JUDGMENT OF THE COURT

22 September 1998 *

In Case C-185/97,

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 tribunal between

Belinda Jane Coote

and

Granada Hospitality Ltd,

on the interpretation of Council Directive 76/207/EEC 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 (OJ 1976 L 39, p. 40),

* Language of the case: English.

THE COURT,

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

Advocate General: J. Mischo,
Registrar: D. Louterman-Hubeau, Principal Administrator,

after considering the written observations submitted on behalf of:

— Ms Coote, by Dinah Rose, Barrister, instructed by Pauline Matthews, Principal Legal Officer, Equal Opportunities Commission,

— the United Kingdom Government, by Lindsey Nicoll, of the Treasury Solicitor's Department, acting as Agent, and Sarah Moore, Barrister,

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

having regard to the Report for the Hearing,

after hearing the oral observations of Ms Coote, the United Kingdom Government and the Commission at the hearing on 19 February 1998,

after hearing the Opinion of the Advocate General at the sitting on 2 April 1998,

gives the following

Judgment

1 By order of 20 November 1996, received at the Court on 12 May 1997, 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 Council Directive 76/207/EEC 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 (OJ 1976 L 39, p. 40, hereinafter 'the Directive').

2 Those questions were raised in proceedings between Ms Coote and her former private-sector employer, Granada Hospitality Ltd (hereinafter 'Granada'), concerning Granada's refusal to provide references to potential employers of Ms Coote.

The Directive

3 According to Article 1(1) of the Directive, its purpose is 'to put into effect in the Member States the principle of equal treatment for men and women as regards access to employment, including promotion, and to vocational training and as regards working conditions and, on the conditions referred to in paragraph 2, social security. This principle is hereinafter referred to as "the principle of equal treatment".'

4 Article 5(1) of the Directive states:

'Application of the principle of equal treatment with regard to working conditions, including the conditions governing dismissal, means that men and women shall be guaranteed the same conditions without discrimination on grounds of sex.'

5 Under Article 6 of the Directive, Member States are to 'introduce into their national legal systems such measures as are necessary to enable all persons who consider themselves wronged by failure to apply to them the principle of equal treatment within the meaning of Articles 3, 4 and 5 to pursue their claims by judicial process after possible recourse to other competent authorities.'

6 Pursuant to Article 7 of the Directive, Member States are to 'take the necessary measures to protect employees against dismissal by the employer as a reaction to a complaint within the undertaking or to any legal proceedings aimed at enforcing compliance with the principle of equal treatment.'

National legislation

7 The Sex Discrimination Act 1975 (hereinafter 'the SDA'), which transposed the Directive into United Kingdom law, provides, in section 4:

'1. A person ("the discriminator") discriminates against another person ("the person victimised") in any circumstances relevant for the purposes of any pro-

vision of this Act if he treats the person victimised less favourably than in those circumstances he treats or would treat other persons, and does so by reason that the person victimised has —

(a) brought proceedings against the discriminator or any other person under this Act or the Equal Pay Act 1970 ...

...'

8 The discrimination is unlawful only if committed in one of the situations referred to in Parts II and IV of the SDA; Part II concerns discrimination in the employment field. In this respect section 6 provides:

'1. It is unlawful for a person, in relation to employment by him at an establishment in Great Britain, to discriminate against a woman —

(a) in the arrangements he makes for the purpose of determining who should be offered that employment, or

(b) in the terms on which he offers her that employment, or

(c) by refusing or deliberately omitting to offer her that employment.

2. It is unlawful for a person, in the case of a woman employed by him at an establishment in Great Britain, to discriminate against her —

(a) in the way he affords her access to opportunities for promotion, transfer or training, or to any other benefits, facilities or services, or by refusing or deliberately omitting to afford her access to them, or

(b) by dismissing her, or subjecting her to any other detriment.'

The main proceedings

9 According to the order for reference, Ms Coote was employed by Granada from December 1992 to September 1993. In 1993 she brought a claim for sex discrimination against Granada, alleging that she had been dismissed because of pregnancy. That claim was settled, and Ms Coote's employment with Granada ended by mutual agreement on 7 September 1993.

10 In July 1994 Ms Coote, seeking new employment, had recourse to two employment agencies. She considers that her difficulties in finding employment were due to Granada's failure to provide a reference to one of the employment agencies; Granada disputes this.

11 Ms Coote then brought a further claim against Granada before the Industrial Tribunal, Stratford, claiming that she had been victimised by Granada's refusal to

supply a reference to the employment agency. She alleged that the refusal was a reaction to the claim which she had previously brought against her former employer.

