JUDGMENT OF THE COURT (Sixth Chamber)

10 February 2000 *

In Joined Cases C-270/97 and C-271/97,

REFERENCES to the Court under Article 177 of the EC Treaty (now Article 234 EC) by the Landesarbeitsgericht Niedersachsen, Germany, for a preliminary ruling in the proceedings pending before that court between

Deutsche Post AG

and

Elisabeth Sievers (C-270/97),

Brunhilde Schrage (C-271/97)

on the interpretation of Article 119 of the EC Treaty (Articles 117 to 120 of the EC Treaty have been replaced by Articles 136 EC to 143 EC) and of the Protocol concerning Article 119 of the Treaty establishing the European Community, annexed to the EC Treaty,

* Language of the case: German.

THE COURT (Sixth Chamber),

composed of: R. Schintgen (Rapporteur), President of the Second Chamber, acting for the President of the Sixth Chamber, G. Hirsch and H. Ragnemalm, Judges,

Advocate General: G. Cosmas,
Registrar: H.A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of:

— Deutsche Post AG, par M. Karoff, Rechtsanwalt, Hanover,

— the Commission of the European Communities, by P. Hillenkamp and M. Wolfcarius, of its Legal Service, acting as Agents, assisted by K. Bertelsmann, Rechtsanwalt, Hamburg,

having regard to the Report for the Hearing,

after hearing the oral observations of Deutsche Post AG, represented by J. Peter, Rechtsanwalt, Bonn, E. Sievers and B. Schrage, represented by K. Lörcher, Gewerkschaftssekretär at the Deutsche Postgewerkschaft, and the Commission, represented by M. Wolfcarius, assisted by K. Bertelsmann, at the hearing on 1 July 1998,

after hearing the Opinion of the Advocate General at the sitting on 8 October 1998,

gives the following

Judgment

1 By two orders of 8 November 1996, received at the Court on 24 July 1997, the Landesarbeitsgericht (Regional Labour Court) Niedersachsen referred to the Court for a preliminary ruling under Article 177 of the EC Treaty (now 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234 EC) two questions on the interpretation of Article 119 of the EC Treaty (Articles 117 to 120 of the EC Treaty have been replaced by Articles 136 EC to 143 EC) and of the Protocol concerning Article 119 of the Treaty establishing the European Community (hereinafter 'the Protocol'), annexed to the EC Treaty.

2 Those questions were raised in two sets of proceedings between Deutsche Post AG (hereinafter 'Deutsche Post'), formerly Deutsche Bundespost, and E. Sievers (C-270/97) and B. Schrage (C-271/97) concerning the conditions for membership of a supplementary occupational retirement pension scheme and the grant of a pension under it.

The national legislative background

3 Article 3(1) to (3) of the Grundgesetz für die Bundesrepublik Deutschland (Basic Law for the Federal Republic of Germany, hereinafter 'the GG') provides:

'1. All persons shall be equal before the law.

2. Men and women shall have equal rights. The State shall encourage effective attainment of equal rights for men and women and shall take action to remove existing disadvantages.

3. No one may be prejudiced or favoured because of his sex, his parentage, his race, his language, his homeland and origin, his faith, or his religious or political opinions. No one may be prejudiced by reason of being handicapped.'

4 Article 1 of the Gesetz über die Gleichbehandlung von Männern und Frauen am Arbeitsplatz (Law of 1980 on equal treatment for men and women in the workplace) inserted in Article 612 of the Bürgerliches Gesetzbuch (German Civil Code) a new paragraph 3, worded as follows:

'In an employment relationship, it may not be stipulated that, for the same work or work of the same value, the remuneration of an employee is, by reason of the

sex of that employee, to be lower than that paid to an employee of the opposite sex. A lower level of pay may not be agreed on the basis that, because of the employee's sex, special rules of protection are applicable ...'

5 In 1985, the Gesetz über arbeitsrechtliche Vorschriften zur Beschäftigungsförderung (Law laying down provisions of employment law designed to promote employment, hereinafter 'the BeschFG'), Articles 2 to 6 of which govern part-time work, was enacted. Article 2(1) prohibits an employer from treating a part-time worker differently from full-time workers, unless there is objective justification for a difference of treatment. Article 6 provides, however, that exceptions may be made to the provisions of the section in which that article appears, even to the detriment of the employee, by means of a collective agreement.

