provisions of the directive are sufficiently precise and unconditional to be relied upon before a national court.

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.

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.

2. 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 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.

REPORT FOR THE HEARING
in Case C-208/90 *

I — Legislative background

1. *Directive 79/7/EEC*

Directive 79/7/EEC of 19 December 1978 (Official Journal 1979 L 6, p. 24) contains the provisions envisaged by Article 1(2) of 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 (Official Journal L 39, p. 40), with regard to the progressive implementation of the principle of equal treatment in matters of social security.

Article 1 states that the purpose of the directive is the progressive implementation, in the field of social security and other elements of social protection provided for in

* Language of the case: English.

Article 3, of the principle of equal treatment for men and women in matters of social security. According to Article 3(1) the directive applies *inter alia* to statutory schemes which provide protection against invalidity.

Article 4(1) provides that:

'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 the spouse and for dependants and the conditions governing the duration and retention of entitlement to benefits'.

To this effect Article 8 of the directive provides that Member States are to bring into force the laws, regulations and administrative provisions necessary to comply with this directive within six years of its notification, namely before 23 December 1984.

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.

As stated in Article 10, the directive is addressed to the Member States. It is based on the Treaty of Rome, in particular Article 235 thereof.

2. *National social security law*

The law on social security in Ireland has been traditionally based on the principle that a married woman is deemed to be the dependant of her husband if she is living with him or is wholly or mainly maintained by him; her husband, on the other hand, is only a dependant of his wife if he is incapable of self-support by means of some physical or mental infirmity and is being wholly or mainly maintained by her. Furthermore, increases of benefit were also paid in respect of dependant children who are 'normally resident' with a beneficiary. However, children were regarded for these purposes as being 'normally resident' with their father; it was thus the father rather than the mother who normally qualified for increases in respect of dependent children.

With a view to implementing Directive 79/7 the Social Welfare (No 2) Act 1985 was passed by the Oireachtas (Irish Parliament) on 16 July 1985 but did not come into effect

until various dates in 1986. The aim of this Act, which was not made retrospective to 23 December 1984, was to remove married women from the category of automatic dependancy and to treat them as having the same status within the social welfare code as married men.

2.1. *Disability benefit*

Until 15 May 1986 the personal rate of disability benefit payable in respect of a married woman was lower than that applicable in respect of a married man, single men or single women. On 15 May 1986 the provisions of Section 2 of the Social Welfare Act 1985 came into effect which provided for the payment of the same rate of disability benefit to married women as was payable to married men, single men and single women.

2.2. *Adult dependant increase*

Until 17 November 1986 a married man was entitled to an increase on his personal rate of disability benefit or assistance in respect of an adult dependant if his wife lived with him or was wholly or mainly maintained by him. In contrast, up to that date, a married woman was only entitled to an increase in respect of an adult dependant on her personal rate of disability benefit if her husband was incapable of self support by reason of some physical or mental infirmity and was being wholly or mainly maintained by her.

This position was altered by the Social Welfare (No 2) Act 1985 (Commencement) Order 1986, bringing into effect on 17 November 1986 the provisions of Section 3 of the Social Welfare (No 2) Act 1985. This provided in effect that an adult dependant means in relation to any person a 'spouse who was wholly or mainly maintained by that person' (but excluding a spouse in employment, a spouse who was self-employed or a spouse who was entitled to claim certain benefits or allowances under the social welfare code). The provisions of Section 3 of the Social Welfare (No 2) Act 1985 confined the payment of an increase in respect of an adult dependant to a situation where actual dependancy could be shown, both in respect of male and female claimants.

2.3. *Child dependant increases*

Until 17 November 1986 an increase was paid on the personal rate of disability benefit in respect of a qualified child or qualified children who 'normally resided' with the beneficiary. However, under Article 5 of the Social Welfare (Normal Residence) Regulations 1974,[1] it was provided that a qualified child who was resident with more than one of the following persons: his father, his stepfather, his mother, his stepmother, should 'be regarded as normally residing with the person first so mentioned and with no other person', provided that where the child's mother or stepmother was wholly or mainly maintaining the child and the child's father or stepfather was incapable of self support by reason of some physical or mental

1 — Statutory Instrument No 211 of 1974.

infirmity, the child should be regarded as normally residing with his mother or stepmother as the case may be and with no other person.

