JUDGMENT OF THE COURT

1 December 1998 *

In Case C-326/96,

REFERENCE to the Court under Article 177 of the EC Treaty by the Employment Appeal Tribunal, London, for a preliminary ruling in the proceedings pending before that court between

B. S. Levez

and

T. H. Jennings (Harlow Pools) Ltd,

on the interpretation of Article 119 of the EC Treaty, and Articles 2 and 6 of Council Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women (OJ 1975 L 45, p. 19),

* Language of the case: English.

THE COURT,

composed of: G. C. Rodríguez Iglesias, President, J.-P. Puissochet, G. Hirsch and P. Jann (Presidents of Chambers), G. F. Mancini (Rapporteur), J. C. Moitinho de Almeida, J. L. Murray, D. A. O. Edward, H. Ragnemalm, R. Schintgen and K. M. Ioannou, Judges,

Advocate General: P. Léger,
Registrar: H. A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of:

— Mrs Levez, by David Pannick QC and Dinah Rose, Barrister, instructed by Pauline Matthews, Solicitor,

— the United Kingdom Government, by Lindsey Nicoll, of the Treasury Solicitor's Department, acting as Agent, with Nicholas Paines, Barrister,

— the French Government, by Catherine de Salins, Head of Sub-directorate in the Legal Affairs Directorate of the Ministry of Foreign Affairs, and Anne de Bourgoing, *chargé de mission* with the same Directorate, acting as Agents,

— the Commission of the European Communities, by Christopher Docksey and Marie Wolfcarius, of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Mrs Levez, represented by David Pannick and Dinah Rose, instructed by Pauline Matthews; of T. H. Jennings (Harlow Pools) Ltd,

represented by Jason Coppel, Barrister; of the United Kingdom Government, represented by Nicholas Paines; of the French Government, represented by Anne de Bourgoing; of the Irish Government, represented by Mary Finlay SC and Eileen Barrington, Barrister; and of the Commission, represented by Christopher Docksey, at the hearing on 3 March 1998,

after hearing the Opinion of the Advocate General at the sitting on 12 May 1998,

gives the following

Judgment

1 By order of 14 August 1996, received at the Court on 4 October 1996, the Employment Appeal Tribunal, London, referred to the Court for a preliminary ruling under Article 177 of the EC Treaty two questions on the interpretation of Article 119 of that Treaty, and Articles 2 and 6 of Council Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women (OJ 1975 L 45, p. 19; hereinafter 'the Directive').

2 Those questions were raised in proceedings between Mrs Levez and T. H. Jennings (Harlow Pools) Ltd (hereinafter 'Jennings'), her former employer, concerning arrears of remuneration not paid by reason of discrimination on grounds of sex.

Community law

3 Article 2 of the Directive provides that 'Member States shall introduce into their national legal systems such measures as are necessary to enable all employees who consider themselves wronged by failure to apply the principle of equal pay to pursue their claims by judicial process after possible recourse to other competent authorities'.

4 Article 6 of the Directive provides that 'Member States shall, in accordance with their national circumstances and legal systems, take the measures necessary to ensure that the principle of equal pay is applied. They shall see that effective means are available to take care that this principle is observed'.

National legislation

5 In the United Kingdom, pursuant to Section 1(1) of the Equal Pay Act 1970 (hereinafter 'the Act'), any contract under which a woman is employed is deemed to contain an equality clause.

6 Section 2(5) of the Act provides that a woman is not entitled, in proceedings brought in respect of a failure to comply with an equality clause (including proceedings before an industrial tribunal), to be awarded any payment by way of arrears of remuneration or damages in respect of a time earlier than two years before the date on which the proceedings were instituted (hereinafter 'the rule at issue').

7 It is clear from the order for reference that the Act does not empower industrial tribunals to extend that period.

8 Nevertheless, according to the information provided by the United Kingdom Government, it would be open to a person in Mrs Levez's position to bring proceedings in the County Court on the basis both of the Equal Pay Act and of the tort of deceit committed by her employer.

Facts

9 In February 1991 Mrs Levez was recruited as manager of a betting shop owned by Jennings at a salary of UKL 10 000 per annum. In December 1991 she was appointed manager of another shop belonging to Jennings, replacing a man who had received an annual salary of UKL 11 400 from the date of his appointment in September 1990 until he left in October 1991.

10 According to the order for reference, it is common ground that the work which Mrs Levez and her predecessor were employed to perform was the same. Furthermore, the parties agree that all managers employed by Jennings in its betting shops were subject to the same contract terms.

