Member State cannot be criticized for having adopted a number of specific provisions in relation to the most important working conditions whilst confining itself in relation to other working conditions to a general provision covering all other working conditions not specifically mentioned, unless it is shown that the result sought by the directive has not in fact been attained.

2. It is not possible to regard as discrimination within the meaning of Directive 76/207 the difference in treatment resulting from the application of a provision of national law to the effect that the adoptive father does not have the right given to the adoptive mother of maternity leave for the first three months following the actual entry of the child into the adoptive family. That distinction is justified by the legitimate concern to assimilate as far as possible the conditions of entry of the child into the adoptive family to those of the arrival of a new-born child in the family during the very delicate initial period.

3. There is no infringement of Article 6 of Directive 76/207 when the national law implementing the directive limits the remedies provided thereby to infringement of certain provisions of the directive provided that the general procedural rules of the national law allow any person to bring any of the matters covered by the directive before the courts.

In Case 163/82

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Armando Toledano Laredo, acting as Agent, with an address for service in Luxembourg at the office of Oreste Montalto, a member of the Legal Department of the Commission, Jean Monnet Building, Kirchberg,

applicant,

v

ITALIAN REPUBLIC, represented by Pier Giorgio Ferri, Avvocato dello Stato, with an address for service in Luxembourg at the Italian Embassy,

defendant,

APPLICATION for a declaration that by not adopting within the prescribed period the provisions needed to ensure compliance with 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 (Official Journal,

L 39, p. 40), the Italian Republic has failed to fulfil its obligations under the EEC Treaty,

THE COURT

composed of: J. Mertens de Wilmars, President, T. Koopmans, K. Bahlmann and Y. Galmot (Presidents of Chambers), P. Pescatore, Lord Mackenzie Stuart, A. O'Keeffe, G. Bosco, O. Due, U. Everling and C. Kakouris, Judges,

Advocate General: S. Rozès
Registrar: P. Heim

gives the following

JUDGMENT

Facts and Issues

The facts of the case and the conclusions and arguments of the parties put forward in the written procedure may be summarized as follows:

I — Facts and written procedure

The purpose of Council Directive 76/207 is to give effect, in the Member States, to the principle of equal treatment for men and women as regards access to employment, including promotion and vocational training and working conditions, referred to as "the principle of equal treatment" (Article 1 (1)).

Article 5 of the directive provides as follows:

"1. Application of the principle of equal treatment with regard to working conditions, including the conditions governing dismissal, means that men and women shall be guaranteed the same conditions without discrimination on grounds of sex.

2. To this end, Member States shall take the measures necessary to ensure that:

(a) any laws, regulations and administrative provisions contrary to the principle of equal treatment shall be abolished;

(b) any provisions contrary to the principle of equal treatment which are included in collective agreements, individual contracts of employment, internal rules of undertakings or in rules governing the independent occupations and professions shall be, or may be declared, null and void or may be amended;

(c) those laws, regulations and administrative provisions contrary to the principle of equal treatment when the concern for protection which originally inspired them is no longer well founded shall be revised; and that where similar provisions are included in collective agreements labour and management shall be requested to undertake the desired revision."

Article 6 provides further that:

"Member States shall introduce into their national legal systems such measures as are necessary to enable all persons who consider themselves wronged by failure to apply to them the principle of equal treatment within the meaning of Articles 3, 4 and 5 to pursue their claims by judicial process after possible recourse to other competent authorities."

Article 9 of the directive provides that the Member States are to put into force the laws, regulations and administrative provisions necessary in order to comply with the directive within 30 months of its notification. Since the directive was notified to the Member States to which it was addressed on 12 February 1976, that period expired on 12 August 1978.

