# OPINION OF MR ADVOCATE-GENERAL TRABUCCHI DELIVERED ON 10 MARCH 1976 [1]

*Mr President,*
*Members of the Court,*

1. After the solemn declarations made by the Heads of State and of Government in Paris in 1972 on the importance of the social aspects of European integration, here we have a private individual, a female worker, who succeeds in obtaining from her national court a reference for a preliminary ruling on the interpretation of the provision in the EEC Treaty which establishes the principle of equal treatment for men and women in the field of employment. A reference which in itself is of very modest financial importance provides an opportunity for this Court to clarify certain aspects of the protection which fundamental rights are entitled to receive within the framework of the Community structure.

This is the second reference for a preliminary ruling which bears the name of Miss G. Defrenne, a former air hostess of the Société Anonyme Belge de Navigation Aérienne (Sabena).

Engaged on 10 December 1951 as a 'trainee air hostess' she proceeded, on 1 October 1963, under a new contract, to discharge the responsibilities appropriate to the category of 'cabin steward, air hostess/principal cabin attendant'.

Earlier, on 15 March 1963, Sabena and the worker's trade unions concluded a collective agreement which could not be made binding by a royal decree and which, in fact, has never been binding.

In conformity with the collective contract, a clause was inserted in the individual contract of the person concerned providing that the contract of women members of the cabin crew was in all cases to cease automatically on completion of 40 years of age. This clause was applied to Miss Defrenne on 15 February 1968.

Under the terms of her contract, she received a grant equivalent to one year's salary. Miss Defrenne then took two actions:

On 9 February 1970 she applied to the Belgian Conseil d'Etat for annulment of the Royal Decree of 3 November which, for civil aviation crew, laid down special rules governing the acquisition of the right to a pension and special procedures for implementation of Royal Decree No 50 of 24 October 1967 concerning retirement pensions and survivors' pensions for employed persons, on the basis of which her pension had been calculated.

Giving a preliminary ruling on a reference made to it by the Belgian court (in Case 80/70), this Court, in its judgment of 25 May 1971, ruled that a retirement pension established within the framework of a social security scheme laid down by legislation does not constitute consideration which the worker receives indirectly in respect of his employment from his employer within the meaning of Article 119 of the EEC Treaty ([1971] ECR 445).

At the same time, on 13 March 1968, Miss Defrenne brought proceedings against Sabena before the Tribunal du travail, Brussels, claiming compensation for the injury she alleged she had suffered owing to the fact that:

1. The salary paid to her during the period between 15 February 1963 and 1 February 1966 was FB 12 716 less than that to which a male 'steward' with the same seniority would have been entitled;

1 — Translated from the Italian.

2. She was entitled to a severance grant of FB 166 138;
3. She ought to have been recognized as entitled to a higher pension, up to a maximum of FB 334 000.

In its judgment on 17 December 1970, the Tribunal du travail, Brussels, dismissed all three heads of claim without recourse to Article 177 of the EEC Treaty.

On 11 April 1971, Miss Defrenne thereupon brought an appeal before the Cour du travail, Brussels. Finally, on 23 April 1975, that court found that only the first head of claim required interpretation of Article 119 of the Treaty and thereupon referred to this Court the questions which we must now consider.

In spite of the opinion to the contrary expressed by the Auditeur Général, the Cour du travail dismissed the applications relating to the injury which Miss Defrenne claims to have suffered, in connexion with pension and grant as a result of the difference in previous salary and the difference in pensionable age respectively compared with her male colleagues.

Arrears were claimed only with effect from 15 February 1963 because of the five-year limitation rule provided for under Article 2277 of the Belgian Civil Code. The reason why the claim does not extend beyond 1 February 1966 is that, with effect from that date, Sabena, of its own accord, placed 'hostesses' and 'stewards' on the same basic rates of pay.

2. The questions referred to the Court are in the following terms:

(1) Does Article 119 of the Treaty of Rome introduce directly into the national law of each Member State of the European Community the principle that men and women should receive equal pay for equal work and does it therefore, independently of any national provision, entitle workers to institute proceedings before national courts in order to ensure its observance, and if so as from what date?

