Articles 1, 2 and 5 (1) of 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 must be interpreted as meaning that a Member State may, after the protective period has expired, grant to mothers a period of maternity leave which the State encourages them to take by the payment of an allowance. The directive does not impose on Member States a requirement that they shall, as an alternative, allow such leave to be granted to fathers, even where the parents so decide.

	Mackenzie Stuart	Koopmans	Bahlmann
Galmot	Pescatore	O'Keeffe	Bosco
Due	Everling	Kakouris	Joliet

Delivered in open court in Luxembourg on 12 July 1984.

For the Registrat

H. A. Rühl
Principal Administrator

A. J. Mackenzie Stuart
President

OPINION OF MR ADVOCATE GENERAL DARMON DELIVERED ON 27 JUNE 1984 [1]

Mr President,
Members of the Court,

1. The Landessozialgericht [Higher Social Court] Hamburg has referred to this court two questions on the interpretation of Council Directive 76/207 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. In my view, the subject-

1 — Translated from the French.

matter of this preliminary reference is such as to require the Court to define the scope of both the principle of equal treatment, as laid down in Article 2 (1) of the directive, and the exception contained in Article 2 (3), which is based on the desire to protect women.

In order to assemble the information necessary for an understanding of the questions of interpretation submitted by the German court, a brief presentation of the background to the national litigation is required.

2. Underlying the present case is the Law for the protection of working mothers (Mutterschutzgesetz, hereinafter referred to as "the Law"), which allows, for the benefit of the mother alone, two consecutive periods of leave following the birth of the child:

(a) One of them (called the "Schutzfrist") is compulsory and covers a period of eight weeks from childbirth (Paragraph 6 (1) of the Law);

(b) The other (the "Mutterschaftsurlaub"), which was introduced by a Law of 25 June 1979, is optional and exempts the mother from employment between the expiry of the aforesaid basic leave and the day on which the child reaches the age of six months (Paragraph 8a of the Law, inserted by the aforesaid Law of 25 June 1979). During that leave, which I shall term "additional", the mother receives an allowance ("Mutterschaftsgeld") paid by the State, of which the upper limit has been set at DM 25 per day (Paragraph 13 (1) and (3) of the Law).

The present case arises from the fact that the benefit in question is reserved to mothers, fathers being ineligible for it.

3. Following the birth of their first child the father, Ulrich Hofmann, and the mother agreed that the father should look after the baby on expiry of the compulsory leave, so as to enable the mother to resume her employment as a teacher as soon as possible, thereby sparing her an interruption which might have proved detrimental to a career which she had only just started.

With the assent of his own employer, Ulrich Hofmann therefore took a period of leave equivalent to the additional leave, in respect of which he later applied for the maternity allowance. His application was refused by the competent sickness fund (the Barmer Ersatzkasse), whose decision was confirmed by a judgment of the Sozialgericht [Social Court] Hamburg. Mr Hofmann then appealed against that judgment to the Landessozialgericht Hamburg, which referred to this Court two preliminary questions, the substance of which is as follows:

(a) Does additional maternity leave constitute an infringement of Articles 1, 2 and 5 (1) of Directive 76/207 when it is granted exclusively to working mothers and not, by way of alternative, to either parent depending on their wishes?

(b) If so, are the abovementioned provisions directly applicable in the Member States?

I shall consider the two questions in turn.

4. As regards the answer to be given to the first of those questions, it seems necessary first of all to recall the limits which the Court has set itself in the exercise of its powers in cases involving preliminary rulings.

In a consistent line of decisions, the Court has held that it is not entitled, in

the context of Article 177, to assess whether national laws are in conformity with Community law.[1] The need for caution is particularly great in this instance, since an action against the relevant Member State for failure to fulfil a Treaty obligation, dealing particularly with the provisions at issue, is at present pending before this Court.

Nevertheless, even in such cases, the Court has always been concerned to give a reply which might be of assistance to the national court, having regard to the matters of fact and law disclosed in its judgment.[2] To those I would add the matters brought to light in the written observations and at the hearing by the parties to the main proceedings, the Member States and the Commission; in keeping with the very purpose of a preliminary request for interpretation, those matters are taken into account in order to forestall any difficulties of interpretation to which the application of Community rules by the national court might lead.[3]

In the light of those considerations it is apparent that the provisions of the directive whose interpretation is necessitated by the questions submitted are, on the one hand, Articles 2 (1) and 5 (1) and, on the other, Article 2 (3); Article 1 merely sets out the object of the directive, without imposing any particular obligation on Member States.