Italian Law No 903 of 9 December 1977 on equal treatment between men and women as regards employment (Gazzetta Ufficiale [Official Gazette] No 343 of 17 December 1977, p. 9041) transposes the provisions of Articles 5 and 6 of the directive into Italian law in the following manner:

"Article 1

Any discrimination on grounds of sex as regards access to employment, regardless of methods of selection and in any sector or branch of activity whatsoever, at all levels of the occupational hierarchy, is prohibited.

The discrimination referred to in the preceding paragraph is likewise prohibited if it is applied:

1. on the basis of marital or family status, or pregnancy;

2. indirectly, through selection procedures or the press or through any other form of publicity indicating as a requirement of recruitment that a person shall be of a particular sex.

The prohibition referred to in the preceding paragraphs applies equally to activities undertaken in connection with vocational guidance, vocational training, advanced vocational training and retraining, as regards both access to and the content of such activities.

. . .

Article 2

Women shall be entitled to the same remuneration as men for work which is the same or of the same value.

Job classification systems for determining remuneration shall apply the same criteria for men and for women.

Article 3

Any discrimination between men and women as regards the assignment of

grading, duties and career development is prohibited . .

Article 4

Women may, even if they are eligible for retirement, elect to continue working up to the retirement age-limit applicable for men pursuant to law, regulation or contract, provided that they inform their employer at least three months before the date on which they are to become eligible for retirement.

. . .

Article 6

Women who have adopted children or who have obtained custody thereof prior to adoption within the meaning of Article 314/20 of the Civil Code shall be entitled, in so far as and provided that the child is not more than six years old at the time of adoption or granting of custody, to claim the compulsory leave referred to in Article 4 (c) of Law No 1204 of 30 December 1971 and the corresponding financial allowance during the first three months following the date on which the child is united with its adoptive family or the family which has been given custody thereof.

. . .

Article 7

Men with children, even if such children have been adopted by, or custody of them has been granted to, the father within the meaning of Article 314/20 of the Civil Code in lieu of the mother of the child who is working, or who has received sole custody, shall be entitled to the same right to take leave of absence from work and to the allowances provided for in Article 7 and the second paragraph of Article 15 of Law No 1204 of 30 December 1971 respectively.

. . .

Article 15

Where there is evidence of conduct calculated to infringe the provisions of Articles 1 and 5 of this Law, and on application by the worker or by a trade union acting on his behalf, the Pretore of the place in which such conduct is alleged to have occurred, acting as a Labour Court, after summoning the parties within the two days next thereafter and opening a summary investigation, shall if he finds the infringement referred to in the application proved, make an order containing a statement of the reasons on which it is based and being immediately enforceable, requiring the person concerned to terminate such unlawful conduct and declaring the same null and void.

The order shall continue to be enforceable until the Pretore gives final judgment on the application made in accordance with the preceding paragraph.

Within 15 days next following notification to the parties an objection to the order may be lodged before the Pretore, who will give without delay a decision which shall be immediately enforceable. Article 413 *et seq.* of the Code of Civil Procedure shall apply in that regard.

Failure to comply with the order referred to in the first paragraph of this article and the decision on any objection thereto shall be punishable in accordance with Article 650 of the Criminal Code.

Where the infringements referred to in the first paragraph of this article are committed by public servants, the provisions applicable with regard to suspension of the operation of a measure provided for in the last paragraph of Article 21 of Law No 1034 of 6 December 1971 shall apply."

The Commission, being of the opinion that Italian Law No 903 transposed the provisions of Articles 5 and 6 of the directive into Italian law to an extent and in a manner not in conformity with the spirit and the letter of the Community instrument, invited the Italian Government by letter of 30 July 1980 to submit

observations as provided for by Article 169 of the Treaty within two months. The Commission alleges in substance that the Italian law unjustifiably restricts the concept of "conditions of work" to which the principle of equal treatment applies, that it restricts the legal remedies provided for in Article 6 of the directive to certain specified cases of discrimination, and that it excludes men from the advantages enjoyed by women as regards the compulsory three months' leave in the case of adoption or the obtaining of custody of children with a view to adoption.