(2) Has Article 119 become applicable in the internal law of the Member States by virtue of measures adopted by the authorities of the European Economic Community (if so, which, and as from what date?) or must the national legislature be regarded as alone competent in this matter?

3. Article 119 is not a complete innovation: it must be viewed both in the light of internationally recognized principles and in the light of the EEC Treaty.

At international level Article 119 is the extension, the 'European translation', of Convention No 100 adopted by the International Labour Organization on 29 June 1951 'concerning equal remuneration for men and women workers for work of equal value'. The Convention has now been ratified by all the Member States of the EEC although some of them ratified it after the entry into force of the Treaty of Rome (the Netherlands in 1971 and Ireland in 1974). Belgium, however, had already ratified it on 23 May 1952. The Convention, which came into force a year later, on 23 May 1953, is accordingly applicable in all the Member States although not with effect from the same date. The question whether it is or is not 'self-executing' has no bearing on the interpretation to be placed in Community law on the provision of Article 119 of the EEC Treaty which is, essentially, its counterpart.

In the Treaty of Rome Article 119 appears in Chapter 1 (Social Provisions) of Title III Social Policy) of Part Three (Policy of the Community).

It embodies an objective consonant with that laid down in the preamble to the Treaty and subsequently expressed more precisely in Article 117, which recognizes

'the need to promote improved working conditions and an improved standard of living for workers, so as to make possible their harmonization while the improvement is being maintained'. Obviously, this harmonization can be achieved only if the standard of living and working conditions, in particular those relating to pay, are harmonized not only as between the Member States but also within each State and, again, as between men and women.

As Mr Advocate-General Dutheillet de Lamothe said, Article 119 has a double objective: 'a social objective ... since it leads all the countries of the Community to accept the principle of a basically social nature raised by the ILO Convention; but an economic objective, too, for in creating an obstacle to any attempt at "social dumping" by means of the use of female labour less well paid than male labour, it helped to achieve one of the fundamental objectives of the Common Market, the establishment of a system ensuring that "competition is not distorted"'.

Confirmation of this view is provided both by the 'preparatory documents' and by the subsequent attitudes adopted by the Member States.

The authors of the ECSC Treaty provided that the Community should 'progressively bring about conditions which will of themselves ensure the most rational distribution of production at the highest possible level of productivity' (Art. 2). In much clearer terms, the authors of the Treaty of Rome declared (about 20 years ago) that 'spontaneous' harmonization of rates of pay as a result of action by the trade unions and of the progressive establishment of the Common Market must be completed by special action on the part of the governments.

4. This brings us to the wording of Article 119. The first paragraph reads as follows: 'Each Member State shall during the first stage ensure and subsequently maintain the application of the principle that men and women should receive equal pay for equal work'.

The principle quoted was, therefore, due to be put into operation before the end of the first stage, namely, before 1 January 1962.

The Treaty forms a single entity; it is impossible to lay emphasis on some of its provisions and ignore others without upsetting the balance of the whole.

Thus, in order to prevent any delay whatsoever affecting social policy pending transition to the second stage, the Commission addressed to Member States and, through them, to all the authorities competent to determine rates of pay, a recommendation, dated 20 July 1960, in which it reminded them of the need to fulfil the obligation imposed by Article 119 and indicated the means whereby this aim could be achieved.

But, because, subsequently, the Member States considered that they were not in a position to comply with the prescribed time-limit, the 'conference of Member States' adopted, on 30 December 1961, a resolution on Article 119 in which a fresh time-table was laid down for the phasing out of differences of treatment and laid down 31 December 1964 as the date by which all discrimination must be abolished.

It should be noted that both the recommendation and the resolution emphasize the need for the Member States to establish, in their own national legal systems, a means of redress of which women can avail themselves in the event of an infringement of Article 119. This would appear to indicate that, in the view of the Commission and of the Member States, Article 119 was not 'self-executing'.