The preliminary question under examination may thus, at this stage, be expressed in the following fashion:

Does Article 2 (1), under which the principle of equal treatment means "that there shall be no discrimination whatsoever on grounds of sex either directly or indirectly by reference in particular to marital or family status", prevent a Member State from introducing, as a supplement to the compulsory basic leave, a period of maternity leave which is available exclusively to working mothers; or

Does such leave fall within the "provisions concerning protection of women, particularly as regards pregnancy and maternity", which, under Article 2 (3), are excluded from the directive?

That alternative must be considered in the light not only of the texts referred to but also of the observations submitted to this Court. The latter, indeed, reflect the practical difficulties connected with the application of Community law. It is in my opinion essential to take them into account, so that the preliminary interpretation may be effectively incorporated into the administration of that body of law.

5. Ulrich Hofmann and the Commission claim that the additional leave should be available to fathers. Their argument is based on the view that Article 2 (3) must be interpreted restrictively in so far as it lays down an exception to the principle that there must be no discrimination at work by reference to sex. In the particular context of that provision, that means, as the Commission has explained, that the difference in treatment — the protection

1 — See in particular Joined Cases 141 to 143/81, *Holdijk*, [1982] ECR 1299, at paragraph 8.

2 — Case 172/82, *Fabricants Raffineurs d'Huile de Graissage* v *Inter Huiles*, [1983] ECR 555, at paragraph 8.

3 — Case 166/73, *Rheinmühlen*, [1974] ECR 33, at paragraph 2.

of the woman — must not only be based on objective grounds but must also be necessary for ensuring the desired protection. That twofold condition, they maintain, is not satisfied by the German legislation.

In the first place, the exclusive treatment enjoyed by mothers is not based on any objective factor which distinguishes a woman's situation, such as her state of health after childbirth.

In support of that view particular attention is drawn to the fact that the leave is optional and that it comes to an end in the event of the child's death; it is further noted that mothers who cannot furnish evidence of continuous employment for nine of the twelve months preceding confinement are disqualified; and lastly, it was observed at the hearing that the request for leave, which must be submitted at least four weeks before the end of the compulsory leave, might be premature in view of possible changes in the mother's state of health. Those various points reveal that the mother's state of health is not the decisive factor in the grant of the leave and that its true objective is to enable the mother to devote herself to the infant. That view is borne out by what has happened in practice because, despite the additional leave, the proportion of mothers giving up their employment has remained unchanged.

In the second place, the Commission and Ulrich Hofmann argue that it is not necessary, for the purpose of protecting her, to reserve the leave exclusively to the mother; if the father were given the option not only of taking care of the child but also of attending to the upkeep of the household, that would be an equally effective means of relieving the mother of the burdens which are liable to impair her health. Consequently, the father also should be entitled to the leave, by virtue of the principle of equal treatment for men and women as regards working conditions (Articles 2 (1) and 5 (1)).

More generally, the Commission and Ulrich Hofmann stress that the effect of the provision at issue is to discriminate not only against the father but also, and principally, against future mothers, inasmuch as employers, in order to avoid the risk of absence from work entailed by the right to additional leave, will hesitate to engage female workers.

6. In response to that line of argument, the sickness fund and the German Government, with reference to the main points at issue, put forward an interpretation of the German legislation which, concentrating on its objective, namely the health of the mother, in their view demonstrates that it is consistent with that objective and hence compatible with the directive by virtue of the exception contained in Article 2 (3).

7. Such, in brief, are the positions of the parties on the reply to be given to the first question. They reveal the difficulties of interpretation created by the application of Article 2 (3). Whilst the question submitted — namely whether it is compatible with Directive 76/207 to exclude a father from the benefit of maternity leave — may give rise to some perplexity by reason of its wording, it in

fact relates to a contemporary claim which in truth underlies the observations of Ulrich Hofmann and the Commission and which has become a right in some Member States, namely the right of parental equality with regard to the child.

Thus the question which arises first of all is whether such a right falls within the scope of Directive 76/207.

The reply to that question is an essential preliminary to any solution proposed to the national court, because it enables the present state of Community law on the subject to be determined.

8. The third recital in the preamble to Directive 76/207 expresses "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", an objective which the Member States agreed upon in Article 117 of the Treaty.