On 10 November 1980 the Permanent Representative of Italy submitted that leave in the case of adoption did not form part of the working conditions and that the principle of sexual equality had already been implemented in Italian law as far as the aspects not provided for by Law No 903 were concerned.

By letter of 4 May 1981 the Commission communicated to the Italian Republic the reasoned opinion provided for in the first paragraph of Article 169 of the Treaty, reiterating the contents of its letter of 30 July 1980 and urging Italy to adopt the measures necessary to comply therewith within one month.

On 6 July 1981 the Permanent Representative of Italy submitted his reply to the opinion accompanied by a note restating the arguments set out above and advising the Commission to await the judgment to be delivered by the Italian Constitutional Court on a case referred to it by the Tribunale di Milano [District Court, Milan] seeking a ruling on the compatibility with the Italian Constitution of the provisions contained in Article 6 of Law No 903.

This application was lodged at the Court Registry on 1 June 1982.

On hearing the report of the Judge-Rapporteur and the views of the Advocate General the Court decided to open the oral procedure without any preparatory inquiry.

II — Conclusions of the parties

The *Commission* claims that the Court should:

"Declare that the Italian Republic, by not adopting within the prescribed period the provisions needed to comply with Council Directive 76/207/EEC 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, has failed to fulfil one of its obligations under the EEC Treaty;

Order the Italian Republic to pay the costs."

The *Italian Republic* contends that the Court should dismiss the application and order the applicant to pay the costs.

III — Submissions and arguments of the parties

The *Commission* maintains that the Italian Law regulates certain conditions of work such as remuneration (Article 2), the age of retirement (Article 4), and the right to take leave of absence from work in the case of adoption (Article 6), but that it fails to cover all working conditions, notwithstanding the much wider nature of the provisions contained in Article 5 of the directive.

The Commission considers that the combined provisions of Articles 5 and 6 of the directive require that the principle of equal treatment be applied as regards working conditions and that the necessary measures must be adopted in order to enable any person who considers himself aggrieved to have his rights upheld by the courts, if necessary after recourse to other appropriate authorities. In this instance, discrimination against men or women may be considered under the system provided for by Law No 903 (sanctions, right of appeal, repeal of contrary provisions, nullity of incompatible clauses) only as regards the working conditions governed by the Law in question, that is to say, conduct calculated to infringe the provisions of Articles 1 (access to employment) and 5 (prohibition of women's working during certain hours in manufacturing industry). The prohibition of discrimination in areas which may be governed by different legislation, for instance Law No 300 of 20 May 1970 on working conditions (Gazzetta Ufficiale, No 131, p. 3404), Article 15 of which, as amended, provides that agreements or measures which give rise to discrimination based on sex as regards employment, dismissal, grading, transfer, disciplinary measures and other prejudicial measures are void, does not guarantee the individual right of men and women not to suffer *de facto* discrimination, as was the intention of the directive, nor is it covered by the remedies provided for by Law No 903.

Furthermore, Article 6 of that Law makes provision for discriminatory rules which are not compatible with Article 5 of the directive inasmuch as only women and not men are eligible, by analogy with the scheme provided for in the case of maternity, for the compulsory leave of three months from the date on which the child is united with its adoptive family or with the family in whose care it is placed, whilst under Article 7 of that Law, the right to take leave of absence from work and the allowances provided for subsequent upon the compulsory leave of three months are allowed equally to men. Since women are eligible for those rights as regards a child who has not yet attained the age of six years, leave in such cases falls rather within the terms of family law referred to by the provisions of Article 7 than of the maternity safeguards referred to in the provisions of Article 6.

As far as the action before the Constitutional Court is concerned, it is clear to the Commission that the doubts expressed by the Tribunale di Milano in the context of the national legal order confirm the Commission's view with regard to Article 6 of Law No 903 as regards the implementation of the Community directive.

