# JUDGMENT OF THE COURT
16 July 1992 *

In Joined Cases C-63/91 and C-64/91,

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

**Sonia Jackson** (Case C-63/91),

**Patricia Cresswell** (Case C-64/91)

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

THE COURT,

composed of: O. Due, President, R. Joliet and F. A. Schockweiler (Presidents of Chambers), G. F. Mancini, C. N. Kakouris, G. C. Rodríguez Iglesias, M. Diez de Velasco, J. L. Murray and D. A. O. Edward, Judges,

Advocate General: W. Van Gerven,
Registrar: D. Triantafyllou, Administrator,

* Language of the case: English.

after considering the written observations submitted on behalf of:

Sonia Jackson and Patricia Cresswell, by Penny Wood, Solicitor,

the United Kingdom of Great Britain and Northern Ireland, by J. E. Collins, of the Treasury Solicitor's Department, acting as Agent,

the Commission of the European Communities, by Karen Banks, of its Legal Service, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of Ms Jackson and Ms Cresswell, represented by Richard Drabble, Barrister-at-law; the United Kingdom, represented by Richard Plender, QC, and David Pannick, Barrister-at-law, acting as Agents; and the Commission at the hearing on 13 March 1992,

after hearing the Opinion of the Advocate General at the sitting on 15 May 1992,

gives the following

## Judgment

1 By orders dated 21 December 1990 which were received at the Court on 14 February 1991, the Court of Appeal of England and Wales referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty three 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) and Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (OJ 1976 L 39, p. 40).

2 The questions were raised in proceedings between Sonia Jackson (Case C-63/91) and Patricia Cresswell (Case C-64/91), on the one hand, and the Chief Adjudication Officer, on the other, relating to Ms Jackson's and Ms Cresswell's right to deduct childminding expenses from their incomes for the purposes of the determination of the amount of benefit granted to them in the United Kingdom in order to make up the insufficiency in their incomes.

3 It appears from the case-file that in the United Kingdom the Supplementary Benefits Act 1976 introduced for persons whose means were insufficient to meet their needs a benefit known as 'supplementary allowance' for persons between 16 years of age and pensionable age and as 'supplementary pension' for persons over pensionable age.

4 Whereas under the regulations implementing the 1976 Act, childminding expenses were in principle deductible from earnings from employment, they were not deductible from allowances paid during vocational training organized by the Manpower Services Commission, a British statutory body responsible for vocational training.

5 The Social Security Act 1986, which replaced the Supplementary Benefits Act 1976 as from April 1988, introduced 'income support', which is granted to anyone aged at least 18 whose income does not exceed a specified amount and who is not engaged in remunerative work.

6 Like the regulations implementing the 1976 Act, those implementing the 1986 Act exempt a sole parent responsible for a child who is a member of his household from the requirement of being available for work which recipients of the benefit in question normally have to fulfil.

7 It should be noted in addition that under the regulations implementing the 1986 Act persons working less than 24 hours a week are not regarded as being in remunerative work and childminding expenses are not deductible from earnings from part-time work.

8 At the time of the events giving rise to the main proceedings, Sonia Jackson, an unmarried mother with a small child, was unemployed and in receipt of supplementary allowance. In 1986 she started a vocational training course arranged by the Manpower Services Commission, in respect of which she received a weekly allowance. The Adjudication Officer took account of that income and withdrew her entitlement to supplementary allowance while refusing her the right to deduct from her income the childminding expenses which she incurred in respect of her child during her period in training.

9 At the time of the events giving rise to the main proceedings, Patricia Cresswell, a divorced mother responsible for two young children, was unemployed and in receipt of income support; she then took up part-time employment for less than 24 hours a week. The Adjudication Officer, taking account of her income from her part-time job, reduced her income support but refused to deduct from her income the expenses for minding her two children.

10 In proceedings brought by Ms Jackson and Ms Cresswell against the United Kingdom authorities' refusal to take account of their childminding expenses in determining their actual income, the Court of Appeal of England and Wales stayed the appeals pending a preliminary ruling by the Court of Justice on the following questions:

'1. Is supplementary allowance (Case C-63/91) or income support (Case C-64/91)-which is (or, in the case of supplementary allowance, was) a benefit available in a variety of personal circumstances to persons whose means are insufficient to meet their needs as defined by statute and who may or may not have suffered from one of the risks listed in Article 3 of Directive 79/7-within the scope of Article 3 of Directive 79/7?

2. Is the answer to question 1 the same in all cases or does it depend on whether a person is suffering from one of the risks listed in Article 3 of Directive 79/7?

3. Are the conditions of entitlement for receipt of supplementary allowance (Case C-63/91) or income support (Case C-64/91) capable of falling within Directive 76/207 where those conditions relate solely to access to supplementary allowance or income support but the effect of application of those conditions may be such as to affect the ability of a single parent to take up access to part-time employment or vocational training?'

11 Reference is made to the Report for the Hearing for a fuller account of the facts, the course of 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.

**Directive 79/7**

12 In its first two questions the Court of Appeal seeks essentially to establish whether Article 3(1) of Directive 79/7 is to be interpreted as applying to a benefit, such as supplementary allowance or income support, which may be granted in a variety of personal situations to persons whose means are insufficient to meet their needs as defined by statute, and whether the answer to that question depends on whether the claimant is suffering from one of the risks listed in Article 3 of the Directive.

13 In order to answer the questions concerning the scope of Directive 79/7 it should be noted first that, according to the first and second recitals in its preamble, the object of the directive is the progressive implementation of the principle of equal treatment of men and women in matters of social security.

14 According to the wording of Article 3(1), the directive applies to statutory schemes which provide protection against the risks of sickness, invalidity, old age, accidents at work and occupational diseases, or unemployment, and to social assistance in so far as it is intended to supplement or replace those schemes.