The directive thus serves to give effect to that programme, by completing the implementation of the principle of the equal treatment for male and female workers in matters other than pay, which is already covered by Article 119 of the EEC Treaty and by Directive 75/117,[1] and social security, which is governed by Directive 79/7.[2] It thus forms part of the arrangements designed to ensure that Member States observe equality of employment between male and female workers as regards recruitment, the pursuit of their careers, vocational training, working conditions, remuneration, dismissal and social benefits.

The Community legislation defines the scope of the right of each sex to receive the same treatment as regards employment as that granted by national legislation to the opposite sex. The application of that fundamental principle[3] presupposes, first, that it is only rights reserved to one sex which may be claimed by workers of the opposite sex, and, secondly, that only employment rights are covered by the directive, not the rights attaching, for example, to the status of head of the family when their exercise is independent of employment.

Those limits clearly show that a period of leave which is available to either of the two parents does not fall within the ambit of Directive 76/207. Offering a choice designed to promote a better distribution of responsibilities between the partners is, for the time being, a matter for Member States alone, which explains the disparities between the relevant national provisions.

Since Directive 76/207 is not a suitable means of resolving those disparities, the Commission thought it necessary to formulate a common approach to parental leave in the proposal for a directive which it submitted to the Council.[4] In other words, as Community law stands at present, it would be going beyond the framework laid down by the Community legislature to anticipate the establishment of something which has yet to be instituted. Consequently, any

1 — Official Journal L 45 of 19. 2. 1975, p. 19.

2 — Official Journal L 6 of 10. 1. 1979, p. 24.

3 — Case 149/77, *Defrenne*, [1978] ECR 1365, at paragraphs 25 to 29.

4 — Official Journal C 333 of 9. 12. 1983, p. 6.

argument based on parental leave must be rejected in interpreting Directive 76/207.

Where an advantage connected with employment is reserved to the female sex, as in the case of additional maternity leave, the alternatives are therefore as follows:

Either what is involved is a "provision concerning the protection of women" (Article 2 (3)), in which case there is no need to consider the necessity of it in terms of parental equality, the latter being extraneous to the debate;

Or else the leave is designed to protect the child, in which case the grant thereof to female workers alone constitutes discrimination against male workers as regards working conditions (Articles 2 (1) and 5 (1)); if that is so, the Member State is obliged to eliminate the discrimination but remains at liberty to choose the means of doing so. It may do so by withdrawing the advantage previously conferred, or — and this seems more practicable — by substituting equivalent measures (for example, refunding the cost of employing a visiting child minder, or giving free access to day nurseries), or indeed by offering the father the option of taking care of the child, as some Member States have done.

9. By defining the objective of Directive 76/207, it has been possible to identify the particular features of the problem raised; an examination of the structure of the directive will provide the guidance required for assessing the scope of the "exceptions" which it lays down in Article 2 (2) to (4).

Whilst Article 1 sets forth the objective of the directive, it is Article 2 (1) which states the principle on which it rests. Articles 3 to 5 specify, with reference to each of the matters covered by the directive, the results which Member States are required to achieve. Lastly, Articles 6 to 10 set out the safeguards designed to ensure compliance with the aforesaid principle.

Thus, it is apparent from the scheme of the directive that the exceptions in paragraphs (2) to (4) of Article 2 indicate the precise limits placed on the principle laid down by Article 2 (1). That arrangement alone reveals the importance which the Community legislature attached to those exceptions, as an examination of them will confirm.

The exception set out in Article 2 (4) is in a category of its own. The provision opens the way for national measures "to promote equal opportunity for men and women, in particular by removing existing inequalities". It merely appears to make an exception to the principle: in aiming to compensate for existing discrimination it seeks to re-establish equality and not to prejudice it. In other words, since it presupposes that there is an inequality which must be removed, the exception must be broadly construed.

Article 2 (2) provides a wide-ranging exception, inasmuch as it authorizes Member States to exclude from the ambit of the directive those "occupational activities ... for which, by reason of their nature or the context in which they are carried out, the sex of the worker constitutes a determining factor". Article 9 (2) merely requires the Member States periodically to assess the occupational activities so excluded "in order to

decide, in the light of social developments, whether there is justification for maintaining the exclusions concerned." Those two provisions reflect the caution of the Community legislature, which is anxious not to forestall the development of social attitudes, even in respect of treatment which is undeniably discriminatory. That preoccupation is, no doubt, not unrelated to the solution which the Court elaborated in Case 165/82 (*Commission* v *United Kingdom* [1]), which concerned restrictions on men wishing to obtain access to, and training for, the vocation of male midwife.