In its defence the *Italian Government* replies, first, that the criticism that the text of Law No 903 does not include the expression "working conditions" appears to be extremely formalistic. The directive gives no binding definition of that expression designed to lay down the mandatory content of the internal measures to be adopted. It would therefore be wrong to attribute to the phrase the same authority and effect as a legal concept endowed with its own direct legislative scope, and requiring to be transposed as it stands into the laws of the Member States. It is rather in the light of Article 5 (2), which lays down in

detail the implementing rules for which Member States are to be responsible, that consideration should be given to the question whether the latter have failed to fulfil their obligations or not. The emphasis in that provision is on the need for the introduction into internal law of legal provisions making unlawful any conduct contrary to the principle of equal treatment, regardless of whether such conduct has been prescribed or authorized by laws, regulations or administrative provisions (which, if they do exist, must be repealed) or whether they are the subject of agreements, collective agreements or individual contracts, or derive from private rules (which the law must pronounce void).

Law No 903 meets those requirements in full: it establishes the principle of equal pay for men and women (Article 2); it prohibits all discrimination between men and women as regards grading, duties and career structure (Article 3); it provides that any agreement or measure calculated to create discrimination between workers on the grounds of sex, covering also matters concerning dismissal, in grading, duties, transfers, disciplinary measures or other measures which may be prejudicial, is void (Article 93, *sic*, adopting and amending the provisions of Article 15 of Law No 300 of 20 May 1970). Taken as a whole, those provisions make it clear that the prohibitions of discrimination have been formulated in such a manner as to permit them to be applied in the broadest manner to all the incidents which may possibly arise in the evolution of the employment relationship. The Italian Government is of the opinion that for this application to have a foundation in law the Commission ought to have directed its attention towards practical realities and indicated which examples of discrimination incompatible with Directive 76/207 and falling outside the prohibitions laid down in Law No 903 might arise in an undertaking or other place of work.

The Italian Government points out that Article 6 of the directive, which requires that provision should exist for legal remedies against harmful measures of a discriminatory nature, makes no mention of the procedure whereby such legal protection is to be guaranteed, or of the way in which the courts may protect the rights of the injured party. In the circumstances it is clear, in the opinion of the Italian Government, that in criticizing the restricted applicability of the judicial procedure laid down by Article 15 of Law No 903 the Commission has failed to have regard to the fact that the procedure is a special one which has been found to be necessary by reason of the special nature of discrimination as regards access to employment, training and promotion at work. However, that does not mean that in both those situations and others connected with "working conditions" (not referred to in Article 15) it is impossible to have recourse to the whole range of normal legal remedies which, in this case, are the procedures available under labour or administrative law. The Italian Government considers that the Commission ought to note the existence in the Constitution of the Italian Republic of Article 24, which declares that "any person may have recourse to the courts in order to safeguard his rights and legitimate interests", a principle which is directly and consistently applicable and well established. Lastly, the Italian Government has no doubt that the prohibitions and other provisions contained in Law No 903 are intended to protect workers who are discriminated against, and that is sufficient to enable the worker to ensure the observance of those provisions by means of legal action.

As far as the first paragraph of Article 6 of Law No 903 is concerned, the Italian Government maintains that the provision is designed to place the adoptive mother in the same position as the natural mother in order to ensure that the former has the same opportunity, in her interest and in the interest of the child, of creating the emotional ties for which the earliest part of a child's life or, by analogy, its entry into the adoptive family, has a decisive role to play. A comparison with the directive shows that provision to be wholly lawful and compatible with Article 2 (3). The Italian Government considers that the Commission has failed to show the contrary in its argument based on a comparison of the first paragraph of Article 6 of the Italian Law with Article 7, which extends to the adoptive father the right to take leave of absence from work in lieu of or in the absence of the mother when the child has need of assistance, as in the case of sickness. In that respect the legislature recognizes the fact that parents may each take the place of the other and for that reason places the working father (whether natural or adoptive) in the same position as the working mother, whether natural or adoptive; such similarity of treatment is not provided for in the case criticized by the Commission, in which the possibility of substitution between the parents was excluded, not without reason, by the legislature.

