OPINION OF ADVOCATE GENERAL LÉGER

delivered on 19 September 1996 *

1. Through the questions it has referred for a preliminary ruling, the High Court of Justice, Queen's Bench Division, is asking the Court of Justice once again to consider the application 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. [1]

Essentially, the High Court is asking the Court of Justice to indicate whether Community law requires interest on the amount awarded by way of arrears of social security benefit to be paid to an individual, where the delay in paying the benefit is due to discrimination prohibited by Directive 79/7.

2. I will deal with the national court's questions after I have briefly set out the background to this case.

Legislative background

The relevant Community provisions: Directive 79/7

3. The purpose of Directive 79/7 is the progressive implementation of the principle of equal treatment for men and women in matters of social security (Article 1).

4. The scope of the directive *ratione personae*, as defined in Article 2, is the whole of the working population '... including self-employed persons, workers and self-employed persons whose activity is interrupted by illness, accident or involuntary unemployment and persons seeking employment — and [...] retired or invalided workers and self-employed persons'.

5. Under Article 3(1), the directive applies *ratione materiae* to statutory schemes which provide protection against the risks of sickness and invalidity, old age, accidents at work, occupational diseases and unemploy-

* Original language: French.

1 — OJ 1979 L 6, p. 24.

ment, as well as to social assistance, in so far as it is intended to supplement or replace the abovementioned schemes.

6. The principle of equal treatment, as laid down in Article 4(1) of Directive 79/7 — which the Court of Justice has held to have direct effect [2] —, means that there is to be no discrimination whatsoever on grounds of sex either directly, or indirectly by reference *inter alia* to marital or family status, in particular as regards the scope of the schemes and the conditions of access thereto, the obligation to contribute and the calculation of contributions, the calculation of benefits and the conditions governing the duration and retention of entitlement to benefits.

7. Article 5 places the Member States under an obligation to take the measures necessary to ensure that any laws, regulations and administrative provisions contrary to the principle of equal treatment are abolished.

8. The Member States are also obliged, under Article 6, to 'introduce into their national legal systems such measures as are necessary to enable all persons who consider themselves wronged by failure to apply the principle of equal treatment to pursue their claims by judicial process, possibly after recourse to other competent authorities'.

9. Finally, Article 7(1)(a) provides that the directive is to be without prejudice to the right of Member States to exclude from its scope 'the determination of pensionable age for the purposes of granting old-age and retirement pensions and the possible consequences thereof for other benefits'.

The national provisions

10. In the United Kingdom, section 37(1) of the Social Security Act provides for the possibility of granting, subject to certain conditions, an 'Invalid Care Allowance' (hereinafter 'ICA') to a person who is not gainfully employed and is regularly and substantially engaged in caring for a severely disabled relative.

11. However, section 37(5) of the Act provides that a person who has attained pensionable age (which section 27(1) sets at 60 for women and 65 for men) is not entitled to ICA unless he was entitled, or is treated by

2 — Judgment in Case 71/85 *Federatie Nederlandse Vakbeweging* ('*FNV*') [1986] ECR 3855, paragraph 21.

the regulations as having been entitled, to that benefit immediately before attaining that age.

Facts

12. It was on the basis of the latter provision that the Adjudication Officer, the competent national authority, refused to grant to Mrs Sutton, the applicant in the main proceedings, the ICA which she had claimed on 19 February 1987.

13. Although she had been engaged since 1968 in caring for her disabled daughter, she was over the retirement age when she submitted her claim (she was then 63) and could not be treated as if she had been entitled to ICA before reaching that age.

14. Mrs Sutton then appealed against that decision to the Social Security Appeal Tribunal (hereinafter 'the Tribunal'), claiming that section 37(5) of the Act unlawfully discriminated against her on grounds of sex, contrary to Directive 79/7, since it excluded a woman in her situation from entitlement to ICA, in circumstances where a claim by a man of the same age would be granted.

15. Her appeal was dismissed on 9 May 1988 on two grounds. The Tribunal considered, first of all, that section 37(5) of the Act was not incompatible with Directive 79/7, since the refusal to award ICA was a consequence of the determination of pensionable age, permitted by Article 7(1)(a) of Directive 79/7. Moreover, the Tribunal considered that, in any event, Mrs Sutton did not fall within the scope *ratione personae* of Directive 79/7, as laid down in Article 2 thereof, since she had ceased work well before she began to look after her daughter on a full-time basis.

16. Mrs Sutton lodged a further appeal with the Social Security Commissioner (hereinafter 'the Commissioner'). Since the outcome of cases pending before other national courts and before the Court of Justice [3] was awaited, the Commissioner did not give his decision until 24 January 1994.

