JUDGMENT OF THE COURT (Second Chamber)
13 December 2001 *

In Case C-206/00,

REFERENCE to the Court under Article 234 EC by the Tribunal administratif de Châlons-en-Champagne (France) for a preliminary ruling in the proceedings pending before that court between

Henri Mouflin

and

Recteur de l'académie de Reims,

intervener:

Syndicat général de l'Éducation nationale et de la Recherche publique CFDT de la Marne (SGEN CFDT 51),

on the interpretation of Article 119 of the EC Treaty (Articles 117 to 120 of the EC Treaty have been replaced by Articles 136 EC to 143 EC), and Council

* Language of the case: French.

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: N. Colneric, President of the Chamber, R. Schintgen and V. Skouris (Rapporteur), Judges,

Advocate General: S. Alber,
Registrar: R. Grass,

after considering the written observations submitted on behalf of:

— Mr Mouflin and the Syndicat général de l'Éducation nationale et de la Recherche publique CFDT de la Marne (SGEN CFDT 51), by H. Masse-Dessen, avocat,

— the French Government, by R. Abraham and A. Lercher, acting as Agents,

— the Commission of the European Communities, by H. Michard, acting as Agent,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 15 May 2001,

gives the following

Judgment

1 By judgment of 25 April 2000, received at the Court on 25 May 2000, the Tribunal administratif de Châlons-en-Champagne (Châlons-en-Champagne Administrative Court) referred to the Court for a preliminary ruling under Article 234 EC two questions on the interpretation of Article 119 of the EC Treaty (Articles 117 to 120 of the EC Treaty have been replaced by Articles 136 EC to 143 EC), and Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men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 the course of proceedings between Mr Mouflin, a school-teacher, who is supported by the Syndicat général de l'Éducation national et de la Recherche publique CFDT de la Marne ('the SGEN CFDT 51'), and the Rector of the Académie de Reims concerning the lawfulness of the order of 10 November 1998 by which the Inspecteur de l'Académie de la Marne annulled his earlier order of 20 October 1998 removing Mr Mouflin from the list of current employees for the purpose of being allowed to claim his entitlement to a retirement pension with immediate effect.

Legal background

Community law

3 The first and second paragraphs of Article 119 of the Treaty provide:

'Each Member State shall during the first stage ensure and subsequently maintain the application of the principle that men and women should receive equal pay for equal work.

For the purpose of this Article, "pay" means the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which the worker receives, directly or indirectly, in respect of his employment from his employer'.

4 Since 1 May 1999, Article 141(1) and (2) EC provide:

'1. Each Member State shall ensure that the principle of equal pay for male and female workers for equal work or work of equal value is applied.

2. For the purpose of this Article, "pay" means the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which the worker receives directly or indirectly, in respect of his employment, from his employer.'

5 The third indent of Article 3(1)(a) of Directive 79/7 provides that:

'This Directive shall apply to:

(a) statutory schemes which provide protection against the following risks:

...

— old age.'

6 Article 4 of that Directive provides:

'1. 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.

2. The principle of equal treatment shall be without prejudice to the provisions relating to the protection of women on the grounds of maternity.'

7 Article 7(1)(a) of the same Directive provides:

'1. This Directive shall be without prejudice to the right of Member States to exclude from its scope:

(a) the determination of pensionable age for the purposes of granting old-age and retirement pensions and the possible consequences thereof for other benefits'.

National law

8 The French retirement scheme for civil servants is laid down by the Code des pensions civiles et militaires de retraite (Civil and Military Retirement Pensions

Code, 'the Code'). The current Code results from Law No 64-1339 of 26 December 1964 (JORF of 30 December 1964) replacing the previous one annexed to Decree No 51-590 of 23 May 1951 and various subsequent amendments.

9 Article L. 1 of the Code provides:

'A pension is a personal monetary benefit for life granted to civil and military servants and, on their death, to their lawful heirs and successors, as remuneration for the services which they performed until their retirement from the service.

The amount of the pension, which takes account of the level, duration and nature of the services performed, guarantees to its recipient, at the end of his or her career, a standard of living commensurate with the dignity of his or her office'.

10 Article L. 24-I-3°(b) of the Code provides:

'The following shall be entitled to the civil pension immediately:

...

3° Female public servants:

...

(b) where it is proven in accordance with the procedure laid down by Article L. 31:

— that they suffer from a disability or incurable illness which makes it impossible for them to perform their former duties;

— or that their husband suffers from a disability or incurable illness which makes it impossible for him to undertake any form of employment'.

11 Article L. 31 of the Code defines the procedure for proving the disabilities relied on and the authority vested with decision-making power in the matter.

The facts in the main action and the questions referred for a preliminary ruling

12 Mr Mouflin, who was born in February 1944, is a school-teacher and civil servant in the Marne *département* (France).

13 He applied, on the basis of Article L. 24-I-3° of the Code, to be allowed to claim his retirement pension rights with immediate effect so as to be able to care for his wife who was suffering from an incurable illness.

14 Upon a favourable opinion from the competent reform commission, the Inspecteur d'Académie de la Marne, who is the departmental director of services for state education, instructed by order of 20 October 1998 that Mr Mouflin be removed from the list of employees.

15 On 10 November 1998, that order was annulled by a new one of the Inspecteur d'Académie, referring to a letter of 6 November 1998 from the Minister for Education, which stated that 'the right to retire to care for an invalid spouse is reserved exclusively to female civil servants'. Therefore Mr Mouflin was reinstated in his original post.

