JUDGMENT OF THE COURT (Fourth Chamber)
8 February 1996 *

In Case C-8/94,

REFERENCE to the Court under Article 177 of the EC Treaty by the Nederlandse Raad van State for a preliminary ruling in the proceedings pending before that court between

C. B. Laperre

and

Bestuurscommissie Beroepszaken in de Provincie Zuid-Holland

on the interpretation of Article 4(1) 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 (OJ 1979 L 6, p. 24),

THE COURT (Fourth Chamber),

composed of: C. N. Kakouris (Rapporteur), President of the Chamber, P. J. G. Kapteyn and J. L. Murray, Judges,

* Language of the case: Dutch.

Advocate General: C. O. Lenz,
Registrar: R. Grass,

after considering the written observations submitted on behalf of:

— the Netherlands Government, by A. Bos, Legal Adviser in the Ministry of Foreign Affairs, acting as Agent,

— the Commission of the European Communities, by M. Wolfcarius and B. J. Drijber, of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the Opinion of the Advocate General delivered at the sitting on 23 November 1995,

gives the following

Judgment

1 By order of 14 December 1993, which was received at the Court on 12 January 1994, the Nederlandse Raad van State (State Council of the Netherlands) referred to the Court for a preliminary ruling under Article 177 of the EC Treaty two 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 (OJ 1979 L 6, p. 24, 'the directive').

2 The questions were raised in the course of proceedings between Mrs Laperre and the Bestuurscommissie Beroepszaken in de Provincie Zuid-Holland (Commission for Social Security Matters of the Province of South Holland, 'the Bestuurscommissie') concerning the rejection of an application for benefit under the Wet Inkomensvoorziening Oudere en Gedeeltelijk Arbeidsongeschikte Werkloze Werknemers (Netherlands Law on Income Support for Older and Partially Incapacitated Unemployed Workers, 'the IOAW').

3 According to the case-file, the questions relate to two social assistance schemes in the Netherlands which guarantee unemployed persons an income at the minimum social level.

4 The first — general — scheme is that established by the Rijksgroepsregeling Werklose Werknemers (National Group Scheme for Unemployed Workers, 'the RWW'). The RWW, which was adopted pursuant to the Algemene Bijstandswet (General Law on Social Assistance), provides for the grant of benefits to unemployed workers without sufficient resources to ensure their subsistence. Entitlement and continuing entitlement to benefit under the RWW are conditional, *inter alia*, on the person concerned not having resources in excess of the 'modest assets' stipulated by the Netherlands legislation.

5 The second — specific — scheme was introduced by the IOAW and provides for the grant of benefit to older or partially incapacitated long-term unemployed persons. The grant of such benefit is subject to various conditions relating to the previous employment of the person concerned and his age or — where applicable — his incapacity for work. Unlike the RWW, the IOAW does not make the grant of benefit subject to any condition relating to the resources of the person concerned.

6 According to Article 2(1)(a) of the IOAW, unemployed worker means, for the purposes of that Law, a person who:

'(1) is unemployed and has not yet reached 65 years of age,

(2) became unemployed after his 50th birthday but before attaining 57.5 years of age, and

(3) during the full benefit period within the meaning of Articles 42(1) and (2) and 43(2) and 49(1) and, so far as applicable, Article 76 of the Werkloosheidswet (Law on Worker's Compulsory Insurance against the Financial Consequences of Involuntary Unemployment), received benefit in respect of loss of earnings and follow-up benefit pursuant to that law.'

7 Until 31 May 1989, Mrs Laperre received unemployment benefit under the RWW. As of 1 June 1989, the competent authority — the municipality of The Hague — ceased to pay her that benefit on the ground that her resources exceeded the 'modest assets' referred to in the legislation.

8 On 20 June 1989, Mrs Laperre applied to that municipality for benefit under the IOAW. It is undisputed that at that date she was 52 years of age and suffered from no incapacity for work.

9 The application for benefit was refused on the ground that Mrs Laperre could not be regarded as being an unemployed worker within the meaning of Article 2(1)(a) of the IOAW.

10 By decision of 25 June 1991, the Bestuurscommissie, ruling on a complaint against the decision taken by the municipality of The Hague, upheld the decision refusing to grant the benefit. Mrs Laperre appealed to the Raad van State. She argued, *inter alia*, that the conditions relating to previous employment and age laid down by the IOAW gave rise to indirect discrimination against women, since women were much less likely to fulfil them than men. Consequently, the conditions were contrary to Article 4(1) of the directive, according to 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, in particular as concerns:

— the scope of the schemes and the conditions of access thereto (...)'.

11 In its order for reference, the Raad van State refers to statistics of the Centraal Bureau voor de Statistiek (Central Statistical Office, hereinafter 'the CBS') showing that in 1989 much more men than women were in receipt of IOAW benefit

(Sociaal Culturele Berichten (Social and Cultural Reports) 1991, 15). It also observes that in the Netherlands much more men than women are in employment (CBS, Statistical Yearbook 1993, p. 101).

12 Taking the view that this suggested that there was indirect discrimination and that the outcome of the proceedings turned on the interpretation of the directive, the Raad van State decided to suspend the proceedings and refer the following questions to the Court for a preliminary ruling:

'(1) Must Article 4(1) of Council Directive 79/7/EEC of 19 December 1978 be interpreted as meaning that that article in principle precludes a provision of national legislation, such as that contained in the IOAW, from offering an income supplement at the level of the social minimum whereby, in so far as is relevant, for the purposes of the grant of the benefit resources are not taken into account and entitlement to the benefit is dependent, briefly, on previous employment and age, whilst under other national legislation, such as that contained in the social assistance provisions of the RWW, which also affords provision at the level of the social minimum, account is taken of resources, where it is common ground that a significantly greater number of men than women are eligible for the more favourable benefit under the IOAW?

