# JUDGMENT OF THE COURT
11 July 1991 *

In Joined Cases C-87/90, C-88/90 and C-89/90,

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

**A. Verholen**

and

**Sociale Verzekeringsbank** (Social Insurance Bank) (Case C-87/90),

and between

**T. H. M. van Wetten-van Uden**

and

**Sociale Verzekeringsbank** (Case C-88/90),

and between

**G. H. Heiderijk**

and

**Sociale Verzekeringsbank** (Case C-89/90),

on the interpretation of certain provisions of Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal

* Language of the case: Dutch.

treatment for men and women in matters of social security (Official Journal 1979 L 6, p. 24),

THE COURT,

composed of: O. Due, President, G. C. Rodríguez Iglesias and M. Díez de Velasco (Presidents of Chambers), Sir Gordon Slynn, C. N. Kakouris, R. Joliet and F. A. Schockweiler, Judges,

Advocate General: M. Darmon,
Registrar: J. A. Pompe, Deputy Registrar,

after considering the written observations submitted on behalf of:

— the Sociale Verzekeringsbank, by E. H. Pijnacker Hordijk and M. Droogleever Fortuyn, of the Bars of Amsterdam and The Hague,

— the Netherlands Government, by B. R. Bot, Secretary-General at the Ministry of Foreign Affairs, acting as Agent,

— the Commission of the European Communities, by René Barents and Karen Banks, members of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of the Sociale Verzekeringsbank, the Netherlands Government and the Commission, at the hearing on 17 April 1991,

after hearing the Opinion of the Advocate General at the sitting on 29 May 1991,

gives the following

## Judgment

1 By three orders of 30 January and 15 February 1990, which were received at the Court on 23 March 1990, the Raad van Beroep, 's-Hertogenbosch (Netherlands), referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a number of questions on the interpretation of Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security (Official Journal 1979 L 6, p. 24).

2 Those questions were raised in three sets of proceedings between Netherlands citizens and the Sociale Verzekeringsbank on the application of the Algemene Ouderdomswet (General Law on old-age pensions, *Staatsblad*, 281).

3 It is apparent from the documents that the Algemene Ouderdomswet establishes a scheme for a general old-age pension payable from the age of 65 for Netherlands residents and non-residents who had been subject to income tax on the basis of an occupation exercised in the Netherlands in which pension rights are acquired on the basis of completed periods of insurance. Under that scheme, prior to a legislative amendment which took effect from 1 April 1985, a married woman resident in the Netherlands whose husband was also a Netherlands resident who was not insured under the Algemene Ouderdomswet because he was exercising an occupation abroad and was insured there, was herself not insured for the corresponding periods; on the other hand, a married man resident in the Netherlands whose wife was not insured continued to be affiliated to the Netherlands pension scheme.

4 A pensioner whose dependent spouse has not yet reached the age of 65 receives an increased pension. However, that increase is reduced in proportion to the number of years during which the spouse was not insured.

5 The plaintiff in the main proceedings in Case C-87/90, Mrs A. Verholen, was employed in the Netherlands until the age of 61 and then took early retirement

under a scheme connected with her employment contract. The plaintiff in the main proceedings in Case C-88/90, Mrs T. H. M. van Wetten-van Uden, like the wife of the plaintiff in the main proceedings in Case C-89/90, Mr G. H. Heiderijk, has never exercised a professional or trade activity.

6 Having reached the age of 65, the plaintiffs in Cases C-87/90 and C-88/90, Mrs Verholen and Mrs van Wetten-van Uden, were refused a full pension by the Sociale Verzekeringsbank on the ground that their husbands, who were resident in the Netherlands, had during certain periods worked and been insured abroad. The plaintiff in Case C-89/90, Mr Heiderijk, had the increase in his old-age pension in respect of his dependent wife under the age of 65 reduced in proportion to the years during which his wife was not insured, including those during which he had himself worked in the Federal Republic of Germany.

7 The Raad van Beroep took the view that the appeals brought against the decisions of the Sociale Verzekeringsbank raised a problem of the interpretation of Directive 79/7/EEC and therefore stayed the proceedings and referred the following questions to the Court for a preliminary ruling:

*Case C-87/90*

'Is it compatible with Article 4(1) (and/or Article 5) of Directive 79/7/EEC for a national provision excluding solely married women from insurance under the Algemene Ouderdomswet to produce that effect after 22 December 1984, inasmuch as even after that date pensions granted under the Algemene Ouderdomswet to such women may still be reduced by virtue of an insurance condition which did not apply to men?'