In its reply the *Commission* observes that the Italian Government attempts to justify the imperfect implementation of the directive by relying on earlier legislation, an explanation which the Commission is unable to regard as satisfactory for the reasons already set out in the application. It reiterates its view concerning the leave granted in the case of adoption or taking custody of a child with a view to its adoption.

In the rejoinder the *Italian Government* maintains that the Commission cannot evade its obligation to be more specific, especially when the action concerns a partial failure to fulfil the obligations of a Member State. The Commission's interpretation of the obligations incumbent upon a Member State as regards the transposition into national law of the directive in question is dubious and subjective, whereas a review of the way in which such transposition is made must be based on strictly legal criteria derived from a logical interpretation of the provisions of the directive. If such a standard were to prevail Member States' freedom of choice as regards methods of implementation would be practically deprived of any true value.

As regards the complaint concerning compulsory leave in the case of adoption or taking custody of a child the Italian Government emphasizes that the Commission has merely given a demonstrable confirmation of its own theory without replying to the arguments against it set out in the statement of defence.

IV — Questions put by the Court

The Court put the following questions to the Commission:

"1. Can the Commission specify precisely the working conditions in respect of which the Italian legislation appears to be in breach of Article 5 of the directive?

2. Can it also specify in what respect Article 6 of the directive appears not to be observed by the Italian Republic in view of the remedies which Italian law provides and

Article 24 of the Italian Constitution?"

The answers were as follows:

First question

"The Commission emphasizes, as it has already done in its pleadings, that the prohibition of discrimination provided for in Article 5 (1) of Directive 76/207/EEC, like the prohibitions provided for in Articles 3 and 4 in relation to access to employment and vocational training and promotion, is intentionally broad and comprehensive in scope.

Italian Law No 903 of 9 December 1977 follows that comprehensive approach in relation to access to employment and vocational training and promotion (Article 1), but adopts an enumerative approach in relation to working conditions so that it covers only specific matters (Article 2 covers remuneration; Article 4 relates to retirement) and passes over others altogether.

Article 6 of Law No 903, moreover, discriminates against workers in relation to leave on grounds of adoption."

Second question

"Article 6 of the directive provides for the introduction into the national legal systems of such measures as are necessary to enable all persons who consider themselves wronged by failure to apply to them the principle of equal treatment within the meaning of Articles 3, 4 and 5 to pursue their claims by judicial process after possible recourse to other competent authorities.

It must be observed that the article does not distinguish between access to employment (Article 3), access to vocational training and promotion (Article 4) and working conditions (Article 5).

Article 15 of Italian Law No 903 creates a system of legal remedies confined to the types of discrimination referred to in Articles 3 and 4 of the directive, omitting entirely the working conditions covered by Article 5 and expressly referred to in Article 6 of the directive.

Moreover, the defendant's reference to Article 24 of the Constitution of the Italian Republic is irrelevant since it cannot be regarded as covering the discrimination referred to in Article 5 of the directive but not applicable as regards that referred to in Articles 3 and 4.

In fact, as the defendant rightly states, the directive did not at all disregard the normal judicial process; it was intended, however, that special means of action should be created in view of the special and difficult social and economic context.

It is thus obvious that the directive has not been fully transposed into the Italian legal system since the system of remedies provided for in Article 15 of Law No 903 relates to failure to give equal treatment within the meaning of Articles 3 and 4, but not of Article 5, of the directive."

The Court asked the Italian Government the following questions:

"1. Can the Italian Republic specify *precisely* which provisions of its law, in addition to Law No 903, apply Article 5 of the directive?