11 However, Mrs Levez's pay was raised with effect from 30 December 1991, but only to UKL 10 800, Jennings having falsely declared to her that this was the salary paid to her male predecessor. Her salary did not reach UKL 11 400 until her next pay rise, in April 1992.

12 On leaving her job with Jennings in March 1993, Mrs Levez discovered that until April 1992 she had been paid less than her male predecessor. She therefore brought a claim under the Act on 17 September 1993 before the Industrial Tribunal. The Tribunal decided on 25 July 1994 that Mrs Levez was entitled to a salary of UKL 11 400 with effect from the date on which she had taken up her duties — that is to say, from 18 February 1991 — and ordered Jennings to pay her the corresponding salary arrears.

13 However, by letter of 26 July 1994, addressed to the Office of the Industrial Tribunal, Jennings alleged that part of the Tribunal's decision was contrary to the Act. In view of the two-year limitation period fixed by section 2(5) of the Act and the fact that Mrs Levez's application to the Industrial Tribunal was dated 17 September 1993, Jennings argued that the Tribunal was not empowered to award arrears of remuneration in respect of the period prior to 17 September 1991 and called on the Chairman to review the dates specified in the decision.

14 By letter of 12 August 1994, the Chairman of the Industrial Tribunal acknowledged that under section 2(5) of the Act Mrs Levez was not entitled to arrears of pay in respect of the period prior to 17 September 1991, that being the date marking the start of the two-year period prior to the lodging of her claim.

15 According to the order for reference, no formal amendment was made to the Tribunal's decision. However, a copy of the letter was sent to Mrs Levez. On 22 August 1994 she appealed to the Employment Appeal Tribunal against the Tribunal's decision, arguing that the decision to amend the date from which arrears of remuneration should be paid to 17 September 1991 was contrary to Community law. Mrs Levez claimed that she was entitled to recover equal pay as from the date when she commenced working for Jennings, namely 18 February 1991. After service of the Notice of Appeal, Mrs Levez obtained the support of the Equal Opportunities Commission, which served an amended Notice of Appeal for which leave was granted on 12 October 1995.

The questions referred for a preliminary ruling

16 Those were the circumstances in which the Employment Appeal Tribunal decided to stay proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'1. Is it compatible with Community law to apply, to a claim for equal pay for equal work without discrimination on grounds of sex, a rule of national law which limits a claimant's entitlement to arrears of remuneration or damages for breach of the principle of equal pay to a period of two years prior to the date on which the proceedings were instituted, in circumstances where —

(a) that rule of national law applies to all claims for equal pay without sex discrimination, but to no other claims;

(b) rules which are in this respect more favourable to claimants are applied to other claims in the field of employment law, including claims in respect of breach of the contract of employment, racial discrimination in pay, unlawful deductions from wages, and sex discrimination in matters other than pay;

(c) the national court has no discretion to extend the two-year period in any circumstance, even where a claimant was delayed in bringing her claim because her employer misrepresented to her the level of remuneration received by men performing like work to her own?

2. In particular, having regard to the consistent case-law of the Court that rights conferred by the direct effect of Community law are to be exercised under the conditions determined by national law, provided *inter alia* that those conditions are no less favourable than those relating to similar domestic actions, how is the phrase "similar domestic actions" to be interpreted in the case of a claim for equal pay in circumstances where the conditions laid down by national legislation implementing the principle of equal pay differ from those laid down by other national legislation in the field of employment law, including legislation relating to breach of the contract of employment, racial discrimination, unlawful deductions from wages, and sex discrimination in matters other than pay?'

Question 1

17 Having regard to the information before the Court, the first question referred by the national court must be construed as seeking to ascertain whether Community law precludes the application of a rule of national law which limits an employee's entitlement to arrears of remuneration or damages for breach of the principle of equal pay to a period of two years prior to the date on which the proceedings were instituted, there being no possibility of extending that period, where the delay in bringing a claim is attributable to the fact that the employer deliberately misrepresented to the employee the level of remuneration received by persons of the opposite sex performing like work.