(2) Can the application of the IOAW, under which a far greater number of men than women are exempted from the means test in the social assistance legislation, be justified on the ground that the target group of that legislation has little chance on the labour market and therefore is not or is rarely in a position to rebuild resources once they have been depleted?'

3 By its questions, the national court essentially asks whether Article 4(1) of the directive has to be interpreted as meaning that a national statutory scheme, such as that established by the IOAW, which provides for a benefit designed to guarantee beneficiaries income at the level of the social minimum, irrespective as to whether the claimant has any resources but subject to conditions relating to his previous employment and age, involves discrimination on grounds of sex where it is established that much more men than women find in that scheme a way of avoiding the means test which, in contrast, has to be satisfied in the case of another scheme, such as that established by the RWW, which, albeit providing for a benefit of the same type, is less favourable, or whether Article 4(1) has to be interpreted as meaning that the scheme in question does not entail such discrimination because it is justified by objective factors unrelated to any discrimination on grounds of sex.

14 In this connection, it should be recalled that the Court has consistently held that Article 4(1) of the directive precludes the application of a national measure which, although formulated in neutral terms, works to the disadvantage of a much higher percentage of women than men, unless that measure is based on objective factors unrelated to any discrimination on grounds of sex. That is the case where the measures chosen reflect a legitimate social policy aim of the Member State whose legislation is at issue, are appropriate to achieve that aim and are necessary in order to do so (see Case C-343/92 *De Weerd, née Roks, and Others* [1994] ECR I-571, paragraphs 33 and 34; see also Case C-444/93 *Megner and Scheffel* [1995] ECR I-4741, paragraph 24).

15 In this case, the Netherlands Government avers that, under the system established by the national legislature, the RWW guarantees unemployed workers income at the level of the social minimum on condition that their resources do not exceed the prescribed ceiling and that they fulfil certain specific obligations, the aim being to encourage the persons concerned to provide for their needs themselves. The scheme set up by the RWW therefore aims to bring unemployed workers back into employment.

16 It states that the scheme established by Article 2(1)(a) of the IOAW pursues a specific aim. The benefit provided for by the IOAW, which also guarantees an income at the level of the social minimum, is intended for unemployed workers who earned income from work over a relatively long period and then, after losing their jobs, received for a long period individual earnings-related benefits, where they are still unemployed after the maximum period for the payment of such benefits has run out and have little chance of finding a job before they reach retirement age. The scheme set up by the IOAW is not means-tested because the legislature sought to protect potential beneficiaries under that scheme from the risk of their having to break into the assets saved out their earnings over their whole working life, having regard to the very small likelihood of their rebuilding their assets by resuming gainful employment.

17 The Netherlands Government adds that the conditions for the grant of IOAW benefit are formulated in such a way that only persons of the class described can qualify for it.

18 The Court first observes that, in the current state of Community law, social policy is a matter for the Member States (see Case C-229/89 *Commission* v *Belgium* [1991] ECR I-2205, paragraph 22). Consequently, it is for the Member States to choose the measures capable of achieving their social policy aim. In exercising that competence, the Member States have a broad margin of discretion (see *Megner and Scheffel*, paragraph 29).

19 It should next be noted that the aim relied on by the Netherlands Government comes under its social policy and is objectively unrelated to any discrimination on

grounds of sex and that, in exercising its competence, the national legislature was reasonably entitled to consider that the legislation in question was necessary in order to achieve that aim.

20 In those circumstances, the legislation in question cannot be described as entailing indirect discrimination within the meaning of Article 4(1) of the directive.

21 Accordingly, it should be stated in reply to the questions from the national court that Article 4(1) of the directive must be interpreted as meaning that a national statutory scheme, such as that established by the IOAW, which provides for a benefit designed to guarantee beneficiaries income at the level of the social minimum, irrespective as to whether the claimant has any resources but subject to conditions relating to his previous employment and age, does not involve discrimination on grounds of sex even if it is established that much more men than women find in that scheme a way of avoiding the means test which, in contrast, has to be satisfied in the case of another scheme, such as that established by the RWW, which, albeit providing for a benefit of the same type, is less favourable, since the national legislature was reasonably entitled to consider that the scheme in question was necessary in order to attain a social policy aim unrelated to any discrimination on grounds of sex.

Costs

22 The costs incurred by the Netherlands Government and 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 proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Fourth Chamber),

in answer to the questions referred to it by the Nederlandse Raad van State, by order of 14 December 1993, hereby rules:

Article 4(1) 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 meaning that a national statutory scheme, such as that established by the IOAW, which provides for a benefit designed to guarantee beneficiaries income at the level of the social minimum, irrespective as to whether the claimant has any resources but subject to conditions relating to his previous employment and age, does not involve discrimination on grounds of sex even if it is established that a much greater number of men than women find in that scheme a way of avoiding the means test which, in contrast, has to be satisfied in the case of another scheme, such as that established by the RWW, which, albeit providing for a benefit of the same type, is less favourable, since the national legislature was reasonably entitled to consider that the scheme in question was necessary in order to attain a social policy aim unrelated to any discrimination on grounds of sex.

Kakouris Kapteyn Murray

Delivered in open court in Luxembourg on 8 February 1996.

R. Grass C. N. Kakouris

Registrar President of the Fourth Chamber