This leads us to the heart of the matter and to the question, which we must now consider, whether Article 119 constitutes a provision having direct effect.

Under the criteria established by the case-law of this Court, a Community provision produces direct effects so as to confer on individuals the right to enforce it in the courts, provided that it is clear and sufficiently precise in its content, does not contain any reservation and is complete in itself in the sense that its application by national courts does not require the adoption of any subsequent measure of implementation either by the States or the Community.

Let us consider whether, viewed in the light of the context and spirit of the Treaty, the character and content of Article 119 satisfy these conditions.

The provision in question places every Member State under the unconditional obligation to ensure during the first stage, and subsequently to maintain, the application of the principle that men and women should receive equal pay for equal work.

Although the form of words used: 'principle that men and women should receive equal pay', may seem too vague and the meaning of the word 'principle' itself not to be very specific, the purpose of the rule is nevertheless clear: to prohibit any discrimination to the detriment of women with regard to pay.

It can be argued that, even though Article 119 defines the concept of pay for the purposes of equality, the definition given of it is not so complete as to exclude all doubt about the precise meaning of the rule. Under the case-law of the Court, however, the fact that the concepts relied upon in a provision require interpretation by the national court, which may, *inter alia,* avail itself of the procedure in Article 177 of the Treaty, constitutes no obstacle to recognition of its direct effect (see the judgment in Case 27/67 *Fink-Frucht* [1968] ECR 223 and in Case 41/74 Van Duyn [1974] ECR 1337).

Again, with regard to the definition of the concept of 'equal work', which is in any case partly described in the third paragraph of Article 119 (which, in addition to using the term 'same work' for work at piece rates, also refers to pay for work at time rates as 'the same for the same job'), there is no need to exaggerate its importance in applying the article.

It has been rightly observed that Article 119 'does not try to determine when men and women are doing the same work but only to ensure that the sex of the worker is in no way taken into account in decisions on pay. Whether the work is the same or different is a question of fact to be determined in every individual case in accordance with the responsibilities assigned to each person concerned and must not be the subject of an *a priori* decision any more than there is an *a priori* decision that two men placed on the same rate of pay perform the same work' (Levi Sandri, in Commentario CEE, vol. II, p. 956).

The conclusion may therefore be drawn that, as regards the abolition, in connexion with pay, of all discrimination based on sex, Article 119 imposes an obligation which is clear, precise and unconditional.

It must, however, be emphasized that Article 119 does not provide for, or rather does not always necessarily provide for, all possible implications of the principle of equal pay for men and women in its fullest sense. The application of the principle to situations other than those referred to in the aforesaid artcle (cases where the 'same work', namely identical work, is performed) lies, without doubt, outside the context in which the question of the direct applicability of the rule can arise and more properly falls within the field of social policy the definition and application of which primarily depend on the initiative and coordinating action of the Community executive and of the Member States.

5. The obligation imposed on the Member States, to which the rule is

formally addressed, consists of an obligation to act subject to a specific time-limit (end of the first stage).

As we know, by the resolution of 31 December 1961 the Member States determined to extend the time-limit for full application of the principle of equal pay until 31 December 1964.

As the validity and effect of that act must be established I must point out that in form it constitutes an agreement reached between the representatives of the Member States meeting in Council; as for its effect, it specifies the substance of Article 119 by laying down the methods and the time-table to be followed in implementing it.

As in the case of the ruling given in the judgment of 3 February 1976, in Case 59/75, *Manghera,* concerning a resolution on another subject, there can be no doubt that the said resolution is powerless to amend the Treaty by replacing the clear provision in Article 119 in respect of the time-limit therein provided.

The resolution must, therefore, be regarded as an essentially political act expressing the States' concern to solve the problems arising from implementation of Article 119. It does not constitute an independent source of obligations for the States; such obligations stem exclusively from the article of the Treaty. The wording of the provision under consideration certainly implies action by the States to put the obligation which they have assumed into full effect.