12 That claim was dismissed on the grounds that the alleged discrimination had taken place after her employment with Granada had ended and that, in any event, the alleged detriment had arisen after that date. The Industrial Tribunal considered that the SDA was to be interpreted as prohibiting only retaliatory measures whose prejudicial effect appears during the employment relationship. It stated that it reached that decision with some regret, since it left Ms Coote without a remedy.

13 Ms Coote appealed against that decision to the Employment Appeal Tribunal. In its order for reference the Employment Appeal Tribunal observes that under section 4 of the SDA it is discrimination *inter alia* if a person is treated less favourably than others because of having brought proceedings under the SDA; however, victimisation by the employer is unlawful only in the circumstances set out in Part II of the SDA.

14 The Employment Appeal Tribunal observes that the Race Relations Act 1976, which contains provisions similar to sections 4 and 6 of the SDA, has been held to cover only acts of discrimination which occur during the relevant employment relationship, so that it does not apply to cases in which an employer causes harm to a former employee. The Employment Appeal Tribunal notes that it was on that basis that the Industrial Tribunal decided against Ms Coote.

15 The Employment Appeal Tribunal is, however, uncertain whether, having regard to the Directive, the SDA, unlike the Race Relations Act 1976, ought not to be interpreted as prohibiting not only retaliatory measures which take the form of detrimental conduct during the employment relationship but also those which are decided on or whose harmful effects are produced after the employment has ended.

16 In those circumstances, the Employment Appeal Tribunal stayed proceedings and referred the following questions to the Court for a preliminary ruling:

'1. Does Council 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 require Member States to introduce into their national legal systems such measures as are necessary to enable a complainant to pursue a claim by judicial process where the following circumstances apply:

(i) the complainant was employed by the respondent;

(ii) during her employment, the complainant brought a claim of sex discrimination against the respondent which was compromised;

(iii) following the end of her employment, the complainant has made efforts to find full-time work, but has been unsuccessful;

(iv) the respondent has caused or contributed to the complainant's difficulties in finding work by refusing to provide references to potential employers when requested to do so;

(v) the employer's decision to refuse to provide references was taken after the end of the complainant's employment;

(vi) the reason, or a principal reason, for the employer's decision to refuse to provide a reference to the complainant was that she had previously brought a claim of sex discrimination against the respondent?

2. Does Council 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 require Member States to introduce into their national legal systems such measures as are necessary to enable persons to pursue a claim by judicial process where the circumstances set out under 1 above apply, save that:

i) the respondent's decision to refuse to provide a reference was taken before the termination of the complainant's employment; but

(ii) the actual refusal or refusals to provide a reference took place after the termination of the complainant's employment?'

17 It must be pointed out at the outset that it has been consistently held since Case 152/84 *Marshall* v *Southampton and South-West Hampshire Area Health Authority* [1986] ECR 723, paragraph 48, that a directive cannot of itself impose obligations on an individual, in this case a private-sector employer, and thus cannot be relied upon as such against such a person.

18 However, it has also been consistently held since Case 14/83 *Von Colson and Kamann* v *Land Nordrhein-Westfalen* [1984] ECR 1891, paragraph 26, that the Member States' obligation arising from a directive to achieve the result envisaged by the directive and their duty under Article 5 of the EC Treaty to take all appropriate measures, whether general or particular, to ensure the fulfilment of that obligation are binding on all the authorities of Member States including, for matters within their jurisdiction, the courts. As follows from Case C-106/89 *Marleasing* v *La Comercial Internacional de Alimentación* [1990] ECR I-4135, paragraph 8, and Case C-334/92 *Wagner Miret* v *Fondo de Garantía Salarial* [1993] ECR I-6911, paragraphs 20 and 21, in applying national law, in particular legislative provisions which, as in the present case, were specially introduced in order to implement the directive, the national court is required to interpret its national law, so far as possible, in the light of the wording and the purpose of the directive in order to achieve the result pursued by the third paragraph of Article 189 of the Treaty.

19 In those circumstances, the questions put by the national court must be understood as seeking to ascertain, for the purpose of interpreting national provisions transposing the Directive, whether the Directive requires Member States to introduce into their national legal systems such measures as are necessary to ensure judicial protection for workers whose employer, after the end of the employment relationship, refuses to provide references as a reaction to proceedings brought to enforce compliance with the principle of equal treatment within the meaning of the Directive.