18 The first point to note is that, according to established case-law, in the absence of Community rules governing the matter it is for the domestic legal system of each Member State to designate the courts and tribunals having jurisdiction and to lay down the detailed procedural rules governing actions for safeguarding rights which individuals derive from Community law, provided, however, that such rules are not less favourable than those governing similar domestic actions (the principle

of equivalence) and do not render virtually impossible or excessively difficult the exercise of rights conferred by Community law (the principle of effectiveness) (see, to that effect, Case 33/76 *Rewe* v *Landwirtschaftskammer Saarland* [1976] ECR 1989, paragraph 5; Case 45/76 *Comet* v *Produktschap voor Siergewassen* [1976] ECR 2043, paragraphs 13 and 16; Joined Cases C-430/93 and C-431/93 *Van Schijndel and Van Veen* v *SPF* [1995] ECR I-4705, paragraph 17; Case C-261/95 *Palmisani* v *INPS* [1997] ECR I-4025, paragraph 27; Case C-246/96 *Magorrian and Cunningham* [1997] ECR I-7153, paragraph 37; and paragraph 16 of the judgment of 15 September 1998 in Joined Cases C-279/96, C-280/96 and C-281/96 *Ansaldo Energia and Others* [1998] ECR I-5025).

19 The Court has thus recognised that it is compatible with Community law for national rules to prescribe, in the interests of legal certainty, reasonable limitation periods for bringing proceedings. It cannot be said that this makes the exercise of rights conferred by Community law either virtually impossible or excessively difficult, even though the expiry of such limitation periods entails by definition the rejection, wholly or in part, of the action brought (see, in particular, *Palmisani*, paragraph 28; Case C-188/95 *Fantask and Others* [1997] ECR I-6783, paragraph 48; and *Ansaldo Energia*, paragraphs 17 and 18).

20 Consequently, a national rule under which entitlement to arrears of remuneration is restricted to the two years preceding the date on which the proceedings were instituted is not in itself open to criticism.

21 However, with respect to the main proceedings, it is clear from the order for reference that Jennings misinformed Mrs Levez in stating that her male predecessor had been paid a salary of UKL 10 800, which accordingly was the amount to which her salary was increased with effect from 30 December 1991. It was not until April 1992 that her salary was increased to UKL 11 400.

22 In such circumstances, according to Mrs Levez, the rule at issue manifestly precludes the possibility of either full compensation or an effective remedy in cases of failure to comply with the principle of equal pay, contrary to Articles 2 and 6 of the Directive. Mrs Levez also points out that the national court has no discretion to extend the limitation period on account of the conduct of the defendant, who deceived her as to the remuneration received by her male predecessor; nor does it have a general discretion to extend the time-limit on the ground that it would be just and equitable to do so.

23 The Commission, too, maintains that the particular circumstances of the present case merit special attention. In practice, Mrs Levez was in no position to bring an equal pay claim during part of the relevant period because at that time she was quite unaware that she had been discriminated against. In consequence, the employer's deceit had the effect of wholly preventing the employee from exercising her right to equal pay, and it is unreasonable to maintain that the inability of the national court to take those special circumstances into account is justified by principles such as legal certainty or the proper conduct of proceedings.

24 The United Kingdom Government contends that Mrs Levez was aware in December 1991 that she had been paid less than her male predecessor, albeit she did not know the full extent of the disparity. She could have brought proceedings at that time, but failed to do so. At the hearing, Jennings likewise pointed out that even though Mrs Levez did not know how much her male predecessor had been paid — nor, therefore, the precise amount that she could obtain by way of arrears — there was nothing to stop her from bringing proceedings before September 1993.

25 It should be borne in mind that Article 177 of the Treaty is based on a clear separation of functions between the national courts and the Court of Justice, which means that, when ruling on the interpretation or validity of Community provisions, the latter is empowered to do so only on the basis of the facts which the national court

puts before it (see, in particuar, Case C-30/93 *AC-ATEL Electronics Vertriebs* [1994] ECR I-2305, paragraph 16).

26 Accordingly, it is not for the Court of Justice but for the national court to ascertain the facts which have given rise to the dispute and to establish the consequences which they have for the judgment which it is required to deliver (see Case 17/81 *Pabst & Richarz* [1982] ECR 1331, paragraph 12, and *AC-ATEL Electronics Vertriebs*, paragraph 17).

27 In the present case, the order for reference states that Mrs Levez was late in bringing her claim because of the inaccurate information provided by her employer in December 1991 regarding the level of remuneration received by men performing like work to her own.

28 It is clear, therefore, that it was because of that inaccurate — or indeed, deliberately misleading — information provided by the employer that Mrs Levez was in no position to realise that, even after December 1991, she had been the victim of sex discrimination.

29 As regards the period preceding December 1991, it was not until April 1993 that Mrs Levez discovered the extent of the discrimination against her.

