JUDGMENT OF THE COURT
25 July 1991 *

In Case C-208/90,

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

Theresa Emmott

and

Minister for Social Welfare and the Attorney General

on the interrelationship between time-limits for initiating proceedings before national courts and the direct effect of Article 4(1) 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 (Official Journal 1979 L 6, p. 24),

THE COURT,

composed of: O. Due, President, T. F. O'Higgins, G. C. Rodríguez Iglesias, M. Díez de Velasco (Presidents of Chamber), Sir Gordon Slynn, C. N. Kakouris, R. Joliet, F. A. Schockweiler and P. J. G. Kapteyn, Judges,

Advocate General: J. Mischo,
Registrar: H. A. Rühl, Principal Administrator,

* Language of the case: English.

having regard to the written observations submitted on behalf of:

Theresa Emmott, by Mary Robinson, Senior Counsel, and Gerard Durcan, Barrister-at-Law, instructed by Gallagher Shatter, Solicitors,

Ireland and the respondents in the main proceedings, by Louis J. Dockery, Chief State Solicitor, acting as Agent, assisted by David Byrne, Senior Counsel, and Aindrias O'Caoimh, Barrister-at-Law,

the Netherlands Government, represented by B. R. Bot, Secretary General for Foreign Affairs, acting as Agent,

the United Kingdom, by Hussein A. Kaya, of the Treasury Solicitor's Department, acting as Agent,

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

having regard to the Report for the Hearing,

after hearing oral argument from Theresa Emmott, represented by Mary Finlay, Senior Counsel, from Ireland, from the United Kingdom, represented by Christopher Vajda, Barrister, and from the Commission at the hearing on 20 February 1991,

after hearing the Opinion of the Advocate General at the sitting on 23 April 1991,

gives the following

Judgment

1 By order of 22 June 1990, which was received at the Court on 12 July 1990, the High Court of Ireland referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question designed to ascertain in substance whether a Member State which has not correctly transposed Council Directive 79/7 of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security (Official Journal 1979 L 6, p. 24, hereinafter referred to as 'the Directive') may, on the ground that the relevant time-limit laid down in national law for instituting proceedings has expired, preclude an individual from initiating proceedings for the purpose of securing entitlements which he or she derives from provisions of the Directive which are sufficiently precise and unconditional to be relied upon before the national courts.

2 That question was raised in proceedings between Mrs Theresa Emmott and the Minister for Social Welfare and the Attorney General of Ireland concerning additional social security benefits which Mrs Emmott claimed on the basis of Article 4(1) of the Directive.

3 That provision prohibits all discrimination whatsoever on ground of sex, in particular as regards the calculation of benefits including increases due in respect of a spouse and for dependants. Article 5 provides that Member States are to take the measures necessary to ensure that any laws, regulations and administrative provisions contrary to the principle of equal treatment are abolished. Article 8 required the Member States to bring into force the laws, regulations and administrative provisions necessary to comply with the Directive within six years of its notification, that is to say by 23 December 1984.

4 The Directive was transposed into Irish law by the Social Welfare (No 2) Act of 16 July 1985 the provisions of which did not enter into force, however, until various dates in 1986. That Act, which was not made retroactive to 23 December 1984, laid down uniform rates of benefit for men and women and made entitlement to increases for adult and child dependants subject to the same conditions.

5 On 12 December 1986, however, the Minister for Social Welfare adopted the Social Welfare (Preservation of Rights) (No 2) Regulations 1986 (Statutory Instrument No 422 of 1986). The effect of those regulations was to reserve, on a transitional basis, the award of periodic compensatory payments to married men who, following the entry into force of the Act of 16 July 1985, lost their entitlement to automatic increases in social security benefits for adult dependants. Those transitional provisions were repeatedly extended, in any case up to 2 January 1989.

6 In a previous case brought by two married women seeking to obtain from the same defendants the payment of social security benefits equal to those paid to married men in an identical family situation, the Court of Justice, from which the High Court of Ireland had requested a preliminary ruling, held that Article 4(1) of the Directive could be relied on as from 23 December 1984 in order to preclude the application of any national provision inconsistent therewith and that, in the absence of measures implementing that provision, women were entitled to have the same rules applied to them as were applied to men who were in the same situation (see judgment in Case 286/85 *Norah McDermott and Ann Cotter* v *Minister for Social Welfare and Attorney General* [1987] ECR 1453).