*Case C-88/90*

'1. Does Community law preclude the national courts from reviewing (of their own motion) a national legal provision in the light of an EEC directive, the

period for whose implementation has elapsed, if an individual (possibly through ignorance) has not relied on the directive?

2. Does Community law prevent the national courts from reviewing a national legal provision in the light of an EEC directive, the period for whose implementation has elapsed, if an individual cannot rely on the directive because he falls outside its scope *ratione personae*, although he does fall within the scope of a national statutory scheme which is covered by the directive?

3. Does Article 2 of Directive 79/7/EEC refer to the scope *ratione personae* of the Directive itself, or is that article to be regarded as setting out a definition (in addition to the definition in Article 3 of the Directive) of the national statutory schemes covered by the Directive?'

*Case C-89/90*

'May an individual rely on Article 4(1) (and/or Article 5) of Directive 79/7/EEC in proceedings before the national courts in order to challenge the effects of a national discriminatory provision which applied to his or her spouse, who is not a party to those proceedings?'

8 By order of 16 January 1991, Cases C-87/90, C-88/90 and C-89/90 were joined for the purposes of the oral procedure and the judgment.

9 Reference is made to the Report for the Hearing for a fuller account of the main proceedings, the procedure and the written observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

10 Since the questions submitted by the Raad van Beroep in Cases C-88/90 and C-89/90 seek clarification of the powers of a national court to apply Community law and precisely how it is to be applied, it is appropriate to answer those questions before dealing with the question in Case C-87/90 on the scope *ratione temporis* of the principle of equal treatment, embodied in Directive 79/7.

**The questions submitted in Case C-88/90**

11 In the first question in Case C-88/90, the Raad van Beroep seeks to ascertain whether Community law precludes a national court from assessing of its own motion whether national rules are in conformity with a directive, the period for whose implementation has elapsed, when the person concerned has not relied on that directive before the court.

12 In that respect, it should be noted that the Court has recognized that Article 177 of the Treaty gives national courts the power and, where appropriate, imposes on them the obligation to refer a case for a preliminary ruling, as soon as the court perceives either of its own motion or at the request of the parties that the litigation depends on a point referred in the first paragraph thereof (judgment in Case 166/73 *Rheinmühlen* v *Einfuhr- und Vorratsstelle Getreide* [1974] ECR 33, paragraph 3).

13 That power to raise of its own motion a question of Community law presupposes that the national court considers either that Community law must be applied and, if necessary, national law disapplied, or that national law must be interpreted in a way that conforms with Community law.

14 Such a question may, in particular, concern a directive which has not been implemented by the national authorities within the prescribed period, which is binding on the Member States and the precise and unconditional provisions of which may, according to the case-law of the Court, be directly applied by a national court.

15 Accordingly, the recognized right of an individual to rely, in certain conditions, before a national court, on a directive where the period for transposing it has expired does not preclude the power for the national court to take that directive into consideration even if the individual has not relied on it.

16 The answer to the first question in Case C-88/90 must therefore be that Community law does not preclude a national court from examining of its own motion whether national rules are in conformity with the precise and unconditional provisions of a directive, the period for whose implementation has elapsed, where the individual has not relied on that directive before the national court.

17 In the second question in Case C-88/90, the national court seeks to ascertain whether it may assess the conformity of national law with a directive where the person concerned does not come within the scope *ratione personae* of that directive, even though he falls within with the scope of a national statutory scheme covered by that directive.

18 That question raises the same problem as that formulated in precise terms in the third question, in which the national court asks whether Article 2 of Directive 79/7 must be interpreted as relating to the scope *ratione personae* of that directive or whether, like Article 3, it relates to the definition of the national social security schemes covered by the directive.

19 In that respect, it must be recalled that, in its judgment in Joined Cases 48/88, 106/88 and 107/88 *Achterberg-te Riele* v *Sociale Verzekeringsbank* [1989] ECR 1963, at paragraph 9, the Court ruled that the scope *ratione personae* of the directive was determined by Article 2, pursuant to which the directive applies to the working population, including persons seeking employment and persons whose activity has been interrupted by one of the risks listed in Article 3(1)(a).

20 It must also be pointed out that, when a provision of a directive, like Article 2 of Directive 79/7, determines precisely the persons to whom that directive is to apply, a national court cannot extend the scope *ratione personae* of that directive on the ground that the persons concerned are covered by national rules, like the Algemene Ouderdomswet, referred to by another provision of the directive concerning its scope *ratione materiae*, like Article 3 of Directive 79/7.

21 The answer to the second and third questions in Case C-88/90 must therefore be that Article 2 of Directive 79/7 must be interpreted as referring to the scope *ratione personae* of that directive, which cannot vary according to the scope *ratione materiae*, as defined in Article 3 thereof.