On 17 November 1986 the provisions of Section 4 of the Social Welfare (No 2) Act 1985 were brought into effect in respect of disability benefit by the Social Welfare (No 2) Act 1985 (Commencement) Order 1986. Section 4 provides that any increase of benefit in respect of a qualified child who normally resides with a beneficiary and with the spouse of a beneficiary is to be payable at the rate of one half of the appropriate amount in any case where the spouse of the beneficiary is not an adult dependant. Also on 17 November 1986 the Social Welfare (Normal Residence) Regulations 1986[2] came into effect and repealed the Social Welfare (Normal Residence) Regulations 1974 as amended. Article 6 of the 1986 Regulations provides that except in certain circumstances a qualified child shall be regarded as normally residing with his parents. Article 7 of the Regulations provides that where a qualified child is resident with one parent only he shall be regarded as normally residing with that parent and with no other person provided, where that parent is a member of a household, that the parent so elects.

The combined effect of Section 4 of the Social Welfare (No 2) Act 1985 and the Social Welfare (Normal Residence) Regulations 1986 is that a claimant for disability benefit, whether male or female, who has a qualified child or children receives an increase on the personal rate of such benefit at the rate of one half of the appropriate amount unless the spouse of such claimant is an adult dependant, in which case an increase at the full appropriate amount is payable.

2.4. *Preservation of rights*

On 12 December 1986 the Minister for Social Welfare made the Social Welfare (Preservation of Rights) (No 2) Regulations 1986,[3] which came into effect in respect of the payment of disability benefit from 17 November 1986. The Regulations applied to persons who, prior to the bringing into effect of the provisions of the Social Welfare (No 2) Act 1985 and the Regulations made thereunder, received or were entitled to receive an increase in respect of an adult dependant. In the case of persons who ceased to be entitled to an increase in respect of an adult dependant because that adult dependant was entitled to or in receipt of any pension, benefit, assistance or allowance under Parts 2 or 3 of the Social Welfare (Consolidation) Act 1981, the person affected became entitled under the Social Welfare (Preservation of Rights) Regulations 1986 to an increase on the amount of his benefit or allowance in the sum of IRL 20 per week.

In the case of persons who ceased to be entitled to an increase in respect of an adult dependant by reason of the adult dependant being in employment or self employed with

2 — Statutory Instrument No 367 of 1986.

3 — Statutory Instrument No 422 of 1986.

a weekly income in excess of IRL 50 a week, the person affected by reason of the provisions of the Social Welfare (Preservation of Rights) Regulations 1986 became entitled to an increase on his benefit or allowance in the amount of IRL 10 per week, together with an amount equal to the difference between the increase payable to that person in respect of child dependants under the Social Welfare (No 2) Act 1985 and the increase for those dependants which would have been payable but for the said Act.

The increases payable under the provisions of the Social Welfare (Preservation of Rights) Regulations 1986 were designed to be transitional in nature. Article 7 provided that the increases in payments provided for under the Regulations should be paid for the duration of the period of continuous entitlement to the payment in question or until the first anniversary of the relevant effective date (which was defined as the date upon which the Social Welfare (Preservation of Rights) (No 2) Regulations 1986 came into effect in respect of a particular allowance or benefit).