6 Under Article 24 of the Tarifvertrag für Arbeiter der Deutschen Bundespost (Collective agreement for German Post Office workers), workers must be affiliated to the Versorgungsanstalt der Deutschen Bundespost (German Post Office Pensions Institution, 'the VAP') under the conditions laid down in the current version of the Tarifvertrag über die Versorgung der Arbeitnehmer der Deutschen Bundespost (Collective Agreement concerning Pensions for Employees of the German Post Office, hereinafter 'the collective pensions agreement').

7 Until 31 December 1987, Article 3 of the collective pensions agreement provided:

'An employee shall be insured with the VAP as provided for in its statute and implementing provisions where ... his average weekly working hours under his

contract of employment are equivalent to at least half of the weekly hours required ... to be regularly worked by a corresponding full-time employee ...'

8 That article was amended as follows with effect from 1 January 1988:

'An employee shall be insured with the VAP as provided for in its statute and implementing provisions where ... his average weekly working hours under his contract of employment are not less than 18 hours.'

9 By a collective agreement of 22 September 1992, Article 3 of the collective pensions agreement was again amended with retroactive effect from 21 April 1991 and now has the following wording:

'An employee shall be insured with the VAP as provided for in its statute and implementing provisions where ... he is employed in an activity which is not simply negligible within the meaning of Article 8(1) of Book IV of the Sozialgesetzbuch [Social Security Code].'

The disputes in the main proceedings

10 Mrs Sievers was employed on a part-time basis by Deutsche Bundespost from 16 September 1964 to 28 February 1988, on which date she retired. Since 1 March 1988 she has received an old-age pension under the statutory scheme.

Because of her working hours, which were always less than 18 hours a week, except for a period from 1963 to 1964 when she worked 18 hours a week, Mrs Sievers was never affiliated to the VAP.

11 Mrs Schrage was employed on a part-time basis by Deutsche Bundespost, first under fixed-term contracts, between which there were periods of non-employment, from 1 April 1960 to 30 September 1980, and then continuously from 1 October 1981 to 31 March 1983, on which date she retired. Since 1 April 1993, she has received an old-age pension under the statutory scheme. Because of her working hours, which were always between 8 and 13 hours a week, Mrs Schrage was never affiliated to the VAP.

12 Mrs Sievers instituted proceedings before the Arbeitsgericht (Labour Court) Hannover seeking an order that Deutsche Post pay her, as from her retirement, a supplementary retirement pension of an amount equivalent to that which she would have received if she had been affiliated to the VAP throughout the period of her employment relationship. Mrs Schrage also instituted proceedings against Deutsche Post before the same court for the same purpose.

13 Both claimed that the exclusion of part-time workers who worked less than 20, and then 18, hours a week from entitlement to a supplementary pension constituted discrimination prohibited by Article 119 of the Treaty, by Article 3 of the GG and by Article 2(1) of the BeschFG.

14 Deutsche Post contended that their claims should be dismissed on the ground that the difference of treatment was justified for objective reasons, that the expense of retroactively extending the scheme to all part-time workers would jeopardise the economic survival of Deutsche Post and that, having regard to the case-law of the Court of Justice on Article 119 of the Treaty, the rights claimed by the plaintiffs had not become vested rights in respect of periods of work prior to 17 May 1990, the date of the judgment in Case C-262/88 *Barber* v *Guardian Royal Exchange* [1990] ECR I-1889.

15 By judgments of 3 February 1994, the Arbeitsgericht essentially upheld the claims of Mrs Sievers and Mrs Schrage, at the same time determining more precisely the periods of employment to be taken into account in Mrs Schrage's case.

16 Deutsche Post appealed against those judgments to the Landesarbeitsgericht Niedersachsen, contending in particular that the limitation of retroactivity in the *Barber* judgment applies to all cases of unequal treatment regarding pay under an occupational old-age pension scheme and that the case-law of the Court of Justice and the Protocol take precedence over Article 3 of the GG.

17 Mrs Sievers and Mrs Schrage argued in reply that the limitation in time of the effects of Article 119 resulting from the *Barber* judgment cannot be transposed to these cases. That judgment gives no guidance as to whether, in the Federal Republic of Germany, where a constitutional principle of equal treatment applies by virtue of Article 3 of the GG, rules may lawfully be applied to part-time workers which differ from those applied to full-time workers.