The course adopted by the legislature reveals both its realism and its caution; it indicates that the directive is not intended to create rights where none exist but that it seeks to equalize rights at work wherever the development of social attitudes so permits. Those observations are equally valid in relation to Article 2 (3) and should serve as a guide to its interpretation.

10. By virtue of the last-mentioned provision, Member States are entitled to maintain or introduce measures dealing with "the *protection* of *women, particularly* as regards pregnancy and maternity".

I have deliberately stressed the extent of the above exception; its scope, both *ratione materiae* and *ratione personae,* seems sufficiently broad to justify an interpretation which takes account of the intentions of the Community legislature as outlined above.

In the first place, Article 2 (3) presupposes that the difference in the treatment reserved to the woman shall not be discriminatory, such will be the case whenever the difference in treatment — namely the protection of the woman — can be justified by an objective difference between the situation of the male worker and that of his female counterpart. That objective rationale is connected with a woman's special biological make-up, as is clearly indicated by the illustrative references to pregnancy and maternity.

In the second place, the advantage conferred on the woman in connection with employment should have her protection as its aim; no one would deny that the leave granted during pregnancy or immediately after childbirth constitutes an exception justified by Article 2 (3).

Lastly, is it necessary, as the Commission has suggested, to add to those criteria the requirement that the difference in treatment should be *necessary* for the protection of the woman? The reply must be in the negative. Neither the purport nor the general scheme nor even the aim of the directive seems to me to justify so restrictive an interpretation of the exception.

It is sufficient that the national measure which confers an advantage on women in connection with employment should seek to protect them for an objective reason. It is the relationship between its aim (namely, protection) and the objective reason determining that aim (pregnancy or maternity, for example) which justifies the measure, not the absence of alternatives.

The extra condition imposed by the Commission is tantamount to requiring Member States to choose whichever measure is most appropriate for the protection of women; however, the choice of measures suitable for justifying

1 — Judgment of 8. 11. 1983, at paragraphs 17 to 20 [1983] ECR 3431.

a difference in treatment is a matter for the Member State alone. As I have indeed emphasized, the directive does not place Member States under an obligation to establish new rights. It merely calls for parity in areas where discrimination exists. The reasoning adopted by the Commission, on the other hand, presupposes the vesting of a right which the Member State may wish to remove or refrain from introducing.

In order to prove that point, it is sufficient to return to the argument that the additional leave is not indispensable for ensuring the protection of the mother, inasmuch as the father of the child could take over her duties. That is tantamount to appraising the compatibility of the national measure by reference to a criterion-parental equality — which is wholly outside the scope of Directive 76/207.

11. Thus, in appraising whether it is compatible with the principle laid down by the directive to grant exclusively to female workers a period of leave which supplements the compulsory post-natal leave, it is necessary to ascertain, first, whether that optional leave is based on an objective reason connected with the person's sex and, secondly, whether the measure is one which protects the woman.

I have noticed from the observations, both written and oral, that no one denies that the mother's health requires special protection on the expiry of the compulsory period of leave; in that connection, no doubt is cast either on the biological and psychological factors which are liable to impair her health still further or on the statistics which reveal that almost one woman in two gives up her employment.

Those objective considerations explain why leave of absence from work was chosen as a means of protecting the mother; it became apparent from the abovementioned statistics that mothers were confronted by extra burdens at the end of the eight-week of leave, since the upkeep of the household and the resumption of employment were supplemented by the intensive care which an infant requires, especially during the early months. Moreover, that threefold burden is all the more difficult for the mother to bear because her state of health is, generally speaking, still precarious, which helps to explain the cases in which employment is given up. Consequently, the leave granted to mothers on expiry of the compulsory leave is intended to enable them, by temporarily eliminating one of those three burdens, to recover more fully while guaranteeing them security of employment.

Thus, not only is the national measure based on the objectively different situation in which a mother finds herself by comparison with any male employee, but it also seeks to protect her health by avoiding any immediate resumption of work. In my opinion, that twofold character provides sufficient reason for concluding that the additional leave is connected with "maternity" for the purposes of the exception laid down in Article 2 (3). The counter-arguments adduced by the Commission and the plaintiff in the main proceedings have, in that respect, failed to convince me.

12. Let us, indeed, review each of the points which the latter have raised in their attempt to demonstrate the

incompatibility with the directive of the conditions attaching to the grant of additional leave.