The effect of the Social Welfare (Preservation of Rights) (No 2) Regulations 1986 was extended by reason of the provisions of the Social Welfare (Preservation of Rights) (No 2) (Amendment) Regulations 1987,[4] Article 3 of which extended increases in payment under the 1986 Regulations for the duration of the period of continuous entitlement of that payment or, in the case of disability benefit, until 4 April 1988. This was once again extended by reason of the provisions of the Social Welfare (Preservation of Rights) (Amendment) Regulations 1988,[5] which extend increases of payment under the 1986 Regulations for the duration of the period of continuous entitlement to the payment or until 25 July 1988 in respect of disability benefit. The said 1988 Regulations also provided for increases in payment to continue after 25 July 1988 in the case of disability benefit at a reduced level of increase which was to continue for the duration of the period of continuous entitlement to the payment or until 2 January 1989 in the case of disability benefit. The payments under the Social Welfare (Preservation of Rights) (No 2) Regulation 1986 were continued, but at a rate slightly lower than the rate of increase initially laid down by those Regulations.

2.5. *Claims and Payments*

Article 4 of the Social Welfare (Claims and Payments) Regulations, 1952[6] (hereinafter referred to as 'the 1952 Regulations') provides that every claim for benefit including an increase thereof is to be made to the Minister in the form for the time being approved by him for the purpose of the benefit for which the claim is made or in such other manner as the Minister may accept as sufficient in the circumstances of any particular case or class of case.

Article 5 of the 1952 Regulations provides as follows:

'5. Every person who makes a claim for benefit shall furnish such certificates, documents, information and evidence for

4 — Statutory Instrument No 351 of 1987.

5 — Statutory Instrument No 63 of 1988.

6 — Statutory Instrument No 374 of 1952.

the purpose of deciding the claim as may be required by the Minister and, if so required, shall for that purpose attend at such office or place as the Minister may direct.'

The right to appeal is provided for under Part VIII of the Social Welfare (Consolidation) Act of 1981. Section 298(1) of the 1981 Act in conjunction with Statutory Instrument No 376 of 1952 provide that notice of appeal is to given to the Minister for Social Welfare within 21 days of notification to the appellant of the decision to be appealed, subject to the possibility that this time may be extended. The appeal is then referred to an appeals officer. Section 299 provides for appeals from decisions of appeals officers to the Hight Court on questions of law.

3. *National rules regarding time-limits and delay*

The relevant provision in the Rules of the Superior Courts 1986, which govern the practice and procedure adopted in the High Court and in the Supreme Court is Order 84, Rule 21(1) which states as follows:

'21(1) 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.'

This Rule applies to all applications for judicial review no matter what the nature of the decision that is being challenged. The Rules of the Superior Courts 1986 came into operation on 1 October 1986 and prior to that the practice and procedure of the High Court and of the Supreme Court was governed by the Rules of the Superior Courts 1962 as amended. The 1962 Rules provided for challenging the validity of decisions made by the lower courts or by other deciding bodies by way of an application for an order of certiorari, prohibition or mandamus. The only time-limit specifically set out in those rules was in respect of an application for an order of certiorari in respect of the decision of a lower court which said application had to be brought within six months of the date of the decision of such court (Order 84, Rule 10 of the Rules of the Superior Courts, 1962).

Delay in applying for relief is one of the aspects of the conduct of the Applicant which the court may take into account in deciding whether to exercise a discretion to quash or declare invalid the decision of an inferior court or deciding body in favour of an applicant. However, in giving judgment for the majority of the Supreme Court in the case of the State (Furey) v the Minister for Defence,[7] McCarthy J. stated that he could see no reason:

'why delay, however long, should of itself, disentitle to certiorari any applicant for that

7 — (1988) *Irish Law Reports Monthly* 89.

remedy who can demonstrate that a public wrong has been done to him — that, for instance, a conviction has been obtained without jurisdiction, or that otherwise, the State has wronged him and that wrong continues to mark or mar his life.'