17. That decision set aside the ruling of the Tribunal. Following the submission of new evidence proving that Mrs Sutton was in part-time employment when she began to care for her daughter, the Commissioner accepted that she was indeed part of the 'working population' within the meaning of

3 — Amongst which were Joined Cases 48/88, 106/88 and 107/88 *Achterberg-te Riele and Others* v *Sociale Verzekeringsbank* [1989] ECR 1963, decided on 27 June 1989, and Case C-328/91 *Secretary of State for Social Security* v *Thomas and Others* [1993] ECR I-1247, decided on 30 March 1993. The first case concerns the concept of 'working population' within the meaning of Article 2 of Directive 79/7. The second case lays down that the conditions for refusing ICA as laid down in section 37(5) of the Social Security Act cannot be justified under Article 7(1)(a) of Directive 79/7.

Article 2 of Directive 79/7. Moreover, he acknowledged that, after the judgment in *Thomas and Others*,[4] Article 7(1)(a) of Directive 79/7 could not be relied upon as against Mrs Sutton in order to justify a refusal to award ICA to women who, like her, had reached the retirement age, namely 60, when men of the same age who had not reached the retirement age, fixed at 65 in their case, were entitled to it.

18. Mrs Sutton was therefore awarded ICA with effect from 19 February 1986, in conformity with national law under which it is possible to back-date the effects of a claim by one year prior to the date of its submission. Payment of the benefit was made after deduction of payments granted by way of 'Income Support' (hereinafter 'IS'), which Mrs Sutton had received during that period and to which she would not have been entitled if she had received ICA on a regular basis. The benefit paid in arrears amounts to a total of UKL 5 588.60; moreover, payments of ICA other than arrears have been made regularly to Mrs Sutton since June 1994.

19. The Commissioner's decision expressly leaves open the question raised by Mrs Sutton, with reference to the judgment of the Court of Justice in *Marshall II*,[5] of her possible entitlement to interest on the arrears of benefit awarded.

20. The grant of such interest was the subject-matter of an application, made by the Child Poverty Action Group on behalf of Mrs Sutton, which was rejected on 19 February 1994 by the Secretary of State for Social Security on the ground that under national law no interest was due on arrears of ICA.

21. It is that refusal to pay interest which is the subject-matter of the proceedings before the High Court, which, having regard to the questions of Community law raised by the parties, considers that it is not in a position to give a ruling on the matter before it has received an answer to the following questions:

'Where a claimant is entitled to a national social security benefit by virtue of falling within the scope of Council Directive 79/7/EEC, does Community law, in the circumstances of the present case, entitle the claimant to interest on the award of benefit and, if so:

(i) from what date is interest payable?

(ii) what shall the rate of interest be?

4 — Cited in footnote 3 above.

5 — Case C-271/91 *Marshall* v *Southampton and S. W. Hampshire Area Health Authority* [1993] ECR I-4367.

(iii) is interest to be calculated only on the balance which falls due after off-setting, in accordance with national overlapping rules, any other benefit payments made for the same period?'

22. Mrs Sutton, the United Kingdom Government and the Commission have submitted written observations, as have the Swedish and German Governments.

Discussion

23. In my view, it is necessary, first of all, to define the precise scope of the questions submitted by the High Court. They require clarification in two respects.

Exclusion of any discussion concerning the liability of the Member States

24. According to the order for reference and the wording of the questions submitted by the High Court, the subject-matter of the main proceedings now before the Court is the payment of 'interest' on arrears of social security benefit in the light of Directive 79/7.

25. However, Mrs Sutton goes beyond the framework as so defined and relies [6] — in the alternative, it would seem, should the Court not accept her line of argument, based on *Marshall II*, concerning the grant of interest — on the application of the principles laid down in the judgment in *Francovich and Others* [7] concerning the liability of Member States for harm caused to individuals by breaches of Community law for which they can be held responsible. She claims in that regard that the United Kingdom Government infringed its obligations under the EC Treaty in that it failed properly to implement Directive 79/7, as a result of which she is entitled to compensation in the form of the payment of damages.

26. As the Commission points out by way of a preliminary observation, [8] the High Court has not referred any question relating to the award of damages in the light of *Francovich*.

6 — Paragraph 2.3 of her observations.

7 — Joined Cases C-6/90 and C-9/90 *Francovich and Others* v *Italian Republic* [1991] ECR I-5357. At the hearing, Mrs Sutton's representative also relied on the judgments delivered after the lodging of her written observations in Case C-46/93 *Brasserie du Pêcheur* and Case C-48/93 *Factortame* [1996] ECR I-1029 and in Case C-392/93 *British Telecommunications* [1996] ECR I-1631 which apply and throw into relief the criteria in *Francovich*.

8 — Section II, point 1.3 of its observations.

27. It should be recalled that the wording and content of questions submitted for a preliminary ruling are matters for the national court alone. At a very early stage the Court of Justice forcefully stated:

'Under Article 177 of the Treaty it is for the court or tribunal of a Member State, and not the parties to the main action, to bring a matter before the Court of Justice.

Since the right to determine the questions to be brought before the Court thus devolves upon the court or tribunal of the Member State alone, the parties may not change their tenor ...'. [9]

That is inherent in the nature of the preliminary reference procedure established by Article 177 of the Treaty, by which those who drafted it intended to provide for '... direct cooperation between the Court of Justice and the national courts based on a non-contentious procedure irrespective of any steps taken by the parties to the proceedings and in the course of which such parties are merely invited to submit observations within the legal framework set out by the court making the reference'. [10]

28. The participation of the parties to the main proceedings in the preliminary ruling procedure is therefore confined within precise limits, which cannot be extended so as to enable the tenor of the questions submitted by the national court to be altered or widened.

