JUDGMENT OF THE COURT (Sixth Chamber)
11 June 1987 *

In Case 30/85

REFERENCE to the Court under Article 177 of the EEC Treaty by the Raad van Beroep (Social Security Court), Amsterdam, for a preliminary ruling in the proceedings pending before that court between

J. W. Teuling, Amsterdam,

and

Bestuur van de Bedrijfsvereniging voor de Chemische Industrie (Professional and Trade Association for the Chemical Industry)

on the interpretation of Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security (Official Journal 1979, L 6, p. 24),

THE COURT (Sixth Chamber),

composed of: C. Kakouris, President of Chamber, T. F. O'Higgins, T. Koopmans, K. Bahlmann and G. C. Rodríguez Iglesias, Judges,

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

after considering the observations submitted on behalf of

Mrs Teuling, the plaintiff in the main proceedings, by M. E. J. C. Diepstraten, of the Amsterdam Bar,

the Bestuur van de Bedrijfsvereniging voor de Chemische Industrie, the defendant in the main proceedings, by Mr Levelt-Overmars, of the Gemeenschappelijk Administratiekantoor (Joint Administration Office), in the written procedure, and by W. W. Wijnbeek at the hearing,

* Language of the Case: Dutch.

the Netherlands Government, by I. Verkade, Secretary-General at the Ministry of Foreign Affairs, in the written procedure,

the Commission of the European Communities, by J. Currall, a member of its Legal Department, acting as Agent, assisted by F. Herbert, of the Brussels Bar,

having regard to the Report for the Hearing and further to the hearing on 6 May 1986,

after hearing the Opinion of the Advocate General delivered at the sitting on 7 October 1986,

gives the following

Judgment

1 By an order of 4 February 1985, which was received at the Court on 6 February 1985, the Raad van Beroep, Amsterdam, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty four questions on the interpretation of 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) and Council Directive 76/207 of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (Official Journal 1976, L 39, p. 40).

2 Those questions were raised in the course of proceedings between Mrs Teuling and the Bestuur van de Bedrijfsvereniging voor de Chemische Industrie concerning the decision of the latter to calculate her invalidity pension with effect from 1 January 1984 on the basis not of the legal minimum wage but of the last wage paid to her, in accordance with the amendments made to the insurance scheme by the law of 29 December 1982.

3 According to the Wet op de Arbeidsongeschiktheidsverzekering (Law on Insurance against Incapacity for Work, hereinafter referred to as 'the Insurance Law'), in the version in force prior to the adoption of the Law of 29 December 1982, all employed persons suffering from an incapacity for work, regardless of their sex or civil status, were entitled to a net minimum benefit equal to the net amount of the statutory minimum wage as laid down by the Law of 27 November 1968 (*Staatsblad* 657) on the minimum wage and minimum holiday entitlement for employed persons. The Law of 29 December 1982 (*Staatsblad* 737) abolished that right with effect from 1 January 1984 and provided for the gradual transfer of the beneficiaries thereof from the minimum benefit provided for under the Insurance Law to the (lower) minimum benefit provided for under the Algemene Arbeidsongeschiktheidswet (General law on Incapacity for Work, hereinafter referred to as 'the General Law'), namely 70% of the statutory minimum wage. By means of supplements that minimum could be increased to 100% only for beneficiaries fulfilling the conditions laid down in Article 10 (4) of the General Law, that is to say, in practice, those having family responsibilities.

4 The Law of 30 December 1983 (*Staatsblad* 698) introduced a new article (Article 97) into the General Law under which a right to benefits under that law was granted to women entitled to benefits under the Insurance Law in respect of an incapacity for work which had already arisen on 1 October 1976 (the date on which the General Law came into force); such women had previously been excluded from those benefits simply by virtue of being married. With effect from 1 January 1984, they became entitled to those benefits where the amount of the benefits awarded under the Insurance Law was less than the amount to which they would have been entitled under the General Law if they had not been excluded from benefits thereunder.

5 Mrs Teuling, who has been unable to work since 1972, received from 1975 onwards benefits under the Insurance Law equal to the net statutory minimum wage, irrespective of the fact that she was married and of her husband's income. However, from 1 January 1984 that benefit was reduced in accordance with the Law of 29 December 1982 to 70% of the statutory minimum wage. Moreover, she was not entitled to benefit supplements under Article 10 (4) of the General Law because of the income arising from or in connection with her husband's work. Her husband died on 28 April 1984 and the period in dispute is therefore that between January and April 1984.