II — Facts and written procedure

1. *Facts*

The applicant in the main proceedings is a married woman who has been in receipt of disability benefit pursuant to Irish social security law since 2 December 1983. The disability which rendered her eligible for this benefit was her poor eyesight. From 2 December 1983 until 18 May 1986 the applicant was paid benefit at a reduced rate which was then applicable to all married women. From 19 May 1986 until 16 November 1986 she was paid disability benefit at the rate applicable to a man or woman who did not have any adult or child dependants. From 17 November 1986 until June 1988 the applicant was paid the personal rate of disability benefit applicable to a man or woman together with an increase in respect of three child dependants, such increase being calculated on the basis of half the full rate payable in respect of such child dependants. In the month of June 1988 the applicant was awarded invalidity pension with retrospective effect to 28 January 1988, and this was paid to her at the standard personal rate payable in respect of a man or woman together with an increase in respect of three child dependants, this increase again being calculated on the basis of half the full rate of increase in respect of such child dependants. The increase payable in respect of the oldest child dependant was discontinued with effect from 7 July 1988 as the dependant moved to England as of that date.

The applicant's husband is a member of the Defence forces in Ireland and he was not in receipt of any social welfare payments at any relevant time. The applicant's husband did not apply for any such welfare payments under the relevant social welfare legislation.

The applicant appears to have been unaware of the existence of the directive until she read in a newspaper about the coming into effect of the Irish legislation which finally implemented it. Subsequent to the judgment of the Court of Justice of 24 March 1987,[8] the applicant entered into correspondence with the first-named Respondent, in an effort to obtain the benefit of the directive. She also wrote to her parliamentary representative and to the European Parliament. Her letters to the Irish authorities always received the reply that judgment was still pending in the High Court in the case of *McDermott and Cotter*, and that until the question of payments retrospective to 23 December 1984 had been resolved in that case, nothing could be decided in relation to her.

In January 1988 the applicant contacted a firm of solicitors and asked them to take legal proceedings on her behalf. An application was made to the High Court on

8 — Case 286/85 *McDermott and Cotter* [1987] ECR 1463.

22 July 1988 for permission to bring proceedings for judicial review of the decisions of the Irish authorities in relation to the applicant's social welfare entitlement.

The High Court, by Order of 22 July 1988 granted her leave to institute proceedings for judicial review, but without prejudice to the right of the respondents to raise the issue of delay at the hearing of the applicant's claim. The respondents did in fact rely upon the argument that the applicant's delay in instituting proceedings constituted a bar to her claim.

2. *The question referred to the Court*

By order of 22 June 1990 the High Court decided to stay the proceedings until the Court of Justice had given a preliminary ruling under Article 177 of the EEC Treaty on the following question:

'Is the ruling of the Court of Justice of 24 March 1987 in Case 286/85 Norah McDermott and Ann Cotter v The 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 EEC 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?'

3. *Procedure before the Court*

The order of the High Court was received at the Court Registry on 12 July 1990. Pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, written observations were submitted

by Mrs Emmott, represented by Mary Robinson, Senior Counsel and Gerard Durcan, Barrister-at-Law, instructed by Gallagher Shatter, Solicitors, by the Irish Government and the respondents in the main proceedings, represented by Louis J. Dockery, Chief State Solicitor, acting as Agent, assisted by David M. Byrne, Senior Counsel and Aindrias O'Caoimh, Barrister-at-Law, by the Netherlands Government represented by B. R. Bot, Secretary General for Foreign Affairs, acting as Agent, by the United Kingdom, represented by Hussein A. Kaya, of the Treasury Solicitor's Department, acting as Agent, and by the Commission of the European Communities, represented by Karen Banks, a member of its Legal Department acting as Agent.

Upon 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.

III — Written observations submitted to the Court

1. The *applicant* submits that the reason for which she has been obliged to commence proceedings to secure her entitlement under the directive to receive equal treatment as and from 23 December 1984 is the default of the respondent in complying with its obligations under the directive. To allow the respondent to rely upon an alleged delay in commencing such proceedings would be to allow it to obtain a possible benefit from its own default, contrary to the principle enunciated by the Court in its judgment of 19 January 1982.[9]

A further reason for which the respondent should not be entitled to rely upon any delay by the applicant in instituting the proceedings is that to do so would be to fail to apply the principle of equal treatment between men and women. During the period from 23 December 1984 until 18 November 1986 all married men were paid at a higher rate and treated in a more beneficial manner in respect of dependants than was the case in respect of married women. Such treatment was given to married men by the respondent without any necessity to commence proceedings to obtain such treatment; the respondent now wishes to maintain that the same treatment should only be available to married women if they commenced appropriate proceedings to obtain such treatment without delay. To allow the respondent successfully to maintain such a position would be to impose an onerous precondition on married women, namely the need to commence proceedings without delay if they are to obtain equal treatment. It would allow the respondent and the Irish State to treat such married women in a discriminatory way.