2. Can it state what has become of the action brought before the Constitutional Court in relation to

the constitutionality of Article 6 of Law No 903 referred to in its reply of 6 July 1981 to the reasoned opinion?

3. Does the Italian Republic consider that it was in an adequate position to comment during the stage prior to action on the second complaint made by the Commission, namely in relation to the incomplete implementation of Article 6 of the directive?"

The answers were as follows:

1. "(. . .) Its obligations to implement Article 5 of the directive are sufficiently and validly satisfied in relation to the complaints made by the Commission in the present case by the provisions of Law No 903 of 9 December 1977 and Law No 300 of 20 May 1970.

The most significant provisions in relation to the complaints made in the present case are herewith set out in full for the convenience of the Court.

Article 2 of Law No 903/77:

Women shall be entitled to the same remuneration as men for work which is the same or of the same value.

Job classification systems for determining remuneration shall apply the same criteria for men and for women.

Article 3 of Law No 903/77:

Any discrimination between men and women as regards the assignment of grading, duties and career development is prohibited.

Article 15 of Law No 300/70 as amended by Article 13 of Law No 903/77:

(Discriminatory measures): Any agreement or measure intended to:

(a) make a job subject to the condition that the worker belong, not belong or cease to belong to a trade union;

(b) dismiss a worker, subject him to discrimination in grading or the allocation of duties, in transfers, in disciplinary measures or otherwise adversely affect him by reason of his membership of a trade union, of his trade union activity or his taking part in a strike shall be void.

The provisions of paragraph (b) shall apply equally to agreements or measures intended to discriminate on grounds of politics, religion, race, language or sex.

Article 19 of Law No 903/77:

All legislative provisions contrary to the provisions of the present Law are hereby repealed. Domestic laws and administrative measures of the State and of other public bodies incompatible with the provisions of the present Law shall cease to apply.

Provisions in collective or individual contracts of employment, internal rules of undertakings and the regulations of trade and professional bodies which are incompatible with the provisions contained in the present Law are likewise null and void."

2. "The proceedings are still pending before the Constitutional Court; at present no date appears to have been set for a hearing in the near future in the calendar of the work of the Court."

3. "It may be observed that during the stage prior to action the Commission attached no special importance in its complaints to the aspect of legal remedies for measures contrary to the principle of equal treatment; there is no reference to Article 6 of the directive in the reasoned opinion of 30 April 1981.

That is why the corresponding communications from the Italian Government do not deal with that issue."

V — Oral procedure

The parties presented oral argument at the sitting on 22 March 1983.

The Advocate General delivered her opinion at the sitting on 7 June 1983.

Decision

1 By application received at the Court Registry on 1 June 1982 the Commission of the European Communities brought an action under Article 169 of the EEC Treaty for a declaration that the Italian Republic, by failing to adopt within the prescribed period the provisions necessary to comply with Council Directive 76/207 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 (Official Journal, L 39, p. 40), had failed to fulfil its obligations under the Treaty.

2 Articles 5 and 6 of the directive, which the Commission considers have not been adequately or correctly transposed into Italian law, provide as follows:

"1. Application of the principle of equal treatment with regard to working conditions, including the conditions regarding dismissal, means that men and women shall be guaranteed the same conditions without discrimination on grounds of sex.

2. To this end, Member States shall take the measures necessary to ensure that:

(a) any laws, regulations and administrative provisions contrary to the principle of equal treatment shall be abolished;

(b) any provisions contrary to the principle of equal treatment which are included in collective agreements, individual contracts of employment, internal rules of undertakings or in rules governing the independent occupations and professions shall be, or may be declared, null and void or may be amended;

(c) those laws, regulations and administrative provisions contrary to the principle of equal treatment when the concern for protection which originally inspired them is no longer well founded shall be revised; and that where similar provisions are included in collective agreements labour and management shall be requested to undertake the desired revision."