30 As the Commission rightly pointed out, even though, in the present case, only part of the plaintiff's claim is affected, in a different case and in similar circumstances, the whole of a claim might be excluded by the operation of the rule at issue.

31 Where an employer provides an employee with inaccurate information as to the level of remuneration received by employees of the opposite sex performing like work, the employee so informed has no way of determining whether he is being discriminated against or, if so, to what extent. Consequently, by relying on the rule at issue in that situation, the employer would be able to deprive his employee of the means provided for by the Directive of enforcing the principle of equal pay before the courts (see, *mutatis mutandis*, Case 109/88 *Danfoss* [1989] ECR 3199, paragraph 13).

32 In short, to allow an employer to rely on a national rule such as the rule at issue would, in the circumstances of the case before the national court, be manifestly incompatible with the principle of effectiveness referred to above. Application of the rule at issue is likely, in the circumstances of the present case, to make it virtually impossible or excessively difficult to obtain arrears of remuneration in respect of sex discrimination. It is plain that the ultimate effect of this rule would be to facilitate the breach of Community law by an employer whose deceit caused the employee's delay in bringing proceedings for enforcement of the principle of equal pay.

33 Furthermore, it does not appear that application of the rule at issue in the circumstances of the case before the national court can reasonably be justified by principles such as legal certainty or the proper conduct of proceedings.

34 The answer to the first question must therefore be that Community law precludes the application of a rule of national law which limits an employee's entitlement to arrears of remuneration or damages for breach of the principle of equal pay to a period of two years prior to the date on which the proceedings were instituted, there being no possibility of extending that period, where the delay in bringing a claim is attributable to the fact that the employer deliberately misrepresented to the employee the level of remuneration received by persons of the opposite sex performing like work.

Question 2

35 In the light of the reply to the first question, there would be no need to address the second question referred by the national court in so far as it concerns proceedings brought before the Industrial Tribunal. However, the United Kingdom Government argues that, on the facts, Mrs Levez could, in proceedings before the County Court, successfully have claimed full compensation for the damage suffered on account of the fact that her employer's deceit had prevented her from bringing a claim under the Act. She could have relied in such proceedings both on the Act and on the deceit committed by her employer, and the rule at issue would not have applied.

36 In the light of that information, the second question should be construed as seeking to ascertain whether Community law precludes the application of the rule at issue even when another remedy is available but, compared with other domestic actions which may be regarded as similar, is likely to entail procedural rules or other conditions which are less favourable.

37 As stated in paragraph 18 of this judgment, in the absence of Community rules governing the matter it is for the domestic legal system of each Member State to designate the courts and tribunals having jurisdiction and to lay down the detailed procedural rules governing actions for safeguarding rights which individuals derive from Community law, provided, however, that such rules are not less favourable than those governing similar domestic actions (*Ansaldo Energia*, paragraph 27).

38 In view of the explanations given by the United Kingdom Government, it must be held that, where an employee can rely on the rights derived from Article 119 of the Treaty and the Directive before another court, the rule at issue does not compromise the principle of effectiveness. It remains to be determined whether, in the circumstances of the case before the national court, proceedings such as those which may be brought before the County Court comply with the principle of equivalence.

39 In principle, it is for the national courts to ascertain whether the procedural rules intended to ensure that the rights derived by individuals from Community law are safeguarded under national law comply with the principle of equivalence (see also, to that effect, *Palmisani*, paragraph 33).

40 However, the Court can provide the national court with guidance as to the interpretation of Community law, which may be of use to it in undertaking such an assessment.

41 The principle of equivalence requires that the rule at issue be applied without distinction, whether the infringement alleged is of Community law or national law, where the purpose and cause of action are similar (see, *mutatis mutandis*, paragraph 36 of the judgment of 15 September 1998 in Case C-231/96 *Edis* [1998] ECR I-4951).

42 However, that principle is not to be interpreted as requiring Member States to extend their most favourable rules to all actions brought, like the main action in the present case, in the field of employment law (see, to that effect, *Edis*, paragraph 36).

43 In order to determine whether the principle of equivalence has been complied with in the present case, the national court — which alone has direct knowledge of the procedural rules governing actions in the field of employment law — must consider both the purpose and the essential characteristics of allegedly similar domestic actions (see *Palmisani*, paragraphs 34 to 38).