The applicant submits that the principles enunciated by the Court in its judgment of 2 February 1988[10] cannot be applied without modification to the facts of this particular case since they are based on the proposition that persons must be presumed to know their legal rights and it is reasonable to expect them to comply with the provisions of their national law in regard to the enforcement of such rights. However, Directive 79/7 was designed to ensure equal treatment for a peculiarly vulnerable section of the community: those

9 — Case 8/81 *Becker* [1982] ECR 53.

10 — Case 309/85 *Barra* [1988] ECR 355.

persons in receipt of social security benefits and allowances. Such persons are peculiarly reliant on the State for information in regard to their entitlements and rely upon the State to pay such amounts as may be due to them.

The failure of the respondent to implement the provisions of the directive as of the due date had the effect of not only depriving married women of their right to equal treatment but also obscuring the true legal position in regard to the legal entitlements of such women. The respondent infringed the provisions of Article 5 of the directive in that a whole series of laws, regulations and administrative provisions contrary to the principle of equal treatment were left in being after 23 December 1984. The continued existence of such laws, regulations and administrative provisions after that date had the effect of misleading married women as to their true legal entitlements. The administrative provisions which were in being are of particular importance in this regard because all the relevant information supplied by the respondent simply set out the legal position under the national laws and regulations which were contrary to Community law.

It is necessary to consider how allowing the respondent to rely upon delay in instituting proceedings could or would reduce the effectiveness of Directive 79/7 (reference is made to the Court's judgments of 1 February 1977 [11] and of 9 March 1978. [12] Less than 600 married women commenced proceedings against the respondent or Ireland prior to the judgment of 24 March 1987 in *McDermott and Cotter*, cited above, a small fraction of the total number of married women who 'would have been deprived of their right to equal treatment by reason of the failure' of the State to implement the Directive as and from 23 December 1984.

The potential consequences of allowing the respondent to rely on delay in instituting proceedings are therefore that the directive would have had little or no effect in regard to a large number of women for a period of nearly two years after its proper implementation date, a result incompatible with the binding effect of the directive. This would be the case despite the fact that the purpose of the directive was that in regard to social security matters as and from 23 December 1984 there should be 'no discrimination whatsoever on grounds of sex either directly or indirectly by reference in particular to marital or family status'. Such a result would be unjust, in particular because of the potentially significant financial advantage accrued to Ireland by reason of its failure to implement the Directive as of the due date.

The applicant therefore submits that the answer to the question referred to the Court should be in the affirmative namely to the effect that 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, by way of defence to a claim by a married woman for equal treatment under Directive 79/7.

11 — Case 51/76 *Verbond* [1977] ECR 113.

12 — Case 106/77 *Simmenthal* [1978] ECR 629.

2. It is submitted by the *respondents* that the applicant has failed to move promptly in seeking the reliefs sought in these proceedings. In particular, the applicant was required to comply with the provisions of Order 84, Rule 21 of the Rules of the Superior Courts, and by reason of the said failure the respondents have been prejudiced. The respondent submits that the judgments of 16 December 1976,[13] of 27 March 1980,[14] of 9 November 1983,[15] of 29 June 1988[16] and of 9 November 1989,[17] indicate that the repayment of taxes and charges levied in contravention of the Treaty may be sought only within the framework of the conditions as to both substance and form (including the conditions relating to the limitation of actions) laid down by the various national laws applicable thereto. Though these latter cases were mainly concerned with taxes and charges it is submitted that the principles which they lay down are of general application and are therefore no less applicable to claims of the kind which arise in the present case than they are to claims for the repayments of taxes. While the conditions for the application of national time-limits or other procedural rules must not be less favourable than those relating to similar claims within the national system, the respondent submits that the national laws applicable in the present case do not discriminate in this way and furthermore do not render it impossible or virtually impossible to exercise the rights conferred by Community law.