The questions referred to the Court

18 The Landesarbeitsgericht considered that, under the case-law of the Bundesarbeitsgericht (Federal Labour Court), Deutsche Post's appeal was unfounded and that Mrs Sievers and Mrs Schrage were entitled to the pensions which they claimed. It observed, however, that under the case-law of the Court (*Barber*, cited above, Case C-109/91 *Ten Oever* [1993] ECR I-4879 and Case C-128/93 *Fisscher* [1994] ECR I-4583), the direct effect of Article 119 of the Treaty could in principle be relied on to claim equal treatment for men and women in relation

to occupational pensions only for periods of employment subsequent to 17 May 1990. Moreover, it was clear from the Protocol that benefits under occupational social security schemes were not to be considered as remuneration if and in so far as they were attributable to periods of employment prior to 17 May 1990.

19 In its view, claims for equal treatment regarding occupational pensions were frequently equally capable of being based either on Article 119 of the Treaty, subject to the proviso that benefits could not be claimed in respect of periods of employment prior to 17 May 1990, or on provisions of national law, be they the employment law principle of equal treatment, the provisions of Article 2(1) of the BeschFG or those of Article 3 of the GG.

20 The Landesarbeitsgericht considered that, in such a situation of concurrence of rights, Community law had to prevail, so that the prohibition of taking into account periods of employment prior to 17 May 1990, the effect of which was to limit benefits, also had to apply to provisions of national law. The question of the primacy of Community law, because of its direct effect, arose in view of the conflict between national law and Community law. The conflict was clear if it was considered that, in addition to pursuing a social purpose, Article 119 of the Treaty — and, above all, historically — also pursues an economic objective, namely that of ensuring equality of opportunity in terms of competition. That objective would be frustrated if national law were allowed to disregard the limited retroactivity of Article 119 of the Treaty.

21 In those circumstances, the Landesarbeitsgericht Niedersachsen decided to stay the proceedings and to make a reference for a preliminary ruling to the Court of Justice on, in each of the cases before it, the following questions:

'1. (a) Does Community law require precedence of application or validity (under the second paragraph of Article 5 and Article 189 of the EC Treaty) over national provisions of the Member States which could or would be

applicable, by way of concurrence of claims, to the same factual situation and with the same aim of supporting claims to equal treatment in occupational pension schemes, like, for example, in Germany the employment law principle of equal treatment generally or, specifically, Article 2(1) of the Beschäftigungsförderungsgesetz (Employment Promotion Law) 1985?

(b) In the case of such a conflict, where Community law confers benefits under occupational pension schemes only if and in so far as they are attributable to periods of employment subsequent to 17 May 1990, whereas the national provisions regulate the same factual situation differently in that they do not exclude retroactive effect, does the precedence of Community law apply generally?

(c) Does such precedence exist only if the economic objective of Article 119 of the EC Treaty that co-exists with the social objective, namely the creation of equal competitive opportunities, is specifically affected?

2. Does at least the Community law principle that national law is to be interpreted in a manner consistent with EC law require national provisions on equal treatment in the matter of benefits paid under occupational pension schemes to be interpreted and applied in accordance with the requirements and limitations (prohibition of retroactive effect) of Community law?'

22 By order of the President of the Court of 20 October 1997 the two cases were joined for the purposes of the written and oral procedure and the judgment.

The request that the oral procedure be re-opened

23 By letter dated 5 November 1998 Deutsche Post asked for the oral procedure to be re-opened. It stated, first, that as a result of a combination of circumstances, its representative and its lawyer, who had attended the Court to hear the Opinion delivered, had not located the courtroom in which the sitting was being held until after the Opinion had been read. Consequently, the parties and the public had not been given an opportunity to attend the sitting, in breach of Article 28 of the EC Statute of the Court of Justice.

24 It also contended that the Opinion of the Advocate General had not been delivered in the prescribed manner since the operative part thereof had been read at a sitting of the Fifth Chamber, not of the Sixth Chamber, which is to give judgment in this case.

25 Finally, it applied, in relation to its request that the procedure be re-opened, for leave to submit observations on certain points of the Advocate General's Opinion.