Article 6 provides that:

"Member States shall introduce into their national legal systems such measures as are necessary to enable all persons who consider themselves wronged by failure to apply to them the principle of equal treatment within the meaning of Articles 3, 4 and 5 to pursue their claims by judicial process after possible recourse to other competent authorities."

3 The Italian Republic adopted Law No 903 of 9 December 1977 concerning equal treatment between men and women in relation to employment. Article 1 thereof provides that any discrimination on grounds of sex as regards access to employment, regardless of methods of selection and in any sector or branch of activity whatsoever, at all levels of occupational hierarchy, is prohibited. Such discrimination is likewise prohibited if it is applied on the basis of marital or family status or pregnancy, or indirectly through selection procedures or the press or through any other form of publicity indicating as a requirement of recruitment that a person shall be of a particular sex. The prohibition applies equally to activities undertaken in connection with vocational guidance, vocational training, advanced vocational training and retraining as regards both access to and the content of such activities.

4 Article 2 provides that women are to be entitled to the same remuneration as men for work which is the same or of the same value. Job classification systems for determining remuneration must apply the same criteria for men and for women.

5 Article 3 prohibits any discrimination between men and women as regards the assignment of grading, duties and career development. The leave provided for in Articles 4 and 5 of Law No 1204 of 30 December 1971 is treated for the purposes of career development as days worked when collective agreements do not specify any special conditions in that respect.

6 The first paragraph of Article 4 provides that even if they are eligible for retirement women may elect to continue working up to the retirement age-limit applicable for men. The other paragraphs thereof contain further provisions to which it is not necessary to refer for the purposes of the present judgment.

7 The Commission considers in the first place that the provisions of Law No 903 do not transpose the provisions of Article 5 of the directive into Italian law to an extent and in a manner in conformity with the spirit and letter of the directive. The Law covers certain working conditions, such as remuneration, retirement age and the right to take leave from work in the case of adoption, but it does not cover all working conditions in spite of the wider nature of the provisions of Article 5 of the directive.

8 The Government of the Italian Republic replies that consideration of the provisions of the aforesaid Law No 903 shows that discrimination based on sex is prohibited in relation to access to employment, vocational guidance, vocational training, advanced vocational training and retraining (Article 1), remuneration and job classification systems for determining remuneration (Article 2), assignment of grading, duties and career development (Article 3), retirement age (Article 4) and entitlement to leave in certain circumstances (Article 6). The Government of the Italian Republic adds that Article 15 of Law No 300 of 20 May 1970 was amended by Article 13 of Law No 903 of 1977 so as to render void any agreement or measure based on sex aimed at dismissing a worker or adversely affecting him.

9 It must be remembered that according to Article 189 of the Treaty a directive is binding as to the result to be achieved upon each Member State to which it is addressed, but leaves to the national authorities the choice of

form and methods. The Italian legislature cannot therefore be criticized for having adopted a number of specific provisions in relation to the most important working conditions and whilst confining itself in relation to other working conditions to a general provision covering, as does Article 15 of the Law of 1970 as amended by Article 13 of the Law of 1977, all other working conditions not specifically mentioned, unless it is shown that the result sought by the directive has not in fact been attained.

10 Since the Commission has not shown that those specific provisions combined with a general supplementing provision have left some areas of the scope of the directive unprovided for, the Commission's first complaint cannot be upheld.

11 The Commission alleges in the second place that the Law of 1977 gives a mother who adopts a child of less than six years of age at the time of adoption the right to compulsory leave and the corresponding financial allowance during the first three months after the child enters the adoptive family and the right to leave for a certain period, without according the adoptive father similar rights. It is said that such different treatment amounts to discrimination in working conditions within the meaning of the directive.