6 The applicant in the main proceedings claims that under the Law of 29 December 1982 the invalidity benefit which she receives was reduced from 100 to 70% of the statutory minimum wage. Since, at the material time, she was married, and her husband's income was above the maximum laid down in Article 10 (4), she was not entitled to the benefit supplements of 15 or 30%. She claims in essence that that system of supplements, which takes account of income arising from or in connection with the work of a spouse and of the presence of dependent children, constitutes indirect discrimination against women and is therefore incompatible with Article 4 (1) of Directive 79/7.

7 However, the competent Netherlands institution considers that only persons with a dependent spouse or children are entitled to the guaranteed minimum income equal to the full amount of the net statutory minimum wage.

8 Since it considered the scope of the directive to be unclear, the Raad van Beroep, Amsterdam, before which the matter had been brought, stayed the proceedings and referred the following four questions to the Court of Justice for a preliminary ruling:

'1. Is a system of entitlement to benefits in respect of incapacity for work under which the amount of the benefit is determined in part by marital status and by the income earned from or in connection with work of the spouse, or by the existence of a dependent child, consistent with Article 4 (1) of Council Directive No 79/7/EEC of 19 December 1978?

2. (a) Is the Law of 29 December 1982 (*Staatsblad* 737) abolishing the guarantee for all persons covered by the Wet op de Arbeidsongeschiktheidsverzekering that the (net) benefits are to be at least equal to the (net) statutory minimum wage, with the result that the guarantee now applies only to persons who satisfy the conditions of Article 10 (4) of the Algemene Arbeidsongeschiktheidswet, consistent with Article 4 (1) of the directive referred to in Question 1?

2. (b) Having regard to the period referred to in Article 8 of the directive and to the provisions of Article 5 thereof and Article 5 of the Treaty establishing the European Economic Community, is it relevant to the answer to be given to Question 2(a) that the said law was adopted on 29 December 1982 and entered into force partially on 1 January 1983, whilst provision is

made for its material consequences to take effect in stages both before and after the expiry of the period referred to in Article 8 of the directive?

3. Are the provisions of Council Directive No 76/207/EEC of 9 February 1976 also relevant as regards the answers to the foregoing questions?

4. If Question 1 or Question 2(a), or both, are answered in the negative, does that mean that the relevant provision of Community law — which is thus deemed to have been infringed — may be relied upon directly by the persons concerned as against the national authorities?'

9 Reference is made to the Report for the Hearing for the Netherlands legislation at issue and the detailed arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

Question 1

10 In the first question, the Raad van Beroep seeks to know whether a system of entitlement to benefits in respect of incapacity for work under which the amount of the benefit is determined in part by marital status and by the income earned from or in connection with work of the spouse or by the existence of a dependent child constitutes discrimination within the meaning of Article 4 (1) of the directive.

11 As the Court decided in its judgment of 24 June 1986 (Case 150/85 *Drake* v *Chief Adjudication Officer* [1986] ECR pp. 1995 and 2002), the aim set out in Article 1 of Directive 79/7 is given effect in Article 4 (1). That article provides, in regard to social security, that there shall be no discrimination whatsoever on ground of sex either directly or indirectly by reference in particular to marital or family status, in particular as concerns the calculation of benefits including increases due in respect of a spouse or for dependants and the conditions governing the duration and retention of entitlement to benefits.

12 It is thus clear from the very words of Article 4 (1) that increases are prohibited if they are directly or indirectly based on the sex of the beneficiary.

13 In that regard, it should be pointed out that a system of benefits in which, as in this case, supplements are provided for which are not directly based on the sex of the beneficiaries but take account of their marital status or family situation and in respect of which it emerges that a considerably smaller proportion of women than of men are entitled to such supplements is contrary to Article 4 (1) of the directive if that system of benefits cannot be justified by reasons which exclude discrimination on grounds of sex.

14 It appears from the documents before the Court that according to statistics provided to the Commission by the Netherlands Government a significantly greater number of married men than married women receive a supplement linked to family responsibilities. According to the plaintiff and the Commission, that results from the fact that in the Netherlands there are at present considerably more married men than married women who carry on occupational activities, and therefore considerably fewer women who have a dependent spouse.

15 In such circumstances a supplement linked to family responsibilities is contrary to Article 4 (1) of the directive if the grant thereof cannot be justified by reasons which exclude discrimination on grounds of sex.

16 In that regard, the purpose of the supplements at issue must be considered. According to the Netherlands Government, the General Law does not link benefits to the salary previously earned by the beneficiaries but seeks to provide a minimum subsistence income to persons with no income from work. It must be observed that such a guarantee granted by Member States to persons who would otherwise be destitute is an integral part of the social policy of the Member States.