26 By letter of 11 November 1998, Deutsche Post also endorsed the observations submitted by Deutsche Telekom in Case C-50/96 *Schröder* and in Joined Cases C-234/96 and C-235/96 *Vick and Conze* to the effect that the refusal to accept that, after delivery of the Opinion of the Advocate General, which, under Article 59(2) of the Rules of Procedure of the Court, brings the oral procedure to a close, the oral procedure may exceptionally be re-opened to allow the parties to

draw attention to any manifest errors or omissions in the account of the facts or the findings of law, or indeed to reply to the Advocate General's Opinion, might amount to an infringement of the right to a fair hearing within the meaning of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 ('the EHRC').

27 It must be held, first, that the manner in which the Opinion was delivered in this case involved no infringement of rules applicable to the Court or any infringement of rights enjoyed by the parties in the main proceedings.

28 The Judges of the Sixth Chamber hearing this case were apprised of the Opinion of the Advocate General through the deposit thereof at the Registry of the Court and that Opinion was made public *inter alia* by the reading of the operative part thereof at a public sitting and the deposit thereof at the Registry.

29 The fact that a party's representative and lawyer were unable to find in good time the courtroom where the Advocate General's Opinion was delivered is not relevant in this regard.

30 Also, it is clear from the order of the Court of 4 February 2000 in Case C-17/98 *Emesa Sugar* v *Aruba* [2000] ECR I-665, paragraph 18) that it is precisely in deference to Article 6 of the EHRC and to the very purpose of every individual's right to adversarial proceedings and to a fair hearing within the meaning of that provision that the Court may of its own motion, on a proposal from the Advocate General or at the request of the parties, order that the oral procedure be re-opened, in accordance with Article 61 of its Rules of Procedure, if it considers that it lacks sufficient information, or that the case must be dealt with on the basis of an argument which has not been debated between the parties.

31 However, in this case, the Court, after hearing the views of the Advocate General, considers that Deutsche Post's application contains nothing to indicate that it would be useful or necessary to re-open the oral procedure.

32 Deutsche Post's request must therefore be rejected.

The first question

33 By its first question, taken altogether, the national court is seeking to ascertain essentially whether the limitation in time of the possibility of relying on the direct effect of Article 119 of the Treaty precludes national provisions which lay down a principle of equal treatment by virtue of which, in circumstances like those of the main proceedings, all part-time workers are entitled to retroactive membership of an occupational pension scheme and to receive a pension under that scheme. Second, the national court asks essentially whether Article 119 of the Treaty precludes provisions of a Member State which lay down a principle of equal treatment by virtue of which, in circumstances like those of the main proceedings, all part-time workers are entitled to retroactive membership of an occupational pension scheme and to receive a pension under that scheme, in view of the risk of distortions of competition between economic operators of the various Member States to the detriment of employers established in the first Member State. If the first or the second part of the question is answered in the affirmative, the national court asks, thirdly, whether the national court responsible for applying the provisions of Community law, within the limits of its jurisdiction, is under an obligation to ensure that those provisions are given full effect, if need be by declining to apply any contrary provision of national law.

The first part of the question

34 First, it must be borne in mind that, according to settled case-law, a pension scheme of the type at issue in the main proceedings, which essentially relates to the employment of the person concerned, forms part of the pay received by that person and comes within the scope of Article 119 of the Treaty (to that effect, see Case 170/84 *Bilka* v *Weber von Hartz* [1986] ECR 1607, paragraph 22, *Barber*, cited above, paragraph 28, and Case C-7/93 *Beune* [1994] ECR I-4471, paragraph 46). Accordingly, the exclusion of part-time workers from such a pension scheme may be found to be contrary to Article 119 (to that effect, see *Bilka*, cited above, paragraph 29).

35 As regards the limitation in time of the effects of Article 119 of the Treaty, it should be recalled, first, that, in Case 43/75 *Defrenne* v *Sabena* [1976] ECR 455 ('*Defrenne* II'), paragraph 40, the Court held that the principle of equal pay contained in Article 119 of the Treaty may be relied upon before the national courts and that those courts have a duty to ensure protection of the rights which that provision vests in individuals. However, in paragraphs 74 and 75 of the same judgment, the Court made it clear that, by virtue of overriding considerations of legal certainty affecting all the interests involved, both public and private, the direct effect of Article 119 could not be relied on in order to support claims relating to pay periods prior to the date of that judgment, namely 8 April 1976, except as regards those workers who had already brought legal proceedings or made an equivalent claim.