It is noted that the Court of Justice answered the second question in its judgment of 16 December 1976, in *REWE*, cited above, by indicating that the fact that the Court had already given a ruling on the question of the infringement of the Treaty did not affect the fact that a claimant could be confronted with the defence that limitation periods laid down by national law have expired.

Accordingly it is submitted that the question posed by the High Court should be answered in the affirmative as follows:

'In the absence of Community rules concerning the contesting or the recovery of Social Welfare payments, such as by a married woman in purported reliance upon Article 4(1) of Council Directive 79/7/EEC 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 for the domestic legal system of each Member State to designate the courts having jurisdiction and determine the procedural conditions governing actions at law intended to safeguard the rights which subjects derive from the direct effect of Community law, and it is not 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 defence of that claim such as to restrict or refuse such compensation, it being understood that the procedural conditions governing the action may not be less favourable than those relating to similar actions of domestic law.'

3. The *Netherlands Government* submits that the direct effect of — in this case — Article

13 — Case 33/76 *REWE* [1976] ECR 1989 and Case 45/76 *Comet* [1976] ECR 2043.

14 — Case 61/79 *Denkavit* [1980] ECR 1205.

15 — Case 199/82 *San Giorgio* [1983] ECR 3595.

16 — Case 240/87 *Deville* [1988] ECR 3513.

17 — Case 386/87 *Bessin*, not yet reported.

4(1) of Directive 79/7 has not yet had the consequence that, where a national provision must be regarded as incompatible with that article, a person can derive a sufficient legal basis from the latter in order to claim as against his own national authorities the unconditional restoration of his rights with regard to the past, and therefore with retroactive effect. According to the Court's case-law such a claim concerning the restoration of rights with regard to the past can, under Community law as it now stands, be made only in accordance with the legislation of the Member State concerned (see the judgment of 19 December 1968.[18] The judgment of 24 March 1987, cited above, does not provide any basis for a different interpretation.

The Netherlands government recalls a line of cases decided by the Court which — although the context was different — make it clear that the relevant national provisions on the designation of the competent court and the rules of procedure may not be less favourable than those applicable to similar domestic claims, nor may they be of such a kind as to frustrate in practice the exercise of the rights conferred by Community law (see the Court's judgments of 16 December 1976, *REWE* and *Comet*, 9 November 1983, *San Giorgio*, 2 February 1988, *Barra*, and of 29 June 1988, *Deville*, all cited above). In addition, Community law, as it stands at present, does not preclude the expiry of reasonable time-limits for bringing proceedings — applicable under national law — from being relied upon as against an applicant. The Netherlands Government considers that the aforesaid principles, which must be taken into account when national law is applied in connection with claims by individuals with regard to the past, may also be relevant in these circumstances, which concern the grant of social security benefits that were wrongly withheld in the past contrary to Article 4(1) of Directive 79/7.

In that regard it is also significant that the Court has held — again in another context, though in relation to a similar question — that, if disparities in the legislation of Member States proved to be such as to compromise the equal treatment of those concerned in different Member States or distort or impair the functioning of the Common Market, it would be for the competent Community institutions to adopt the provisions needed to remedy such disparities (see, the judgment of 21 September 1983[19]).

In the light of the foregoing considerations, the Netherlands Government submits, in response to the question raised, that, under Community law as it now stands, an individual cannot derive a sufficient legal basis from Article 4(1) of Directive 79/7, as a directly applicable provision of Community law, in order to claim, as against his national authorities, the restoration of his rights with regard to the past. The claim in question must be assessed in the light of the national law applicable thereto unless the national provisions concerned are more unfavourable than those which are applicable to similar domestic claims or else make it impossible in practice for an individual to exercise the rights conferred upon

18 — Case 13/68 *Salgoil* [1968] ECR 453.

