JUDGMENT OF THE COURT
6 December 1994 *

In Case C-410/92,

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

Elsie Rita Johnson

and

Chief Adjudication Officer

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 (OJ 1979 L 6, p. 24),

THE COURT,

composed of: G. C. Rodríguez Iglesias (Rapporteur), President, R. Joliet, F. A. Schockweiler and P. J. G. Kapteyn (Presidents of Chambers), G. F. Mancini, C. N. Kakouris, J. C. Moitinho de Almeida, J. L. Murray and D. A. O. Edward, Judges,

* Language of the case: English.

Advocate General: C. Gulmann,
Registrar: L. Hewlett, Administrator,

after considering the written observations submitted on behalf of:

— Mrs Johnson, by R. Drabble, Barrister, and P. Wood, Solicitor,

— Ireland, by M. A. Buckley, Chief State Solicitor, acting as Agent,

— the United Kingdom, by L. Hudson, of the Treasury Solicitor's Department, acting as Agent, and C. Vajda, Barrister,

— the Commission of the European Communities, by K. Banks, of its Legal Service, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of Mrs Johnson, represented by R. Drabble, Barrister, Ireland, represented by F. McDonagh, Barrister-at-law, acting as Agent, the United Kingdom, represented by C. Vajda, Barrister, and L. Hudson, acting as Agents, and the Commission, represented by K. Banks, of its Legal Service, acting as Agent, at the hearing on 13 April 1994,

after hearing the Opinion of the Advocate General at the sitting on 1 June 1994,

gives the following

Judgment

1 By order of 30 October 1992, received at the Court on 10 December 1992, the Court of Appeal referred for a preliminary ruling under Article 177 of the EEC Treaty 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 (OJ 1979 L 6, p. 24).

2 Those questions arose in a dispute between Mrs Johnson and the Chief Adjudication Officer concerning payment of severe disablement allowance.

3 The material Community provisions are those of Directive 79/7.

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 Article 4 (1) provides:

'The principle of equal treatment means that there shall be no discrimination whatsoever on grounds of sex either directly or indirectly by reference in particular to marital or family status, in particular as concerns:

— the scope of the schemes and the conditions of access thereto,

— the obligation to contribute and the calculation of contributions,

— the calculation of benefits including increases due in respect of a spouse and for dependants and the conditions governing the duration and retention of entitlement to benefits.'

6 Under Article 8, the period within which Member States were required to transpose the directive expired six years after its notification, hence on 22 December 1984.

7 Mrs Johnson, the appellant in the main proceedings, gave up work in or about 1970 in order to look after her daughter, who was then six years old. She sought to resume employment in 1980 but was unable to do so because of a back complaint. For that reason she was granted Non-Contributory Invalidity Benefit ('NCIB') in 1981, when she was living alone.

8 In 1982 she began cohabiting with a male friend. Payment of NCIB then ceased because at that period a woman cohabiting with a man was required, in order to qualify for NCIB, to prove not only that she was unfit for work but also that she

was unfit to carry out normal household duties (section 36(2) of the Social Security Act 1975, as then in force). This household-duties test did not apply to men.

9 The Health and Social Security Act 1984 abolished the NCIB and introduced the Severe Disablement Allowance ('SDA'), which may be granted to persons of either sex under identical conditions. However, Regulation 20(1) of the Social Security (Severe Disablement Allowance) Regulations 1984 allowed persons entitled to the old NCIB to qualify automatically for the new SDA without being required to prove that they satisfied the new conditions.

10 On 17 August 1987 Mrs Johnson applied through the Citizens Advice Bureau for SDA.

11 Her application was turned down on the basis of section 165A of the Social Security Act 1975, as amended, which provides that:

'(1) Except in such cases as may be prescribed, no person shall be entitled to any benefits unless, in addition to any other conditions relating to that benefit being satisfied —

(a) he makes a claim for it —

(i) in the prescribed manner; and

(ii) subject to subsection (2) below, within the prescribed time;

12 In a case such as this, the effect of that provision is that a person who has not claimed payment of NCIB before the abolition of that benefit may not claim automatic entitlement to SDA (see Case C-31/90 *Johnson* v *Chief Adjudication Officer* [1991] ECR I-3723, paragraph 29).

13 The Social Security Commissioners, before whom the case came on appeal, referred questions to the Court of Justice by decision of 25 January 1990 asking in particular whether such a rule was compatible with Directive 79/7.