36 Second, as far as occupational pension schemes are concerned, the Court held in paragraphs 44 and 45 of *Barber*, cited above, that by reason of overriding considerations of legal certainty, the direct effect of Article 119 of the Treaty could not be relied upon in order to claim entitlement to a pension with effect from a date prior to that of that judgment, namely 17 May 1990, except in the case of claimants who had before that date initiated legal proceedings or raised an equivalent claim.

37 As the Court made clear in paragraph 20 of the judgment in *Ten Oever*, cited above, by virtue of the judgment in *Barber*, cited above, the direct effect of Article 119 of the Treaty may be relied upon, for the purpose of claiming equal treatment in the matter of occupational pensions, only in relation to benefits payable in respect of periods of employment subsequent to 17 May 1990, subject to the exception in favour of workers or those claiming under them who had, before that date, initiated legal proceedings or raised an equivalent claim under the applicable national law.

38 That limitation is also embodied in the Protocol, pursuant to which, for the purposes of Article 119, benefits under occupational social security schemes are not to be considered as remuneration if and in so far as they are attributable to periods of employment prior to 17 May 1990, except in the case of workers or those claiming under them who have before that date initiated legal proceedings or introduced an equivalent claim under the applicable national law.

39 It is clear, however, from the judgments in Case C-57/93 *Vroege* [1994] ECR I-4541, paragraphs 20 to 27, *Fisscher*, cited above, paragraphs 17 to 24, and Case C-246/96 *Magorrian and Cunningham* v *EHSSB and DHSS* [1997] ECR I-7153, paragraphs 27 to 35, that the limitation in time of the effects of Article 119 resulting from both the *Barber* judgment and the Protocol concerns only those kinds of discrimination which employers and pension schemes could reasonably have considered to be permissible owing to the transitional derogations for which Community law provided and which were capable of being applied to occupational pensions (see Case C-435/93 *Dietz* v *Stichting Thuiszorg Rotterdam* [1996] ECR I-5223, paragraph 19).

40 As far as the right to join an occupational scheme is concerned, the Court has stated that there was no reason to suppose that those concerned could have been mistaken as to the applicability of Article 119 (*Magorrian and Cunningham*, cited above, paragraph 28).

41 In fact, it has been clear since the judgment in *Bilka* that any discrimination, based on sex, in the recognition of that right infringes Article 119 of the Treaty (*Vroege*, paragraph 29, *Fisscher*, paragraph 26, *Dietz*, paragraph 20, and *Magorrian and Cunningham*, paragraph 29).

42 Therefore, as the judgment in *Bilka* included no limitation of its effects in time, the direct effect of Article 119 may be relied on as from 8 April 1976, the date of the judgment in *Defrenne II*, in which that article was first held to have direct effect, in order retroactively to claim equal treatment in relation to the right to join an occupational pension scheme (*Dietz*, paragraph 21, and *Magorrian and Cunningham*, paragraph 30).

43 It must also be borne in mind that, at paragraph 23 of its judgment in *Dietz* and at paragraph 33 of its judgment in *Magorrian and Cunningham*, the Court has already stated that membership of an occupational pension scheme would be of no interest to employees if it did not confer entitlement to the benefits provided by the scheme in question. Accordingly, the Court took the view that entitlement to a retirement pension under an occupational scheme was indissolubly linked to the right to join such a scheme. It added, however, that the fact that a worker can claim retroactive membership of an occupational pension scheme does not enable him to avoid paying contributions for the period of membership concerned (*Fisscher*, paragraph 37, and *Dietz*, paragraph 34).

44 It is clear from the foregoing that the only limitation in time on the possibility of relying on the direct effect of Article 119 of the Treaty in relation to membership of an occupational pension scheme of the kind at issue in the main proceedings and the subsequent payment of a pension is that resulting from *Defrenne II*.