In view of this the questions arises whether Article 119 possesses the completeness which a provision is required to have in order to be recognized as having direct effect.

From the precedents established by this Court it is clear that an article of the Treaty does not cease to have direct effect merely because it imposes on the States an obligation to act, provided that the obligation is expressed clearly and unconditionally, its tenor is precise and no real discretion is left to the Member States with respect to the application of the provision (see, for example, the judgment in Case 57/65 Lütticke, [1966] ECR 205).

Apart from cases where work which is not identical has to be established as being of equal value, which could undoubtedly give rise to fairly complicated assessments on the part, in the first place, of the legislature, the application of Article 119 does not necessarily require the adoption of implementing legislation in circumstances (which, in this case, are exclusively the concern of the court making the reference) where work which is undoubtedly identical is differently rewarded on grounds of sex.

Difficulties might, of course, be involved in the concept of 'pay'.

Those who drafted Article 119 tried to define this concept. Repeating, on this point word for word the text of Article 1 (a) of Convention No 100 [1], Article 119 provides that ' "pay" means the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which the worker receives, directly or indirectly, in respect of his employment from his employer'.

Despite this clarification, it will, in my opinion, frequently be necessary to interpret the concept of pay and especially that of 'any other consideration'. The Court did this in the first *Defrenne* case and, in respect of the treatment of dependants, in Case 20/71, *(Sabbatini (née Bertoni),* [1972] ECR 345).

Nevertheless, it seems clear to me that the ordinary basic wage or salary as set out in the salary table or scales must be

1 — Translator's note: but not of the English text of the Convention;

treated as pay and that if, in the event, there is found to be discrimination solely on grounds of sex, this constitutes one of the conditions for application of Article 119. All that I need add is that, as is observed by the court making the reference, the difference of FB 12716 is due to the difference in the 'basic salary scales' applicable to men and women and not to supplementary perquisites, whether direct or indirect, in cash or in kind, such as 'flight bonuses' or 'cabin bar takings'.

On this point, too, therefore, I consider that there is nothing standing in the way of the direct applicability of Article 119 in a case such as that on which the national court is called upon to rule.

6. But another question arises. In contrast to the other articles of the Treaty which the Court has hitherto declared to have immediate effect and which are concerned with matters on which there is a direct legal relationship between the State and its subjects (customs or taxation law and the right of establishment), Article 119, despite the fact that it is restricted to imposing an obligation on the States, is primarily concerned with the relationship between individuals. The discrimination which the provision sets out to prohibit will, in the majority of cases, consist of discriminatory action by a private undertaking against women workers.

The State directly intervenes in the fixing of rates of pay only in the public sector; in the private sector, on the other hand, pay rates are largely left to be fixed by agreement between the independent parties to the contract. The national authorities might not, therefore, be in a position, on the basis of this provision alone, forthwith to impose the principle of equal pay. To this end it would be necessary to adopt appropriate national legislation.

For these reasons, the intervener governments have argued that the provision under consideration does no more than impose a direct obligation on the Member States alone and that it cannot create rights and duties in the case of individuals.

A subsidiary argument contended for by the representative of the Commission is to the effect that, from a purely technical standpoint, Article 119 could enable individuals to bring an action which, although admissible, would be upheld only if it were based on discrimination for which, as the employer, the State was responsible or, at least, on systems of payment directly fixed by the national legislative or executive authorities in the country concerned.

The above-mentioned arguments seem to me to misconceive the principles of the Community legal order which have been developed by case-law covering more than twenty years.

To begin with, if we were to accept that the provision is directly applicable only against public employers this would, as was emphasized by the agent of the Irish Government, constitute fresh and unacceptable discrimination between the public and private sectors. The legal status of Sabena and its relationship with the Belgian State have, therefore, no relevance to the present dispute.

It should also be borne in mind that, under settled and well-known precedents established by this Court, even provisions addressed to the States alone are, in certain conditions, capable of creating individual rights which the national courts can and must protect.