14 In its judgment in Case C-31/90, cited above, the Court answered that question by ruling that it had been possible since 23 December 1984 to rely on Article 4 of Directive 79/7 in order to have set aside national legislation which made entitlement to a benefit subject to the previous submission of a claim in respect of a different benefit which had since been abolished and which had entailed a condition discriminating against female workers. In the absence of appropriate measures for implementing Article 4 of Directive 79/7, women placed at a disadvantage by the maintenance of the discrimination were entitled to be treated in the same manner and to have the same rules applied to them as men who were in the same situation, since, where the directive had not been implemented correctly, those rules remained the only valid point of reference.

15 Following the Court's judgment in that case, the Social Security Commissioners, by decision of 16 December 1991, granted SDA to Mrs Johnson with effect from 16 August 1986, that is to say, 12 months prior to her claim, but refused to grant payments in respect of any period prior to that date.

16 That refusal was based on the rule contained in subsection (3) of section 165A of the Social Security Act 1975, which provided that:

'Notwithstanding any regulations made under this section, no person shall be entitled:

(c) to any other benefit (except disablement benefit or reduced earnings allowance or industrial death benefit) in respect of any period more than 12 months before the date on which the claim is made.'

17 Mrs Johnson appealed to the Court of Appeal, where argument centred on whether the judgment of the Court of Justice in Case C-208/90 *Emmott* v *Minister for Social Welfare and Attorney General* [1991] ECR I-4269 constituted a precedent for the present case and whether it entitled Mrs Johnson to receive benefits from 22 December 1984, when the period for transposing Directive 79/7 expired.

18 In *Emmott* the Court ruled that Community law precludes the competent authorities of a Member State from relying, in proceedings brought against them by an individual before the national courts in order to protect rights directly conferred upon him by Article 4(1) of Directive 79/7, on national procedural rules relating to time-limits for bringing proceedings so long as that Member State has not properly transposed that directive into its domestic legal system.

19 The Court of Appeal, in doubt as to the proper scope of that judgment, decided to stay proceedings and refer the following questions to the Court for a preliminary ruling:

'1. Is the decision of the European Court of Justice in *Emmott* (Case C-208/90) to the effect that a Member State may not rely on national procedural rules relating to the time-limits for bringing proceedings so long as that Member State has not properly transposed Directive 79/7 into its legal system to be interpreted as applying to national rules on claims for benefit for past periods in cases where a Member State has implemented measures to comply with that directive before the relevant deadline but has left in force a transitional provision such as that considered by the European Court of Justice in Case 384/85 *Borrie Clarke*?

2. In particular in circumstances where:

(i) a Member State has adopted and implemented legislation to fulfil its obligations under Council Directive 79/7 ("the directive") prior to the deadline laid down in the directive;

(ii) the Member State introduces ancillary transitional arrangements in order to safeguard the position of existing social security beneficiaries;

(iii) it subsequently transpires as a result of a preliminary ruling by the Court of Justice that the transitional arrangements breach the directive;

(iv) an individual brings a subsequent claim for benefit shortly after the preliminary ruling referred to above relying on the transitional arrangements

and the directive in a national tribunal pursuant to which that individual is awarded the benefit for the future and for 12 months prior to the bringing of the claim in accordance with the relevant national rules on payments for the period prior to the making of the claim,

must that national tribunal disapply those national rules on arrears of payment from the date that the deadline for implementation of the directive has expired, that is, 23 December 1984?'

20 By those questions, which should be considered together, the national court asks, in essence, whether it is compatible with Community law to apply, to a claim based on the direct effect of Directive 79/7, a rule of national law which limits the period prior to the bringing of the claim in respect of which arrears of benefit are payable, even where that directive has not been properly transposed within the prescribed period in the Member State concerned.

21 The right conferred on women by the direct effect of Article 4(1) of Directive 79/7 to claim benefits for incapacity for work under the same conditions as men must be exercised under the conditions determined by national law, provided that, as the Court has consistently held, those conditions are no less favourable than those relating to similar domestic actions and that they are not framed so as to render virtually impossible the exercise of rights conferred by Community law (see Case C-338/91 *Steenhorst-Neerings* v *Bestuur van de Bedrijfsvereniging voor Detailhandel, Ambachten en Huisvrouwen* [1993] ECR I-5475, paragraph 15, and *Emmott*, paragraph 16).

22 Here, the wording of the contested rule shows that it is of general application and that actions based on Community law are therefore not subject to less favourable conditions than those applying to similar domestic actions.

23 Nor does that rule, which merely limits the period prior to the bringing of a claim in respect of which arrears of benefit are payable, make it virtually impossible for an action to be brought by an individual relying on Community law.