7 By judgment delivered on 13 March 1991 in Case C-377/89 (*Ann Cotter and Norah McDermott* v *Minister for Social Welfare and Attorney General*, not yet published in the Reports of Cases before the Court), on a preliminary reference from the Supreme Court of Ireland, which was confronted with new claims by the same applicants, the Court of Justice ruled that Article 4(1) of the Directive had to be interpreted as meaning that married women were entitled to the same increases in benefits and compensatory payments as those awarded to married men in family situations identical to theirs even if this were to result in double payments or infringe the prohibition of unjust enrichment laid down by Irish law.

8 In paragraph 24 of the aforesaid judgment in Case C-377/89 the Court stated that the Directive did not provide for any derogation from the principle of equal treatment laid down in Article 4(1) so as to authorize the continuation of the discriminatory effects of earlier provisions of national law. Accordingly a Member State could not maintain, beyond 23 December 1984, any inequalities of treatment attributable to the fact that the conditions for entitlement to compensatory payments were those which applied before that date. That was so notwithstanding the fact that those inequalities were the result of transitional provisions.

9 Mrs Emmott is married and has two dependant children. As from 2 December 1983 she received a disability benefit under the Irish social security legislation. Until 18 May 1986 she received that benefit only at the reduced rate applicable, at that time, to all married women. Following amendments to the Irish legislation, her benefit was adjusted three times. From 19 May 1986 she received a benefit at the rate applicable to a man or woman but without any increases for dependant children. It was only from 17 November 1986 that those increases were granted to her. Finally, in June 1988 she was granted, with retroactive effect to 28 January 1988, an invalidity pension calculated at the personal rate normally applicable to a man or woman, together with an increase for dependant children.

10 As soon as the aforesaid judgment of the Court in Case 286/85 had been delivered on 24 March 1987, Mrs Emmott entered into correspondence with the Minister for Social Welfare with a view to obtaining, as from 23 December 1984, the same amount of benefits as that paid to a married man in a situation identical to hers.

11 By letter of 26 June 1987 the Minister replied that, since the Directive was still the subject of litigation before the High Court, no decision could be taken in relation to her claim which would be examined as soon as that court had given judgment.

12 By order of 22 July 1988, the High Court granted Mrs Emmott leave to institute proceedings for judicial review for the purpose of recovering the benefits which had not been paid to her since 23 December 1984 in breach of Article 4(1) of the Directive, namely additional disability benefit at the appropriate personal rate, increases for adult and child dependants and compensatory payments. However, that leave was granted without prejudice to the right of the defendants to raise the issue of the non-observance of the time-limit for initiating proceedings.

13 The relevant provision in this regard is Order 84, Rule 21(1), of the Rules of the Superior Courts 1986. That provision is worded as follows:

'An application for leave to apply for judicial review shall be made promptly and in any event within three months from the date when grounds for the application first arose, or six months where the relief sought is certiorari, unless the Court considers that there is good reason for extending the period within which the application shall be made'.

14 The national authorities concerned did in fact plead that the applicant's delay in initiating proceedings constituted a bar to her claim. Consequently, in its order of 22 June 1990, the High Court decided to refer the following question to the Court of Justice for a preliminary ruling:

'Is the ruling of the Court of Justice of 24 March 1987 in Case 286/85 *Norah McDermott and Ann Cotter* v *Minister for Social Welfare and Attorney General* [1987] ECR 1453 whereby the Court of Justice answered the questions referred to it pursuant to Article 177 of the EEC Treaty by the High Court in its interpretation of the provisions of Article 4(1) of Council Directive 79/7/EEC of 19 December 1978 as follows:

(1) "Where Council Directive 79/7/EEC of 19 December 1978 has not been implemented, Article 4(1) of the Directive, which prohibits all discrimination on grounds of sex in matters of social security, could be relied on as from 23 December 1984 in order to preclude the application of any national provision inconsistent with it.

(2) In the absence of measures implementing Article 4(1) of the Directive, women are entitled to have the same rules applied to them as are applied to men who are in the same situation since, where the Directive has not been implemented, those rules remain the only valid point of reference."

to be understood as meaning that, in a claim before a national court or tribunal made in purported reliance upon Article 4(1) of that directive by a married woman for equal treatment and for compensatory payments in respect of discrimination alleged to have been suffered by reason of the failure to apply to her the rules applicable to men in the same situation, it is contrary to the general principles of Community law for the relevant authorities of a Member State to rely upon national procedural rules, in particular rules relating to time-limits, in bringing claims in defence of that claim such as to restrict or refuse such compensation?'