12 Article 6 of Law No 903 of 1977 provides that women who have adopted children or who have obtained custody thereof prior to adoption may claim the maternity leave referred to in Article 4 of Law No 1204 of 1971 and the financial benefits relating thereto for the first three months after the child enters the adoptive family or the family which has been given custody of it, provided the child is not more than six years of age at the time of the adoption or award of custody. The second paragraph of Article 6 adds that such women may also claim the leave provided for in the first paragraph of Article 7 of the Law of 1971 for a period of one year from the actual entry of the child into the family provided that the child is not more than three years of age, and the right to the leave provided for in the second paragraph of Article 7.

13 Article 4 of Law No 1204 of 30 December 1971 provides that women may not be employed:

(a) During the two months immediately preceding the expected date of confinement;

(b) If confinement takes place after that date, during the period between the expected date and the actual date of confinement;

(c) During the three months following confinement.

14 Article 7 of the same Law provides that during the child's first year the woman is entitled, after the above-mentioned maternity leave, to leave from work during a period of six months during which her job is to be kept for her (first paragraph). She is also entitled to leave when a child of less than three years of age is sick, upon submission of a medical certificate (second paragraph).

15 Article 7 of Law No 903 of 1977 gives a working father the right to leave allowed by Article 7 of Law No 1204 of 1971, even if he is a father by adoption or a guardian within the meaning of Article 314/20 of the Civil Code, in lieu of the working mother or where the care and custody of the children are given to the father.

16 However, the adoptive father does not have the right given the adoptive mother of maternity leave for the first three months following the actual entry of the child into the adoptive family. That distinction is justified, as the Government of the Italian Republic rightly contends, by the legitimate concern to assimilate as far as possible the conditions of entry of the child into the adoptive family to those of the arrival of a newborn child in the family during the very delicate initial period. As regards leave from work after the initial period of three months the adoptive father has the same rights as the adoptive mother.

17 In those circumstances the difference in treatment criticized by the Commission cannot be regarded as discrimination within the meaning of the directive.

18 The Commission's last complaint relates to the alleged failure by the Italian Republic to comply with Article 6 of the directive. The Commission states that Article 15 of Law No 903 of 1977 restricts the legal remèdies it provides for to cases of breach of the provisions of Articles 1 and 5 of that Law, by not giving a legal remedy to a worker who considers himself adversely affected by failure to comply with the other provisions of the directive.

19 The Government of the Italian Republic contends that the procedure referred to in Article 15 of Law No 903 is an emergency one but emphazises that there is nothing in the directive which requires such a procedure for all cases of discrimination. Article 700 of the Italian Code of Civil Procedure, which is an entirely general rule of procedure, allows the measures required to avoid irremediable damage to be obtained urgently. That provision may be relied upon in all areas where the directive applies and which are not covered by Article 15 of Law No 903.

20 Article 24 of the Italian Constitution, moreover, provides that any person may bring proceedings to protect his rights and lawful interests. That is a constitutional principle of direct application, unchanging and well established in the sense that once the existence of a basic rule protecting an individual interest is established no specific legislative measure is needed to ensure protection thereof since such protection is universally and unconditionally afforded by Article 24 of the Constitution. Workers suffering discrimination may therefore rely on that constitutional provision to ensure observance of the provisions of Law No 903 by means of a court action.

21 The Commission has not contested the explanations given by the Government of the Italian Republic. In those circumstances the complaint cannot be upheld.

22 Since none of the complaints made by the Commission has been upheld the application must be dismissed in its entirety.

Costs

23 Under Article 69 (2) of the Rules of Procedure the unsuccessful party is to be ordered to pay the costs if a request has been made to that effect.

24 Since the Commission has been unsuccessful it must be ordered to pay the costs.

On those grounds

THE COURT

hereby:

1. **Dismisses the application;**

2. **Orders the Commission to pay the costs.**

	Mertens de Wilmars	Koopmans	Bahlmann
Galmot	Pescatore	Mackenzie Stuart	O'Keeffe
Bosco	Due	Everling	Kakouris

Delivered in open court in Luxembourg on 26 October 1983.

P. Heim
Registrar

J. Mertens de Wilmars
President