45 As to whether Community law precludes the taking into account, under national provisions, of periods of service prior to 8 April 1976, the date of the judgment in

Defrenne II, it is appropriate to recall, first, that, according to settled case-law (see, in particular, Case 61/79 *Denkavit Italiana* v *Amministrazione delle Finanze dello Stato* [1980] ECR 1205, paragraphs 16 and 17, and Joined Cases 66/79, 127/79 and 128/79 *Salumi* v *Amministrazione delle Finanze* [1980] ECR 1237, paragraphs 9 and 10), the interpretation which, in the exercise of the jurisdiction conferred on it by Article 177 of the Treaty, the Court of Justice gives to a rule of Community law clarifies and defines where necessary the meaning and scope of that rule as it must be or ought to have been understood and applied from the time of its coming into force. As the Court recognised in *Defrenne II*, it is only exceptionally that the Court may, in application of the general principle of legal certainty inherent in the Community legal order and in taking account of the serious effects which its judgment might have, as regards the past, on legal relationships established in good faith, be moved to restrict for any person concerned the opportunity of relying upon the provision as thus interpreted with a view to calling in question those legal relationships.

46 Also, the Court indicated in paragraph 65 of *Defrenne II* that the application of Article 119 was to have been fully secured by the original Member States, including the Federal Republic of Germany, as from 1 January 1962, the beginning of the second stage of the transitional period. It is also clear from paragraph 68 of the same judgment that, even in the areas in which Article 119 has no direct effect, its implementation may if need be derive from a combination of Community and national measures.

47 Finally, when deciding, in *Defrenne II*, to limit in time the possibility of relying on the direct effect of Article 119 of the Treaty, the Court considered that, in the light of the conduct of several of the Member States and the views adopted by the Commission and repeatedly brought to the notice of the circles concerned, it was appropriate to take exceptionally into account the fact that, over a prolonged period, the parties concerned had been led to continue with practices which were contrary to Article 119 of the Treaty, although not yet prohibited under their national law (*Defrenne II*, paragraph 72).

48 It follows that the limitation of the possibility of relying on the direct effect of Article 119 of the Treaty was not intended in any way to deprive the workers concerned of the opportunity of relying on national provisions laying down a principle of equal treatment.

49 National provisions having the effect of ensuring application of the principle of equal pay for male and female workers contribute to the implementation of Article 119 of the Treaty, in compliance with the obligation which has been incumbent on the original Member States since 1 January 1962.

50 In such circumstances, the principle of legal certainty inherent in the Community legal order, which may move the Court, exceptionally, to limit the possibility of relying on a provision which it has interpreted, does not fall to be applied and does not preclude the application of national provisions which ensure a result which conforms with Community law.

51 It is immaterial, in that regard, that the national provisions at issue were not interpreted in a manner consonant with Article 119 of the Treaty until after the date of the judgment in *Defrenne II*, since that interpretation is capable of being applied, if necessary, to situations which arose and became established before that date. It is not for the Court to pronounce as to the application in time of rules of national law.

52 The answer to the first part of the first question must therefore be that the limitation in time of the possibility of relying on the direct effect of Article 119 of the Treaty, resulting from the judgment in *Defrenne II*, does not preclude national provisions which lay down a principle of equal treatment by virtue of which, in circumstances like those of the main proceedings, all part-time workers are entitled to retroactive membership of an occupational pension scheme and to receive a pension under that scheme.

The second part of the question

53 As the national court rightly observes, the Court took the view, in paragraphs 8 to 11 of *Defrenne II*, that Article 119 of the Treaty pursues a twofold purpose, both economic and social.

54 First, in view of the different stages of development of social legislation in the various Member States, the aim of Article 119 is to avoid a situation in which undertakings established in States which have actually implemented the principle of equal pay suffer a competitive disadvantage in intra-Community competition as compared with undertakings established in States which have not yet eliminated discrimination against women workers as regards pay (*Defrenne II*, paragraph 9).

55 Second, the Court has stressed that Article 119 forms part of the social objectives of the Community, which is not merely an economic union but is at the same time intended, by common action, to ensure social progress and seek constant improvement of the living and working conditions of the peoples of Europe, as is emphasised in the Preamble to the Treaty. That aim is accentuated by the insertion of Article 119 into the body of a chapter devoted to social policy whose preliminary provision, Article 117 of the EC Treaty (Articles 117 to 120 of the EC Treaty have been replaced by Articles 136 EC to 143 EC), marks the need to promote improved working conditions and an improved standard of living for workers, so as to make possible their harmonisation while the improvement is being maintained (*Defrenne II*, paragraphs 10 and 11).