The decisive factor in determining what the effects of a Community provision are in national law is not the identity of those to whom it is addressed but its nature, which the Court defines on the basis of 'the spirit, the general scheme and the wording' of the provision itself.

The object of Article 119 is, within a specified time, to abolish discrimination

of any kind in fixing rates of pay and, moreover, not only discrimination created by the laws or regulations of the Member States but also discrimination produced by collective agreements or individual contracts of employment.

It follows that the obligation to observe the principle of equality is imposed not only on the States, inasmuch as the determination of the pay of government servants is concerned but, provided that the requirement stated in the provision is sufficiently clear and precise in meaning to enable it to apply in relation to third parties, it also has effects in the field left to trade union organizations and individuals in which to conclude their collective or individual contracts. This is due entirely to the provison of the Treaty, regardless of other implementing provisions adopted to this end by the State.

When requested to give a ruling on a private 'regulation' adopted by an international sporting organization, the Court stated (in Case 36/74, *Walrave* [1974] ECR 1405) that both Article 59 and Article 48 prohibit not only discrimination which has its origin in acts of a public authority but also those arising from 'rules of any other nature aimed at regulating in a collective manner gainful employment and the provision of services'. The attainment of the fundamental objectives of the Treaty would in fact be compromised in the absence of 'the abolition of... obstacles resulting from the exercise of their legal autonomy by associations or organizations which do not come under public law'.

It is true that, in contrast to the free movement of persons, the principle of equal pay is not included amongst the fundamental objectives of the Treaty but its attainment is of exceptional importance as a step towards 'economic and social progress' and in achieving the 'constant improvement of the living and working conditions...' (see preamble to the Treaty).

7. I therefore feel able to conclude that the principle of equal pay, which by its very nature is of direct concern to individuals, is, within the limits which I have indicated above, capable of producing direct effects in respect of such individuals and enables them to rely upon it in the national courts without need for it to be subject to adoption of relevant legislative measures by the States.

Of course, the adoption of administrative or even penal sanctions could only reinforce the direct effectiveness of Community laws and would for this reason be particularly favourable, but the main sanction is the inapplicability of national law or of any other kind of act, public or private, which conflicts with directly applicable Community law.

Consequently, where previous national legislation or regulations have been repealed or amended only by implication through the automatic incorporation of Community laws within the national legal system, or where the contracting parties maintain in force collective or individual contracts which conflict with Community legislation, it is not necessary, for an acknowledgment of the direct effectiveness of the latter, for the said provisions to be formally harmonized with the Community laws concerned in order that all concerned may be made aware of the change and any uncertainty as to the law in force may be removed. Here too, formal harmonization would, without doubt, be of great value but any doubts, assuming there are any, may be removed by the use of Article 177 of the Treaty; the danger that this Court would be overwhelmed with requests for 'clarification' is an argument worthy of consideration only on grounds of expediency.

Accordingly for the purposes of Article 119, there is a very simple and effective method of moving against a discrimination; it is enough for the national

courts to declare null and void any clause in an individual or collective contract which conflicts with the aforesaid provision. Here again, however, we must define the precise meaning of the words 'null and void'. Notwithstanding the axiom 'no nullity save as provided for by the law', the nullity to which I refer is based on public policy and thus takes priority over any individual provision of the law. On the question of pay, nullity means that the rate of pay provided for by the clause which is void is automatically replaced by the higher rate of pay granted to male workers.

There is nothing new in this. The courts in various Member States have, even in the face of opposition from management and workers, and even in the absence of implementing legislation, so acted in order to give effect to the principles of equal treatment enshrined in the constitutions of the countries concerned.

The Court has, moreover, recognized other provisions of the Treaty as having direct effect, although they raised much greater problems (see, for example, Article 95 (1) of the EEC Treaty which is the subject of the judgment in Case 57/65, *Lütticke* [1966] ECR 205).

It is no more difficult for the national court to disallow a discriminatory contractual agreement than to disallow a national law which is incompatible with the Treaty or to award compensation to an individual who has suffered damage as the result of such a law.