19 — Joined Cases 205 to 215/82 *Deutsche Milchkontor* [1983] ECR 2633, at paragraph 24.

him by Community law. In general, that is not the case where reasonable time-limits are fixed for bringing proceedings.

4. The *United Kingdom* contends that the question raised in the present reference is the same as that raised in the judgments of 16 December 1976 and of 9 November 1983, cited above, in which the principle has been upheld that reasonable limitations do not make the exercise of Community rights impossible. It is for the national court to satisfy itself that the limitation period here in question complies with the condition that it is not in itself unreasonable and that the same rule applies for a right arising under Community law as for a right arising under the domestic law.

The United Kingdom proposes a response to the question referred to the effect that, provided the national procedural rules are not less favourable than those which apply to proceedings based on domestic law and provided that they do not make it impossible in practice to exercise rights conferred by Community law, the relevant authorities of a Member State may rely on the expiry of a limitation period against a litigant in its domestic court.

5. The *Commission* points out that the mere fact that a Member State maintains and enforces a law which is contrary to Community law does not prevent it from relying on a procedural rule relating to time-limits. The general principle is that everyone must be assumed to know the law, including directly effective Community law.

Although it could be argued that a special case can be made in relation to social security recipients, given their particularly disadvantaged position in relation to information about the law, the Commission hesitates to propose a principle based on the idea that exceptions can be made in relation to particular groups. It is not clear that an exception should be allowed only because certain groups in society are especially unlikely to be familiar with particularly subtle aspects of the law. The very failure of Ireland to implement the directive in time, thus causing unlawful harm to the applicant, would not seem to be enough to give rise to an estoppel, preventing the respondent from raising the issue of the applicant's delay in commencing proceedings.

It could be argued that the fact that the Irish authorities have engaged in a delaying process vis-à-vis the applicant, implying that the outcome of her case depended only on the solution of the proceedings in *McDermott and Cotter*, cited above, can be taken into account by the national judge when he comes to consider the possibility of extending the three-month period. Where a person in the particularly unprotected position of those dependant on social welfare has claimed rights from the State and has been given no indication that the State intends to limit payments to those who institute legal proceedings promptly, it may reasonably be thought that that person has been lulled into a false sense of security, and that he should not later be met with the argument that the proceedings are out of time. The Commission recognizes that such arguments are not necessarily ones of Community law; it nevertheless submits that Community law cannot accept that the possibility of enforcing directly effective

rights, even within the procedural limits laid down by national law, should be further reduced by behaviour on the part of national authorities tending to dissuade potential beneficiaries of such rights from exploiting the national time-limits in the most effective manner. Just as the rule governing time-limits must not itself be framed in such a way as to render virtually impossible the exercise of rights conferred by Community law, so a national authority wanting to rely on such a rule must not act in a way as to render it unnecessarily difficult for a claimant to satisfy the rule's requirements.

The Commission refers to the fact that the 'dissuasive' correspondence only began two and a half years after the right to equal treatment first arose, and that therefore the applicant was arguably already out of time for beginning legal proceedings, but stresses that the national courts have a discretion to extend the three-month period where justice would be served by doing so. The Commission inclines to the view that it is very possible that the national courts would in fact extend the period for bringing an action to the time when the person in question first knew, or could reasonably have known, about the existence of her rights. In this case that would mean that the time for bringing the action could well be extended to March 1987. The Commission submits that Community law prevents the Irish authorities from relying on delay after that point.

The Commission proposes that the question of the High Court be answered as follows:

'It is contrary to the requirement of the effectiveness of Community law for the authorities of a Member State to rely on a national rule relating to time-limits to defeat a claim based on Community law where they have previously acted in such a way as to indicate that the satisfaction of the claim would not depend on complying with the rule in question.'

T. F. O'Higgins
Judge-Rapporteur