The fact that, unlike the compulsory post-natal leave, the additional leave is optional is not inconsistent with the desire to protect the mother's health. It is apparent that the additional leave is a *preventive measure* underpinned by medical and social considerations. The latter determine the general, impersonal character of the right, as a result of which the only condition attaching to its grant are childbirth and the pursuit of gainful employment, not the presentation of a sickness certificate.

That objective of general prevention, together with the concern to avoid any disruption at the place of employment, also explains why the application for leave must be made almost four weeks before expiry of the compulsory leave; the grant of the leave rests on a presumption — namely that the mother's health requires protection — but it is granted independently of her current or foreseeable state of health. Nevertheless, that presumption as to the mother's health is not binding upon her if she wishes to resume work — where the father is unemployed, for example — on account, in particular, of the financial sacrifice which, as the Federal Republic of Germany has emphasized, taking the leave entails.

As regards the expiry of the additional leave in the event of the child's death, it is the corollary of the objective which the leave seeks to achieve; once the "burden" of the child has ceased to exist, there is no longer the same need to alleviate the burden caused by the mother's employment in order to protect her health. That stringent logic is, however, tempered by the postponement of the expiry of the leave. It is the same logic which debars foster mothers and adoptive mothers from the entitlement accorded to natural mothers. It further explains why the right to the leave is not transferable to the father, even in the event of the mother's death. No matter how those arrangements are viewed, it is quite clear that they are brought about by the very purpose of the leave instituted.

The Commission and Ulrich Hofmann also refer to a change in the legislation which occurred after the events which led to the dispute pending before the national court, but which we shall none the less consider in order to eliminate any ambiguity over the interpretation to be given to the exception contained in Article 2 (3). It appears that it is now only mothers who have been in employment for nine out of the twelve months preceding childbirth who are entitled to the leave. It should, however, be noted that the leave is also available if the applicant has been entitled to unemployment or subsistence benefits, which enlarges considerably the class of beneficiaries while preventing abuse. Finally, the same conditions attach to the compulsory leave; they are simply intended to withold leave from mothers who cannot furnish evidence either of a minimum period of employment or of circumstances assimilated thereto.

Lastly, it has been argued that the Law fails to attain its objective on two counts. First, the statistics supplied by the German Government disclose that more than one woman in two gives up her employment at the end of the additional

leave. Secondly, the Law has the effect of encouraging employers to avoid recruiting women, owing to the risk of their absence from work as a result of the additional leave.

That line of argument does not convince me. Although the proportion of female employees giving up their careers after the end of the additional leave has remained constant, the figures none the less do not seem to me to bear the same meaning, because they do not support the inference that the health risk was not a decisive factor at the time when the mothers opted for the additional leave. On the contrary, by promoting the physical and mental recovery of the beneficiary, the additional leave enables a woman to choose more freely, on its expiry, between resuming her career and giving it up.

As for the adverse effects of the additional leave on the recruitment of women, they remain a mere possibility since they have not been demonstrated. It should also be noted that, in the absence of such leave, which is financed out of public funds, mothers would be obliged to have recourse to periods of sick leave during which the employer himself would be compelled to pay them a salary without having, in return, the benefit of their labour. Furthermore, it will be observed that, as the Federal Republic of Germany has pointed out, the grant of the leave in question affords a means of mitigating the *de facto* inequalities suffered by women as a result of the deterioration of their health following childbirth and thus preserves their opportunities on the resumption of work. In that sense, the leave is included amongst the measures referred to by Article 2 (4) of the directive.

Thus, the question necessarily arises as to whether the exception in Article 2 (3) is not an illustration, selected by the Community legislature, of the general derogation contained in Article 2 (4). I incline towards that view and see it as confirming the rejection of the restrictive interpretation placed on the exception in Article 2 (3).

I therefore consider that the reply to be given to the first question submitted by the German court is that the additional leave, which is granted to ensure protection in connection with maternity, whose effects on a mother's health it mitigates, is a provision concerning the protection of women within the meaning of Article 2 (3) of Directive 76/207 and hence does not constitute an infringement of Articles 2 (1) and 5 (1).

13. If the Court adopts that solution, it need not reply to the second question. However, I shall, in the alternative, turn to the question of the direct applicability of Articles 1, 2 and 5 (1) of Directive 76/207.