15 As the Court has already held, a benefit, if it is to fall within the scope of Directive 79/7, must constitute the whole or part of a statutory scheme providing protection against one of the specified risks or a form of social assistance having the same objective (judgment in Case 150/85 *Drake* v *Adjudication Officer* [1986] ECR 1995, paragraph 21; judgment in Case C-243/90 *The Queen* v *Secretary of State for Social Security, ex parte Smithson* [1992] ECR I-467, paragraph 12).

16 The Court stated that, although the mode of payment is not decisive as regards the identification of a benefit as one which falls within the scope of Directive 79/7, nevertheless in order to fall within the scope of the directive the benefit must be directly and effectively linked to the protection provided against one of the risks specified in Article 3(1) (judgment in *Smithson*, paragraph 14).

17 However, Article 3(1)(a) of Directive 79/7 does not refer to a statutory scheme which, on certain conditions, provides persons with means below a legally defined limit with a special benefit designed to enable them to meet their needs.

18 That finding is not affected by the circumstance that the recipient of the benefit is in fact in one of the situations covered by Article 3(1) of the directive.

19 Indeed, in the judgment in *Smithson* (cited above) the Court held with regard to a housing benefit that the fact that some of the risks listed in Article 3(1) of

Directive 79/7 were taken into account in order to grant a higher benefit was not sufficient to bring that benefit as such within the scope of the directive.

20 Consequently, exclusion from the scope of Directive 79/7 is justified *a fortiori* where, as in the cases at issue in the main proceedings, the law sets the amount of the theoretical needs of the persons concerned, used to determine the benefit in question, independently of any consideration relating to the existence of any of the risks listed in Article 3(1) of the directive.

21 Moreover, in certain situations, in particular those of the appellants in the main proceedings, the national schemes at issue exempt claimants from the obligation to be available for work. That shows that the benefits in question cannot be regarded as being directly and effectively linked to protection against the risk of unemployment.

22 Accordingly, the answer to the first and second questions referred by the Court of Appeal of England and Wales must be that Article 3(1) of Directive 79/7/EEC is to be interpreted as not applying to a benefit, such as supplementary allowance or income support, which may be granted in a variety of personal situations to persons whose means are insufficient to meet their needs as defined by statute; that answer does not depend on whether the claimant is suffering from one of the risks listed in Article 3 of the directive.

## Directive 76/207

23 In its third question the Court of Appeal of England and Wales essentially seeks to establish whether Directive 76/207 should be interpreted as applying to a social security scheme, such as supplementary allowance or income support, simply because the conditions of entitlement for receipt of the benefits may be such as to affect the ability of a single parent to take up access to vocational training or part-time employment.

24 In order to answer that question on the scope of Directive 76/207 it should be noted that, according to the wording of Article 1(1) of the directive, its purpose is to put into effect in the Member States the principle of equal treatment for men and women as regards access to employment, including promotion, and to vocational training and as regards working conditions and, on the conditions referred to in Article 1(2), social security. Article 1(2) provides that, with a view to ensuring the progressive implementation of the principle of equal treatment in matters of social security, the Council, acting on a proposal from the Commission, will adopt provisions defining its substance, its scope and the arrangements for its application.

25 In this connection, it should be noted that the Court has interpreted that provision as meaning that Directive 76/207 was not intended to apply in social security matters (see the judgment in Case 192/85 *Newstead* v *Department of Transport* [1987] ECR 4753, paragraph 24).

26 Nevertheless, in view of the fundamental importance of the principle of equality of treatment, the Court has made it clear that that exception to the scope of the directive must be interpreted strictly (see the judgment in Case 152/84 *Marshall* v *Southampton and South-West Hampshire Area Health Authority* [1986] ECR 723, paragraph 36).

27 It follows that, because of the risk of detracting from the objective of Directive 76/207, a scheme of benefits cannot be excluded from the scope of the directive solely because, formally, it is part of a national social security system.

28 Nevertheless, such a scheme will fall within the scope of that directive only if its subject-matter is access to employment, including vocational training and promotion, or working conditions.

29 However, as has already been stated in answering the first question, national benefit schemes such as those at issue in the main proceedings are intended to provide income support for persons with insufficient means to meet their needs.

30 Consequently, the assertion that the method of calculating claimants' actual earnings, which are used as the basis for determining the amount of the benefits, might affect sole mothers' ability to take up access to vocational training or part-time employment, is not sufficient to bring such schemes within the scope of Directive 76/207.

31 Accordingly, the answer to the third question must be that Directive 76/207 is to be interpreted as not applying to a social security scheme, such as supplementary allowance or income support, simply because the conditions of entitlement for receipt of the benefits may be such as to affect the ability of a single parent to take up access to vocational training or part-time employment.

## Costs

32 The costs incurred by the United Kingdom and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the questions referred to it by the Court of Appeal of England and Wales by orders of 21 December 1990, hereby rules:

1. **Article 3(1) of Directive 79/7/EEC is to be interpreted as not applying to a benefit, such as supplementary allowance or income support, which may be granted in a variety of personal situations to persons whose means are insufficient to meet their needs as defined by statute; that answer does not depend on whether the claimant is suffering from one of the risks listed in Article 3 of the directive.**

2. **Directive 76/207 is to be interpreted as not applying to a social security scheme, such as supplementary allowance or income support, simply because the conditions of entitlement for receipt of the benefits may be such as to affect the ability of a single parent to take up access to vocational training or part-time employment.**

Due Joliet Schockweiler Mancini

Kakouris Rodríguez Iglesias Diez de Velasco Murray Edward

Delivered in open court in Luxembourg on 16 July 1992.

J.-G. Giraud
Registrar

O. Due
President