15 Reference is made to the Report for the Hearing for a fuller account of the legal background to and facts of the case, the course of the procedure and the written observations submitted to the Court, which are referred to hereinafter only in so far as is necessary for the reasoning of the Court.

16 As the Court has consistently held (see, in particular, the judgments in Case 33/76 *Rewe-Zentralfinanz eG and Rewe-Zentral AG* v *Landwirtschaftskammer für das Saarland* [1976] ECR 1989 and Case 199/82 *Amministrazione delle Finanze dello Stato* v *San Giorgio SpA* [1983] ECR 3595), in the absence of Community rules on the subject, it is for the domestic legal system of each Member State to determine the procedural conditions governing actions at law intended to ensure the protection of the rights which individuals derive from the direct effect of Community law, provided that such conditions are not less favourable than those relating to similar actions of a domestic nature nor framed so as to render virtually impossible the exercise of rights conferred by Community law.

17 Whilst the laying down of reasonable time-limits which, if unobserved, bar proceedings, in principle satisfies the two conditions mentioned above, account must nevertheless be taken of the particular nature of directives.

18 According to the third paragraph of Article 189 of the EEC Treaty, a directive is to be binding, as to the result to be achieved, upon each Member State to which it is addressed, but is to leave to the national authorities the choice of form and methods. Although that provision leaves Member States free to choose the ways and means of ensuring that a directive is implemented, that freedom does not affect the obligation, imposed on all the Member States to which a directive is addressed, to adopt, within the framework of their national legal systems, all the measures necessary to ensure that the directive is fully effective, in accordance with the objective which it pursues (see judgment in Case 14/83 *Sabine van Colson and Elisabeth Kamann* v *Land Nordrhein-Westfalen* [1984] ECR 1891).

19 In this regard it must be borne in mind that the Member States are required to ensure the full application of directives in a sufficiently clear and precise manner so that, where directives are intended to create rights for individuals, they can ascertain the full extent of those rights and, where necessary, rely on them before the national courts (see, in particular, judgment in Case 363/85 *Commission* v *Italy* [1987] ECR 1733).

20 Only in specific circumstances, in particular where a Member State has failed to take the implementing measures required or has adopted measures which are not in conformity with a directive, has the Court recognized the right of persons affected thereby to rely, in judicial proceedings, on a directive as against a defaulting Member State. This minimum guarantee, arising from the binding nature of the obligation imposed on the Member States by the effect of directives, cannot justify a Member State absolving itself from taking in due time implementing measures appropriate to the purpose of each directive (see judgment in Case 102/79 *Commission* v *Belgium* [1980] ECR 1473).

21 So long as a directive has not been properly transposed into national law, individuals are unable to ascertain the full extent of their rights. That state of uncertainty for individuals subsists even after the Court has delivered a judgment finding that the Member State in question has not fulfilled its obligations under the directive and even if the Court has held that a particular provision or provisions of the directive are sufficiently precise and unconditional to be relied upon before a national court.

22 Only the proper transposition of the directive will bring that state of uncertainty to an end and it is only upon that transposition that the legal certainty which must exist if individuals are to be required to assert their rights is created.

23 It follows that, until such time as a directive has been properly transposed, a defaulting Member State may not rely on an individual's delay in initiating proceedings against it in order to protect rights conferred upon him by the provisions of the directive and that a period laid down by national law within which proceedings must be initiated cannot begin to run before that time.

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

Costs

25 The costs incurred by Ireland, the Netherlands and the United Kingdom and by the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of 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 question submitted to it by the High Court of Ireland by order of 22 June 1990, hereby rules:

Community law precludes the competent authorities of a Member State from relying, in proceedings brought against them by an individual before the national courts in order to protect rights directly conferred upon him by Article 4(1) of Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security, on national procedural rules relating to time-limits for bringing proceedings so long as that Member State has not properly transposed that directive into its domestic legal system.

Due O'Higgins Rodríguez Iglesias Díez de Velasco

Slynn Kakouris Joliet Schockweiler Kapteyn

Delivered in open court in Luxembourg on 25 July 1991.

J.-G. Giraud
Registrar

O. Due
President