44 Furthermore, whenever it falls to be determined whether a procedural rule of national law is less favourable than those governing similar domestic actions, the national court must take into account the role played by that provision in the pro-

cedure as a whole, as well as the operation and any special features of that procedure before the different national courts (see, *mutatis mutandis*, *Van Schijndel and Van Veen*, paragraph 19).

45 With respect to the main proceedings, it is necessary to consider, first, the United Kingdom Government's arguments that, for the purposes of the principle of equivalence, a claim under the Act — which was adopted before the United Kingdom acceded to the Communities and prior to the adoption of the Directive — constitutes a form of action under domestic law comparable to an action based directly on Article 119 of the Treaty. Since the Act applies to a whole series of claims concerned with enforcing compliance with the rule of equality of contractual terms, whether or not in relation to pay, it is reasonable for all claims to be subject to the same limitation period. Thus, according to the United Kingdom, the principle of equivalence is complied with.

46 On that point, it should be noted that the Act is the domestic legislation which gives effect to the Community principle of non-discrimination on grounds of sex in relation to pay, pursuant to Article 119 of the Treaty and the Directive.

47 Accordingly, as the Advocate General rightly pointed out in paragraph 48 of his Opinion, the fact that the same procedural rules — namely, the limitation period laid down by section 2(5) of the Equal Pay Act — apply to two comparable claims, one relying on a right conferred by Community law, the other on a right acquired under domestic law, is not enough to ensure compliance with the principle of equivalence, as the United Kingdom Government maintains, since one and the same form of action is involved.

48 Following the accession of the United Kingdom to the Communities, the Act constitutes the legislation by means of which the United Kingdom discharges its obligations under Article 119 of the Treaty and, subsequently, under the Directive. The Act cannot therefore provide an appropriate ground of comparison against which to measure compliance with the principle of equivalence.

49 Secondly, it is necessary to consider the possibilities contemplated by the order for reference. It is there suggested that claims similar to those based on the Act may include those linked to breach of a contract of employment, to discrimination in terms of pay on grounds of race, to unlawful deductions from wages or to sex discrimination in matters other than pay.

50 If it transpires, on the basis of the principles set out in paragraphs 41 to 44 of this judgment, that a claim under the Act which is brought before the County Court is similar to one or more of the forms of action listed by the national court, it would remain for that court to determine whether the first-mentioned form of action is governed by procedural rules or other requirements which are less favourable.

51 On that point, it is appropriate to consider whether, in order fully to assert rights conferred by Community law before the County Court, an employee in circumstances such as those of Mrs Levez will incur additional costs and delay by comparison with a claimant who, because he is relying on what may be regarded as a similar right under domestic law, may bring an action before the Industrial Tribunal, which is simpler and, in principle, less costly.

52 Also of relevance here is the fact mentioned by the national court that the rule at issue applies solely to claims for equal pay without discrimination on grounds of sex, whereas claims based on 'similar' rights under domestic law are not limited by the operation of such a rule, which means that such rights may be adequately protected by actions brought before Industrial Tribunals.

53 In view of the foregoing, the answer must be that Community law precludes the application of a rule of national law which limits an employee's entitlement to arrears of remuneration or damages for breach of the principle of equal pay to a period of two years prior to the date on which the proceedings were instituted, even

when another remedy is available, if the latter is likely to entail procedural rules or other conditions which are less favourable than those applicable to similar domestic actions. It is for the national court to determine whether that is the case.

Costs

54 The costs incurred by the United Kingdom and French Governments and the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the 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 questions referred to it by the Employment Appeal Tribunal, London, by order of 14 August 1996, hereby rules:

1. Community law precludes the application of a rule of national law which limits an employee's entitlement to arrears of remuneration or damages for breach of the principle of equal pay to a period of two years prior to the date on which the proceedings were instituted, there being no possibility of extending that period, where the delay in bringing a claim is attributable to

the fact that the employer deliberately misrepresented to the employee the level of remuneration received by persons of the opposite sex performing like work.

2. Community law precludes the application of a rule of national law which limits an employee's entitlement to arrears of remuneration or damages for breach of the principle of equal pay to a period of two years prior to the date on which the proceedings were instituted, even when another remedy is available, if the latter is likely to entail procedural rules or other conditions which are less favourable than those applicable to similar domestic actions. It is for the national court to determine whether that is the case.

Rodríguez Iglesias Puissochet Hirsch

Jann Mancini Moitinho de Almeida

Murray Edward Ragnemalm

Schintgen Ioannou

Delivered in open court in Luxembourg on 1 December 1998.

R. Grass G. C. Rodríguez Iglesias

Registrar President