16 Mr Mouflin then challenged the order of 10 November 1998 before the Tribunal administratif de Châlons-en-Champagne.

17 After referring the file to the Conseil d'État (Council of State) for an opinion, which it received on 4 February 2000, the Tribunal administratif de Châlons-en-Champagne decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Do the pensions provided by the French retirement pension scheme for civil servants constitute pay within the meaning of Article 119 of the Treaty of

Rome (now Article 141 of the Treaty establishing the European Community)? If so, is the principle of equal pay breached by the provisions of Article L. 24-I-3° of the Civil and Military Retirement Pensions Code?

(2) If Article 119 of the Treaty of Rome is not applicable, do the provisions of Directive 79/7/EEC of 19 December 1978 prevent France from maintaining in force provisions such as Article L. 24-I-3° of the Civil and Military Retirement Pensions Code?'

The first question

18 As a preliminary point, it is clear from reading the order for reference as a whole that, by its first question, the referring court merely wished to seek an interpretation from the Court of Article 119 of the Treaty. Article 141 EC is merely referred to incidentally in the question after Article 119 to indicate the number of the provision that has replaced Article 119 of the Treaty following the entry into force of the Treaty of Amsterdam.

19 In those circumstances, only Article 119 of the Treaty need be considered in answering the first question.

The first part

20 By the first part of the first question the referring court asks essentially whether the pensions provided under a scheme such as the French retirement scheme for civil servants fall within the scope of Article 119 of the Treaty.

21 It will be remembered that the Court was asked an identical question in Case C-366/99 *Griesmar* (judgment of 29 November 2001, not yet published in the ECR).

22 In that case, the Court held that pensions provided under a scheme such as the French retirement scheme for civil servants fall within the scope of Article 119 of the Treaty.

23 Accordingly, the reply to the first part of the first question is that pensions provided under a scheme such as the French retirement scheme for civil servants fall within the scope of Article 119 of the Treaty.

The second part

24 By the second part of the first question, the referring court asks essentially whether the principle of equal pay is infringed by a provision of national law such as Article L. 24-I-3°(b) of the Code which, in providing that only female civil

servants whose husbands suffer from a disability or incurable illness making it impossible for them to undertake any form of employment are entitled to a retirement pension with immediate effect, deprives male civil servants in the same situation of that right.

25 Mr Mouflin and the SGEN CFDT 51 claim that, in according female civil servants the advantage of being able to receive their retirement pension sooner than male civil servants in the same circumstances, Article L. 24-I-3° of the Code infringes Article 119 of the Treaty.

26 The Commission concurs with them.

27 The French Government has indicated that a ministerial directive is being prepared which will enable the competent authorities to apply Article L.24-I-3° without regard to the sex of the civil servant. As to the reply to be given to the second part of the first question, the Government relies on the wisdom of the Court.

28 The principle of equal pay enshrined in Article 119 of the Treaty, like the general principle of non-discrimination of which it is a particular expression, presupposes that male and female workers whom it covers are in comparable situations (see Case C-218/98 *Abdoulaye and Others* [1999] ECR I-5723, paragraph 16).

29 As for the entitlement to a retirement pension with immediate effect provided for by Article L.24-I-3° of the Code, male and female civil servants are in comparable

situations. There is nothing to distinguish the situation of a male civil servant whose wife suffers from a disability or incurable illness making it impossible for her to undertake any form of employment from that of a female civil servant whose husband suffers from such a disability or disease.

30 Article L.24-I-3° of the Code does not entitle a male civil servant whose wife is disabled to receive a retirement pension with immediate effect. It therefore discriminates against male civil servants in the same situation on grounds of sex.

31 In the light of the foregoing, the reply to the second question is that the principle of equal pay for men and women enshrined in Article 119 of the Treaty is infringed by a provision of national law such as Article L.24-I-3°(b) of the Code which, in providing that only female civil servants whose husbands suffer from a disability or incurable illness making it impossible for them to undertake any form of employment are entitled to a retirement pension with immediate effect, deprives male civil servants in the same situation of that right.

The second question

32 The second question is posed in the event that Article 119 of the Treaty is not applicable to pensions provided under a scheme such as the French retirement scheme for civil servants. It follows from the answer to the first part of the first question that pensions provided under such a scheme do fall within the scope of that provision of the Treaty.

33 It is for that reason unnecessary to reply to the second question.

Costs

34 The costs incurred by the French Government and by the Commission, 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 (Second Chamber),

in answer to the questions referred to it by the Tribunal administratif de Châlons-en-Champagne by order of 25 April 2000, hereby rules:

Pensions provided under a scheme such as the French retirement scheme for civil servants fall within the scope of Article 119 of the EC Treaty (Articles 117 to 120 of the EC Treaty have been replaced by Articles 136 EC to 143 EC).

The principle of equal pay for men and women enshrined in Article 119 of the Treaty is infringed by a provision of national law such as Article L.24-I-3°(b) of the Civil and Military Retirment Pensions Code which, in providing that only female civil servants whose husbands suffer from a disability or incurable illness making it impossible for them to undertake any form of employment are entitled to a retirement pension with immediate effect, deprives male civil servants in the same situation of that right.

Colneric Schintgen Skouris

Delivered in open court in Luxembourg on 13 December 2001.

R. Grass

Registrar

N. Colneric

President of the Second Chamber