17 Consequently, if supplements to a minimum social security benefit are intended, where beneficiaries have no income from work, to prevent the benefit from falling below the minimum subsistence level for persons who, by virtue of the fact that they have a dependent spouse or children, bear heavier burdens than single persons, such supplements may be justified under the directive.

18 If a national court, which has sole jurisdiction to assess the facts and interpret the national legislation, finds that supplements such as those in this case correspond to the greater burdens which beneficiaries having a dependent spouse or children must bear in comparison with persons living alone, serve to ensure an adequate minimum subsistence income for those beneficiaries and are necessary for that purpose, the fact that the supplements are paid to a significantly higher number of married men than married women is not sufficient to support the conclusion that the grant of such supplements is contrary to the directive.

19 The reply to the first question raised by the Raad van Beroep must therefore be that Article 4 (1) of Council Directive 79/7 of 19 December 1978 is to be interpreted as meaning that a system of benefits in respect of incapacity for work under which the amount of the benefit is determined in part by marital status and by the income earned from or in connection with work of a spouse is consistent with that provision if the system seeks to ensure an adequate minimum subsistence income for beneficiaries who have a dependent spouse or children, by means of a supplement to the social security benefit which compensates for the greater burdens they bear in comparison with single persons.

Question 2 (a)

20 In part (a) of the second question, the national court seeks to determine whether legislation such as the Netherlands Law of 29 December 1982, cited above, under which the guarantee previously applicable to all workers suffering from an incapacity for work whose income was approximately equal to the statutory minimum wage that their (net) benefits would be at least equal to the (net) statutory minimum wage is restricted to persons having a dependent spouse or child, or whose spouse has a very small income, is compatible with Article 4 (1) of the directive.

21 It appears from the order for reference that after the entry into force of the Law of 29 December 1982 the position of married persons entitled to benefits under the Insurance Law at the minimum rate who could not produce evidence that they had a dependent spouse became less favourable, since their benefits were reduced to 70% of the statutory minimum wage with effect from 1 January 1984. It is also

clear that within the group of persons entitled to benefits under the Insurance Law, a much greater number of (married) men than (married) women came within the scope of Article 10 (4) of the General Law.

22 As the Netherlands Government emphasized, the Law of 29 December 1982 embodies a policy which seeks to ensure, having regard to available resources, a minimum subsistence income for all workers suffering from an incapacity for work. In that regard, it must be recognized that Community law does not prevent a Member State, in controlling its social expenditure, from taking account of the fact that the need of beneficiaries who have a dependent child or spouse or whose spouse has a very small income is greater than that of single persons.

23 The reply to part (a) of the second question must therefore be that Article 4 (1) of Directive 79/7 is to be interpreted as meaning that legislation under which the guarantee previously applicable to all workers suffering from an incapacity for work whose income was approximately equal to the statutory minimum wage that their (net) benefits would be at least equal to the (net) statutory minimum wage is restricted to persons having a dependent spouse or child or whose spouse has a very small income is compatible with that provision.

Questions 2(b), 3 and 4

24 Having regard to the replies given to questions 1 and 2(a), it is no longer necessary to consider questions 2(b), 3 or 4.

Costs

25 The costs incurred by the Netherlands Government and by the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of a step in the action pending before the national court, the decision as to costs is a matter for that court.

On those grounds,

THE COURT (Sixth Chamber),

in answer to the questions referred to it by the Raad van Beroep, Amsterdam, by order of 4 February 1985, hereby rules:

(1) **Article 4 (1) of Council Directive 79/7/EEC of 19 December 1978 is to be interpreted as meaning that a system of benefits in respect of incapacity for work under which the amount of the benefit is determined in part by marital status and by the income earned from or in connection with work of a spouse is consistent with that provision if the system seeks to ensure an adequate minimum subsistence income for beneficiaries who have a dependent spouse or children, by means of a supplement to the social security benefit which compensates for the greater burdens they bear in comparison with single persons.**

(2) **Article 4 (1) of Directive 79/7/EEC is to be interpreted as meaning that legislation under which the guarantee previously applicable to all workers suffering from an incapacity for work whose income was approximately equal to the statutory minimum wage that their (net) benefits would be at least equal to the (net) statutory minimum wage is restricted to persons having a dependent spouse or child or whose spouse has a very small income is compatible with that provision.**

Kakouris O'Higgins

Koopmans Bahlmann Rodríguez Iglesias

Delivered in open court in Luxembourg on 11 June 1987.

P. Heim
Registrar

C. Kakouris
President of the Sixth Chamber