24 Referring to the terms of the *Emmott* judgment, however, Mrs Johnson submits that the rule in question is a 'national procedural rule relating to time-limits' and that a Member State cannot therefore rely on it so long as it has not 'properly transposed' a directive.

25 In *Emmott* the Court did indeed hold that so long as a directive has not been properly transposed into national law individuals are unable to ascertain the full extent of their rights (paragraph 21) and that consequently, until the directive has been properly transposed, a defaulting Member State may not rely on an individual's delay in initiating proceedings against it in order to protect rights conferred upon him by the provisions of the directive and that a period laid down by national law within which proceedings must be initiated cannot begin to run before that time (paragraph 23).

26 However, it is clear from the judgment in *Steenhorst-Neerings* that the solution adopted in *Emmott* was justified by the particular circumstances of that case, in which a time-bar had the result of depriving the applicant of any opportunity whatever to rely on her right to equal treatment under the directive.

27 The Court pointed out in *Steenhorst-Neerings* (paragraph 20) that in *Emmott* the applicant in the main proceedings had relied on the judgment of the Court in Case 286/85 *McDermott and Cotter* v *Minister for Social Welfare and Attorney General* [1987] ECR 1453 in order to claim entitlement by virtue of Article 4(1) of Directive 79/7, with effect from 23 December 1984, to invalidity benefits under the same conditions as those applicable to men in the same situation. The administrative authorities had then declined to adjudicate on her claim since Directive 79/7 was the subject of proceedings pending before a national court. Finally, even though Directive 79/7 had still not been correctly transposed into national law, it was claimed that the proceedings she had brought to obtain a ruling that her claim should have been accepted were out of time.

28 In contrast, the rule at issue in *Steenhorst-Neerings* did not affect the right of individuals to rely on Directive 79/7 in proceedings before the national courts against a defaulting Member State but merely limited to one year the retroactive effect of claims for benefits for incapacity for work.

29 The Court concluded (paragraph 24) that Community law did not preclude the application of a national rule of law whereby benefits for incapacity for work were payable not earlier than one year before the date of claim, in the case where an individual sought to rely on rights conferred directly by Article 4(1) of Directive 79/7 with effect from 23 December 1984 and where on the date the claim for benefit was made the Member State concerned had not yet properly transposed that provision into national law.

30 In the light of the foregoing, the national rule which adversely affects Mrs Johnson's action before the Court of Appeal is similar to that at issue in *Steenhorst-Neerings*. Neither rule constitutes a bar to proceedings; they merely limit the period prior to the bringing of the claim in respect of which arrears of benefit are payable.

31 At the hearing, however, Mrs Johnson argued that the two cases had to be distinguished since their facts were different.

32 In the first place, she submitted that there was no difficulty, in certain areas of social security, and in this case in particular, in determining whether the claimant satisfied the conditions governing entitlement to benefit prior to the bringing of the claim. Since the relevant rules in the United Kingdom provided that the burden of proof rested on the claimant, the claim would fail if the lapse of time made it impossible to adduce that proof.

33 Mrs Johnson further submitted that the benefit in question in this case was non-contributory, unlike that at issue in *Steenhorst-Neerings*, and that there was consequently no need in this case to preserve the financial balance of a fund having limited resources. Payment of arrears from the date on which the period for transposition expired would constitute no more of a burden on State resources than a proper transposition of the directive within the specified period.

34 Those arguments are not cogent. Admittedly, the individual position of Mrs Johnson and the benefit which she seeks can be distinguished in certain respects from the situation and the benefit at issue in *Steenhorst-Neerings*.

35 The fact remains, however, that the rule at issue in this case is identical to that under consideration in *Steenhorst-Neerings* and that the application of those rules does not make it impossible to exercise rights based on the directive.

36 Accordingly, the answer to the national court's questions must be that Community law does not preclude the application, to a claim based on the direct effect of Directive 79/7, of a rule of national law which merely limits the period prior to the bringing of the claim in respect of which arrears of benefit are payable, even where that directive has not been properly transposed within the prescribed period in the Member State concerned.

Costs

37 The costs incurred by Ireland, 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 action 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 referred to it by the Court of Appeal, by order of 30 October 1992, hereby rules:

Community law does not preclude the application, to a claim based on the direct effect 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, of a rule of national law which merely lim-

its the period prior to the bringing of the claim in respect of which arrears of benefit are payable, even where that directive has not been properly transposed within the prescribed period in the Member State concerned.

Rodríguez Iglesias Joliet Schockweiler

Kapteyn Mancini Kakouris Moitinho de Almeida

Murray Edward

Delivered in open court in Luxembourg on 6 December 1994.

R. Grass G. C. Rodríguez Iglesias

Registrar President