Furthermore, in interpreting Article 119, the Court cannot overlook the fact that the principle of equal treatment is enshrined in the legal system of Member States, the majority of which have erected it into a principle formally underwritten by the constitution itself. In its judgment of 17 December 1970 in Case 11/70, *Internationale Handelsgesellschaft* ([1970] ECR at p. 1134), the Court stated that respect for fundamental rights forms an integral part of the general principles of law and that the protection of such rights within the Community can and must be inspired by the constitutional traditions common to the Member States. In view of this it seems to me that the prohibition of all discrimination based on sex (particularly on the subject of pay) protects a right which must be regarded as fundamental in the Community legal order as it is elsewhere.

In cases where discrimination was based on the criterion of mere residence or nationality — in Case 33/74 *(Van Binsbergen* [1974] ECR 1299) and Case 2/74 *(Reyners* [1974] ECR 631) — the Court declared any discrimination based on residence or nationality to be contrary to the Treaty. I propose that the Court should extend the principle of these decisions to discrimination based solely on considerations of sex, as the Court has already done in the case of Community dependants (see Case 20/71, *Sabbatini (née Bertoni),* [1972] ECR 351, and Case 21/74, Airola [1975] ECR 228).

8. To summarize my comments, at this point, let me say that the words in Article 119: 'Each Member State (shall... ensure)', taken from Convention No 100 and which are explained by the fact that the putting into effect of Article 119 requires, on the part of the authorities of the Member States (and of the so-called 'social partners', namely the employers, the workers and their respective organizations), constant action in order to ensure that the realization of the principle is not placed in jeopardy even in the event of a technological development or a change in economic policy, have nevertheless a much deeper significance in the Treaty of Rome; the words refer not only to the Member State as a sovereign body bound by an international treaty, as was also the case under Convention No 100 but, in addition, all the competent authorities of the State, including the courts, which have a duty to apply the provisions of the Treaty.

It is true that application of the concepts of 'pay' and of 'work' may give rise to difficulty but it is equally true that 'the fulfilment [of the obligation] had to be made easier by ... the implementation of a programme of progressive measures' (judgment of 21 June 1974 in Case 2/74, *Reyners*, [1974] ECR 631.

Undoubtedly, action by the Member States and by the Community institutions in the form of legislation, regulations or administrative measures is essential for the reason that, if the principle of equal treatment were to apply only to pay in the strict sense of the word or to absolutely identical work, the practical effect of Article 119 would be rather small.

This gives the Member States and the Community institutions enormous scope in taking action to put into effect the principle of non-discrimination laid down in Article 119 without having to rely on its direct applicability.

Discrimination against women is, in fact, often disguised by the pay structure, the classification or description of work, the special character of labour in certain spheres, not to mention inequalities due to job training or promotion systems and general working conditions.

The list of studies and investigations carried out at Community level in order to make the principle of equal treatment fully effective is an impressive one.

Furthermore, on 10 February 1975, the Council adopted under Article 100 a directive, submitted to it by the Commission on 14 November 1973, on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women 'for the same work or for work to which equal value is attributed'. The purpose of the directive was to ensure smooth and effective application of the principle of equal pay and indicated in general terms certain measures which would provide minimum protection, in particular through judicial process. The Member States were given a year, ending in February 1976, to comply with the directive and three years, ending in February 1978, to report to the Commission on its application.

The directive quoted did not, however, avail to amend the original scope of Article 119. All that can be said is that, as no one disputes, provisions adopted under Article 100 (approximation of laws) can help to make more effective application of Article 119.

9. I can now bring the considerations I have mentioned to bear on the national law which raised doubts in the minds of the Cour du travail, Brussels.

Article 14 of Royal Decree No 40 of 24 October 1967, promulgated in implementation of the Law of 31 March 1967 on economic recovery, reads as follows:

'In accordance with Article 119 of the Treaty establishing the European Economic Community, ratified by the Law of 2 December 1957, any woman worker may institute proceedings before the relevant court for the application of the principle that men and women should receive equal pay for equal work.'