20 On this point, it should be noted that Article 6 of the Directive requires Member States to introduce into their national legal systems such measures as are necessary to enable all persons who consider themselves the victims of discrimination 'to pursue their claims by judicial process'. It follows from that provision that the Member States must take measures which are sufficiently effective to achieve the aim of the Directive and that they must ensure that the rights thus conferred can be effectively relied upon before the national courts by the persons concerned (see, in particular, *Von Colson and Kamann*, paragraph 18; Case 222/84 *Johnston* v *Chief Constable of the Royal Ulster Constabulary* [1986] ECR 1651, paragraph 17; and Case C-271/91 *Marshall* v *Southampton and South West Hampshire Area Health Authority* [1993] ECR I-4367, paragraph 22).

21 The requirement laid down by that article that recourse be available to the courts reflects a general principle of law which underlies the constitutional traditions common to the Member States and which is also enshrined in Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 (see, in particular, *Johnston*, paragraph 18).

22 By virtue of Article 6 of the Directive, interpreted in the light of the general principle stated above, all persons have the right to obtain an effective remedy in a competent court against measures which they consider to interfere with the equal treatment for men and women laid down in the Directive. It is for the Member States to ensure effective judicial control of compliance with the applicable provisions of Community law and of national legislation intended to give effect to the rights for which the Directive provides (*Johnston*, paragraph 19).

23 As the Court has also held (Case C-271/91 *Marshall*, paragraph 34), Article 6 of the Directive is an essential factor for attaining the fundamental objective of equal treatment for men and women, which, as the Court has repeatedly held (see, *inter alia*, Case C-13/94 *P* v *S and Cornwall County Council* [1996] ECR I-2143, paragraph 19), is one of the fundamental human rights whose observance the Court has a duty to ensure.

24 The principle of effective judicial control laid down in Article 6 of the Directive would be deprived of an essential part of its effectiveness if the protection which it provides did not cover measures which, as in the main proceedings in this case, an employer might take as a reaction to legal proceedings brought by an employee with the aim of enforcing compliance with the principle of equal treatment. Fear of such measures, where no legal remedy is available against them, might deter workers who considered themselves the victims of discrimination from pursuing their claims by judicial process, and would consequently be liable seriously to jeopardise implementation of the aim pursued by the Directive.

25 In those circumstances, it is not possible to accept the United Kingdom Government's argument that measures taken by an employer against an employee as a reaction to legal proceedings brought to enforce compliance with the principle of equal treatment do not fall within the scope of the Directive if they are taken after the employment relationship has ended.

26 It is true that, as the United Kingdom Government also stresses, Article 7 of the Directive expressly requires Member States to take the necessary measures to protect employees against dismissal by the employer as a reaction to any legal proceedings aimed at enforcing compliance with the principle of equal treatment.

27 However, contrary to that Government's submissions, having regard to the objective of the Directive, which is to arrive at real equality of opportunity for men and women (Case C-271/91 *Marshall*, paragraph 24), and to the fundamental nature of the right to effective judicial protection, it is not, in the absence of a clear indication to the contrary, to be inferred from Article 7 of the Directive that the legislature's intention was to limit the protection of workers against retaliatory measures decided on by the employer solely to cases of dismissal, which, although an exceptionally serious measure, is not the only measure which may effectively deter a worker from making use of the right to judicial protection. Such deterrent measures include *inter alia* those which, as in the present case, are taken as a reaction to proceedings brought against an employer and are intended to obstruct the dismissed employee's attempts to find new employment.

28 In those circumstances, the answer to the questions put by the national court must be that Article 6 of the Directive requires Member States to introduce into their national legal systems such measures as are necessary to ensure judicial protection for workers whose employer, after the employment relationship has ended, refuses to provide references as a reaction to legal proceedings brought to enforce compliance with the principle of equal treatment within the meaning of the Directive.

Costs

29 The costs incurred by the United Kingdom Government and by 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 action pending before the national tribunal, the decision on costs is a matter for that tribunal.

On those grounds,

THE COURT,

in answer to the questions referred to it by the Employment Appeal Tribunal, London, by order of 20 November 1996, hereby rules:

Article 6 of Council Directive 76/207/EEC 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 requires Member States to introduce into their national legal systems such measures as are necessary to ensure judicial protection for workers whose employer, after the employment relationship has ended, refuses to provide references as a reaction to legal proceedings brought to enforce compliance with the principle of equal treatment within the meaning of that directive.

Rodríguez Iglesias	Ragnemalm	Schintgen	Mancini
Moitinho de Almeida	Murray	Edward	Puissochet
Hirsch	Jann		Ioannou

Delivered in open court in Luxembourg on 22 September 1998.

R. Grass — Registrar

G. C. Rodríguez Iglesias — President