**The question submitted in Case C-89/90**

22 The question raised in Case C-89/90 seeks to ascertain whether an individual may rely before a national court on the provisions of Directive 79/7 when he bears the effects of a discriminatory national provision regarding his spouse, who is not a party to the proceedings.

23 It should be pointed out straight away that the right to rely on the provisions of Directive 79/7 is not confined to individuals coming within the scope *ratione personae* of the directive, in so far as the possibility cannot be ruled out that other persons may have a direct interest in ensuring that the principle of non-discrimination is respected as regards persons who are protected.

24 While it is, in principle, for national law to determine an individual's standing and legal interest in bringing proceedings, Community law nevertheless requires that the national legislation does not undermine the right to effective judicial protection (see the judgments in Case 222/84 *Johnston* v *Chief Constable of the Royal Ulster*

*Constabulary* [1986] ECR 1651 and in Case 222/86 *Unectef* v *Heylens* [1987] ECR 4097) and the application of national legislation cannot render virtually impossible the exercise of the rights conferred by Community law (judgment in Case 199/82 *Amministrazione delle Finanze dello Stato* v *San Giorgio* [1983] ECR 3595).

25 In so far as this case is concerned, however, it should be stated that an individual who bears the effects of a discriminatory national provision may be allowed to rely on Directive 79/7 only if his wife, who is the victim of the discrimination, herself comes within the scope of that directive.

26 Accordingly, the answer to the question submitted in Case C-89/90 must be that an individual may rely on Directive 79/7 before a national court if he bears the effects of a discriminatory national provision regarding his spouse, who is not a party to the proceedings, provided that his spouse herself comes within the scope of the directive.

**The question submitted in Case C-87/90**

27 The point of the question submitted in Case C-87/90 is whether Articles 4(1) and 5 of Directive 79/7 preclude the maintenance, after the period for the implementation of the directive has elapsed, of the effects of earlier national legislation which in certain circumstances excludes married women from the benefit of old-age insurance.

28 It should be recalled that, in its judgment in Case 384/85 *Borrie Clarke* v *Chief Adjudication Officer* [1987] ECR 2865, the Court stated that Directive 79/7 did not provide for any derogation from the principle of equal treatment laid down in Article 4(1) in order to authorize the extension of the discriminatory effects of earlier provisions of national law. On that basis, the Court held in its judgment in Case 80/87 *Dik* v *College van Burgemeester en Wethouders* [1988] ECR 1601 that a Member State may not maintain beyond 23 December 1984 any inequalities of treatment attributable to the fact that the conditions for entitlement to benefit are those which applied before that date.

29 The Netherlands Government and the Sociale Verzekeringsbank are wrong to suggest that that case-law, applied within the framework of so-called risk schemes, cannot be transposed to so-called contributory schemes, such as that under the Algemene Ouderdomswet. The wording of Directive 79/7 and also the judgments in *Borrie Clarke* and in *Dik* set out very clearly the principle that any discrimination after the expiry of the period for the implementation of the directive is prohibited, without distinguishing between the various insurance schemes.

30 The answer to the question submitted in Case C-87/90 must therefore be that Directive 79/7 must be interpreted as not allowing Member States to retain in force, after the expiry of the period for its implementation laid down in Article 8, the effects of earlier national legislation which in certain circumstances excluded married women from the benefit of old-age insurance.

## Costs

31 The costs incurred by the Netherlands Government and by the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the action 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 Raad van Beroep, 's-Hertogenbosch, by orders of 30 January and 15 February 1990, hereby rules:

**1. Community law does not preclude a national court from examining of its own motion whether national rules are in conformity with the precise and unconditional provisions of a directive, the period for whose implementation has elapsed, where the individual has not relied on that directive before the national court;**

2. **Article 2 of Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security must be interpreted as referring to the scope ratione personae of that directive, which cannot vary according to the scope ratione materiae, as defined in Article 3 thereof;**

3. **An individual may rely on Directive 79/7/EEC before a national court if he bears the effects of a discriminatory national provision regarding his spouse, who is not a party to the proceedings, provided that his spouse herself comes within the scope of the directive;**

4. **Directive 79/7/EEC must be interpreted as not allowing the Member States to retain in force, after the expiry of the period for its implementation laid down in Article 8, the effects of earlier national legislation which in certain circumstances excluded married women from the benefit of old-age insurance.**

Due Rodríguez Iglesias Díez de Velasco

Slynn Kakouris Joliet Schockweiler

Delivered in open court in Luxembourg on 11 July 1991.

J.-G. Giraud
Registrar

O. Due
President