The court which has referred the matter to the Court of Justice for a preliminary ruling seems, therefore, to take the view, in conformity with the explanatory memorandum to the decree, that women workers have the right to bring proceedings to compel the employer to comply with 'individual rights arising from the principle of equal treatment only with effect from 1 January 1968, the date when Royal Decree No 40 (Article 30) came into force.

But the fact that, in order to make Article 119 more effective, the Belgian authorities deemed it necessary to make express provision for women workers to

take legal action in no way implies that, without that provision, the principle in Article 119 would not have created and did not create individual rights and that analogous rights exist solely because and from the date when national law recognized the said principle.

The measure adopted by the Belgian authorities has no effect whatsoever on the meaning of Article 119; if we accept that, at least within certain limits, Article 119 is directly effective as from the end of the first stage, we must recognize that the nationals of the original Member States were and are able to avail themselves of it from that date, subject to the laws governing application to the courts for redress and to the law of limitation affecting that right.

It is true that, in Belgium, the King 'regularly' refuses to give the force of law to collective contracts which conflict with the principle contained in Article 119. But, since the collective contract between Sabena and its employees could not be subject to review by the King, the obstacle consisting of the 'independent wishes of employers and employed' and of the 'freedom to negotiate and enter into collective contracts' could not be surmounted in this way. If there were anything discriminatory in the contract and if there were a desire to remove it, this could only be done by the use, in the words of the explanatory memorandum, of a 'legal fiction'. But this fiction does not require the consent of national law; it is merely the legal translation into national law of 'the direct effect' of the Community provision to be applied.

In my opinion, therefore, a royal decree is not necessary in a case such as the present one. The principle embodied in Article 119 of the Treaty was not introduced into the Belgian legal system by the royal decree in question but by the law, ratifying the EEC Treaty, which was approved on 2 December 1957.

Under the case-law of this Court, the methods adopted for implementation of a Community provision cannot jeopardize its uniform application: 'All methods of implementation are contrary to the Treaty which would have the result of creating an obstacle to the direct effect of Community regulations and of jeopardizing their simultaneous and uniform application in the whole of the Community' (judgment of 7 February 1973 in Case 39/72, *Commission* v *Italy* [1973] ECR at p. 114). The national provision in question may have value for the future but it could not affect the substance of the principle embodied in Article 119.

Finally, I feel justified in reaching the following conclusion: with effect from 1 January 1962, a woman worker in the six original Member States could, purely on the basis of Article 119, bring proceedings against any infringement whatever of the principle embodied in the said article. The validity of the action would depend on the meaning attributed to the concepts of 'pay' and of 'equal work'.

10. A final argument against the 'direct effect' of Article 119 is put forward by the Governments of the United Kingdom and of the Irish Republic, both of whom appear to be peculiarly sensitive to what might be called the 'cost of the operation'.

Arguments of this kind, however pressing on grounds of expediency, have no relevance in law. This Court did not deem it necessary to alter its interpretation of Article 95 which, in Germany, resulted in a large number of applications and created difficulties for the fiscal courts. The Court declared: 'This argument is not by itself of such a nature as to call in question the correctness of that interpretation' (judgment of 3 April 1968 in Case 28/67 *Molkerei-Zentrale Westfalen* v *Hauptzollamt Paderborn* [1968] ECR at p. 153).

On the other hand, in view of the fact that Article 119 is recognized as having direct effect solely in respect of pay, properly so called, representing consideration for 'equal work', the financial consequences should not reach too high a level, having regard to the effects of limitation in the various Member States.

For the foregoing reasons I am of the opinion that the Court should rule as follows:

Inasmuch as Article 119 of the EEC Treaty is concerned with pay in the strict sense of the word and with work which is not merely similar but is the same, the article has, with effect from 1 January 1962, introduced into the national law of the original Member States of the Community the principle of equal pay for men and women, and has by itself directly conferred rights on the workers concerned, which national courts must protect; such protection is not subject to prior adoption of rules for its implementation either by the States or by the Community.