56 However, in later decisions the Court has repeatedly held that the right not to be discriminated against on grounds of sex is one of the fundamental human rights whose observance the Court has a duty to ensure (see, to that effect, Case 149/77 *Defrenne III* [1978] ECR 1365, paragraphs 26 and 27, Joined Cases 75/82 and 117/82 *Razzouk and Beydoun* v *Commission* [1984] ECR 1509, paragraph 16, and Case C-13/94 *P.* v *S. and Cornwall County Council* [1996] ECR I-2143, paragraph 19).

57 In view of that case-law, it must be concluded that the economic aim pursued by Article 119 of the Treaty, namely the elimination of distortions of competition between undertakings established in different Member States, is secondary to the social aim pursued by the same provision, which constitutes the expression of a fundamental human right.

58 In those circumstances, the fact that, prior to *Defrenne II*, the principle of equal pay for men and women could not be relied on against employers established in Member States other than the Federal Republic of Germany, either under national legislation or by virtue of the direct effect of Article 119 of the Treaty, does not affect the application of national rules ensuring observance of that principle in the Federal Republic of Germany.

59 The answer to the second part of the first question must therefore be that Article 119 of the Treaty does not preclude provisions of a Member State which lay down a principle of equal treatment by virtue of which, in circumstances like those of the main proceedings, all part-time workers are entitled to retroactive membership of an occupational pension scheme and to receive a pension under that scheme, notwithstanding the risk of distortions of competition between economic operators of the various Member States to the detriment of employers established in the first Member State.

The third part of the question

60 In view of the answers given to the first and second parts of the first question, it is unnecessary to answer the third part.

The second question

61 By its second question the national court is essentially asking whether it is required to interpret its national law in the light of the wording and purpose of the relevant Community provisions, in particular Article 119 of the Treaty.

62 According to settled case-law, national courts are required to interpret their national law as far as possible in the light of the wording and purpose of the relevant Community provisions, in particular Article 119 of the Treaty, in order to achieve the result pursued by them (see to that effect, in particular, Case 157/86 *Murphy* v *Bord Telecom Eireann* [1988] ECR 673, paragraph 11, and Case C-106/89 *Marleasing* [1990] ECR I-4135, paragraph 8).

63 It is clear from the answers given to the first question that Community law, in particular Article 119 of the Treaty, seeks to implement the principle of equal pay for men and women and does not preclude national provisions which are conducive to compliance with that principle.

64 The answer to the second question must therefore be that national courts are required to interpret their national law as far as possible in the light of the wording and purpose of the relevant Community provisions, in particular Article 119 of the Treaty, in order to ensure application of the principle of equal pay for men and women.

Costs

65 The costs incurred by the Commission, which has 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 (Sixth Chamber),

in answer to the questions referred to it by the Landesarbeitsgericht Niedersachsen by two orders of 8 November 1996, hereby rules:

1. **The limitation in time of the possibility of relying on the direct effect 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), resulting from the judgment in Case 43/75 *Defrenne* v *Sabena* [1976] ECR 455, does not preclude national provisions which lay down a principle of equal treatment by virtue of which, in circumstances like those of the main proceedings, all part-time workers are entitled to retroactive membership of an occupational pension scheme and to receive a pension under that scheme.**

2. Article 119 of the Treaty does not preclude provisions of a Member State which lay down a principle of equal treatment by virtue of which, in circumstances like those of the main proceedings, all part-time workers are entitled to retroactive membership of a private occupational pension scheme and to receive a pension under that scheme, notwithstanding the risk of distortions of competition between economic operators of the various Member States to the detriment of employers established in the first Member State.

3. National courts are required to interpret their national law as far as possible in the light of the wording and purpose of the relevant Community provisions, in particular Article 119 of the Treaty, in order to ensure application of the principle of equal pay for men and women.

Schintgen Hirsch Ragnemalm

Delivered in open court in Luxembourg on 10 February 2000.

R. Grass

Registrar

J.C. Moitinho de Almeida

President of the Sixth Chamber