The Court's decisions on the effects which directives have for individuals are now well known. Although, in principle, a directive has effects only with regard to those to whom it is addressed, that is to say the Member States,[1] the Court acknowledges that individuals nevertheless enjoy a "minimum guarantee",[2] namely the right to rely on any "unconditional and sufficiently precise" obligations which a directive may impose in order to challenge before a national court "any national provision

1 — Case 8/81, *Becker* v *Finanzamt Münster-Innenstadt* [1982] ECR 53, at paragraphs 17 to 19.

2 — Case 102/79, *Commission* v *Belgium*, [1980] ECR 1473, at paragraph 12.

which is incompatible with [the] directive".[1]

I shall therefore consider Directive 76/207 in the light of the conditions which I have elicited from the Court's decisions.

If, contrary to the view which I have expressed, the fact that the additional maternity leave is reserved to mothers alone does, in the opinion of the Court, entail discrimination prohibited by Articles 2 (1) and 5 (1) of the directive, there remains the question whether the duty which it imposes to achieve a given result satisfies the conditions enabling it to be relied upon by a private person before a national court. I shall consider in turn each of the provisions of the directive whose interpretation is requested by the national court.

Article 1 is, as I have stated, introductory in character; it sets out the purpose of the directive and imposes no obligation on Member States. It may not therefore usefully be relied upon by individuals before a national court.

Articles 2 (1) and 5 (1) are interconnected: Article 2 (1) lays down the general obligation to achieve a given result, which Article 5 (1) applies to one of the areas covered by the directive, by providing as follows:

"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."

That obligation is both precise and unambiguous. It might be thought, however, that certain provisions of the directive cast doubt on its unconditional character.

It might in the first place be argued that the principle of non-discrimination is to be construed subject to the exceptions to which Article 2 of the directive refers. However, on the assumption that the exception in question is considered inapplicable, all that remains is the obligation imposed by Article 2 (1), as defined by Article 5 (1) with specific reference to working conditions.

In the second place, it might be pointed out that under Article 5 it is the Member States which are called upon to take all the measures necessary for applying the principle of equal treatment to working conditions. However, that is an obstacle which is inherent in every directive; as Article 189 of the EEC Treaty specifies, a directive is binding on a State as to the result to be achieved, but the State is free to choose the method of achieving that result. In the case of Directive 76/207, the objective to be attained is equality of treatment; whilst a State is at liberty to decide upon the method of attaining that objective, it must comply with the imperative obligation of non-discrimination, in respect of which it enjoys no margin of discretion.

In the light of those considerations, it may be seen that the conditions enabling Articles 2 (1) and 5 (1) to be relied upon by individuals before national courts are satisfied.

That conclusion should come as no surprise, since Article 6 of the directive provides that, by virtue of the necessary measures taken by Member States "...

1 — Case 8/81, cited above, paragraphs 20 to 25 and, more recently, judgment of 26 January 1984, Case 301/82, *SA Cliny-Midy and Others*, v *Belgian State*, [1984] ECR 251, at paragraph 4.

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 [must be able] to pursue their claims by judicial process . . .". As this Court held in a recent judgment, that guarantee is tantamount to vesting those who are wronged with rights of which they may avail themselves before the courts.[1]

However, as the Commission has emphasized, that does not mean that they are entitled to assume that the advantage granted to the opposite sex will necessarily be extended to themselves. The directive, it should be remembered, is designed solely to promote equality of treatment, not to require States to establish new rights. Therefore, regrettable though it may be, the action of individuals can require a Member State only to redress inequalities by removing discrimination; the choice of method is a matter for the Member State, as has been seen above.[2]

14. In conlcusion I propose that the Court should reply as follows to the two questions of interpretation submitted by the Landessozialgericht Hamburg:

1. It is not contrary to Articles 2 (1) and 5 (1) of Directive 76/207 to reserve to mothers a period of leave which supplements the compulsory post-natal leave, since such leave constitutes a provision concerning the protection of women, within the meaning of Article 2 (3) of the aforesaid directive.

2. In the alternative, Articles 2 (1) and 5 (1) of Directive 76/207 create rights on which individuals may rely in proceedings before national courts against any State which has failed to comply with the obligations which those articles impose on it.

1 — Case 14/83, *von Colson and Kamann* v *Land Nordrhein-Westfalen*, judgment of 10 April 1984, [1984] ECR 1891, at paragraph 22; cf. Case 79/83, *Harz* v *Deutsche Tradax GmbH*, judgment of the same date, [1984] ECR 1921.

2 — Point 8 above.