determining the supplement payable to him in respect of a younger dependent spouse, the national legislation at issue in this case ultimately allocates to the couple an aggregate income equal to that to which both spouses will be entitled when they are both in receipt of a pension and the supplement has consequently been discontinued.

17 The supplements scheme is therefore essential in order to preserve the nature of the allowance granted under the AOW as a basic allowance and in order to guarantee the couple, where one of the spouses has not yet reached pensionable age, an income equal to the social minimum which they will receive when they are both pensioners.

18 In those circumstances, the fact that at times the supplement is granted to persons who, having regard to the income which they receive from other sources, do not need it in order to guarantee a minimum level of subsistence cannot affect the fact that the means chosen are necessary having regard to the aim pursued.

19 It follows from the foregoing considerations that the national legislation at issue corresponds to a legitimate objective of social policy, involves supplements suitable and requisite for attaining that aim and is therefore justified by reasons unrelated to discrimination on grounds of sex.

20 The answer to the first two questions submitted by the national court must therefore be that Article 4(1) of Directive 79/7 is to be interpreted as not precluding the application of national legislation on old-age insurance which, regardless of sex, makes the grant and the amount of a supplement payable to a pensioner whose dependent spouse has not yet reached retirement age depend exclusively on the income earned by the spouse from or in connection with work, even if the effect of that legislation is that far more men than women qualify for the supplement.

21 In view of the answer given to the first two questions submitted for a preliminary ruling, there is no need to answer the national court's third question, which relates to the consequences, in a situation of the kind which has arisen in the main proceedings, of a breach of Article 4(1) of Directive 79/7.

Costs

22 The costs incurred by the Netherlands Government 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 (Second Chamber),

in answer to the questions referred to it by the Raad van Beroep, Amsterdam, by order of 24 July 1991, hereby rules:

Article 4(1) 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 must be interpreted as not precluding the application of national legislation on old-age insurance which, regardless of sex, makes the grant and the amount of a supplement payable to a pensioner whose dependent spouse has not yet reached retirement age depend exclusively on the income earned by the spouse from or in connection with work, even if the effect of that legislation is that far more men than women qualify for the supplement.

Murray Mancini Schockweiler

Delivered in open court in Luxembourg on 19 November 1992.

J.-G. Giraud

Registrar

J. L. Murray

President of the Second Chamber