29. Consequently, since the Court of Justice may not '... reply ... at the request of the parties to the main action, to questions which have not been put to [it] ...', [11] I will refrain in the remainder of my Opinion from dealing with the question raised by Mrs Sutton concerning the award of damages based on the principle of the Member States' liability for breach of Community law and keep strictly to the questions formulated by the High Court.

Rejection of the argument based on Marshall II

30. Furthermore, as the main proceedings do not concern any other form of reparation, I am not at all swayed by the argument advanced by Mrs Sutton in support of her claims, to the effect that there is a parallel between her situation and that which gave

9 — Case 44/65 *Hessische Knappschaft* v *Singer* [1965] ECR 965, 970.

10 — Order of 18 October 1979 in Case 40/70 *Sirena* v *Eda* [1979] ECR 3169, third paragraph.

11 — Opinion of Advocate General Gand in Case 44/65 *Hessische Knappschaft* v *Singer*, cited above (p. 975, sixth paragraph).

rise to the judgment in *Marshall II*, given in a context which it is appropriate to recall.

31. In its first judgment of 26 February 1986 in *Marshall I*, [12] the Court interpreted Article 5(1) 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 [13] as meaning that 'a general policy concerning dismissal involving the dismissal of a woman solely because she has attained the qualifying age for a State pension, which age is different under national legislation for men and for women, constitutes discrimination on grounds of sex, contrary to that directive'. [14]

32. When that same case was the subject of a second reference for a preliminary ruling, the House of Lords asked the Court to consider provisions of national legislation (Sex Discrimination Act 1975) relating to compensation for loss sustained by reason of a discriminatory dismissal of that kind, in the light of Article 6 of Directive 76/207, which requires the Member States to take the necessary measures to enable all persons who consider themselves wronged by discrimination to pursue their claims by judicial process.

33. In that context the Court was called upon to decide whether national rules which limited from the outset the amount of compensation that could be claimed were compatible with Article 6, and whether that article required that compensation for the loss suffered should include interest on the amount of damages that could be claimed in respect of the period between the date of the unlawful discrimination and the date when such compensation was paid.

34. After stating that '... Article 6 does not prescribe a specific measure to be taken in the event of a breach of the prohibition of discrimination, but leaves Member States free to choose between the different solutions suitable for achieving the objective of the directive, depending upon the different situations which may arise', the Court went on to state: '[h]owever, the objective is to arrive at real equality of opportunity and cannot therefore be attained in the absence of measures appropriate to restore such equality when it has not been observed. ... [Those] measures must be such as to guarantee real and effective judicial protection and have a real deterrent effect on the employer'. [15]

Thus, in the event of a discriminatory dismissal, for which '... a situation of equality could not be restored without either reinstating the victim of discrimination or, in the alternative, granting financial compensation for the loss and damage sustained', the Court held that the Member States must, if they opt

12 — Case 152/84 *Marshall* v *Southampton and South-West Hampshire Area Health Authority* [1986] ECR 723.

13 — OJ 1976 L 39, p. 40.

14 — Paragraph 38.

15 — Paragraphs 23 and 24 of the judgment in *Marshall II*.

for financial compensation in preference to reinstatement, ensure that it is '... adequate, in that it must enable the loss and damage actually sustained as a result of the discriminatory dismissal to be made good in full in accordance with the applicable national rules'. [16]

Consequently, and in reply to the two questions submitted to it, the Court held that the fixing a priori of an upper limit on the amount of compensation cannot ensure adequate reparation for the loss and damage suffered [17] and that '... full compensation for the loss and damage sustained as a result of discriminatory dismissal cannot leave out of account factors, such as the effluxion of time, which may in fact reduce its value. The award of interest, in accordance with the applicable national rules, must therefore be regarded as an essential component of compensation for the purposes of restoring real equality of treatment.' [18]

35. Mrs Sutton claims that her situation is indistinguishable from that of the plaintiff in *Marshall II*.

36. She claims that the fact that *Marshall II* concerns the application of Directive 76/207 and not Directive 79/7 is irrelevant, since the two directives form part of the same programme for the implementation of the principle of equal treatment and the wording of the two articles most immediately relevant (Article 6 in both directives) is, for all practical purposes, identical. She considers that a person making a social security claim on the basis of Directive 79/7 must be granted the same right to interest and the same degree of protection against infringements of the principle of equal treatment as a person who bases his claim for compensation on Directive 76/207. [19]

37. However, it seems to me, a view shared by the United Kingdom Government, [20] that despite the undeniable link that exists between Directive 76/207 and Directive 79/7, the subject-matter of this case differs significantly from that of *Marshall II*.

38. In the House of Lords' own words, the question submitted in *Marshall II* concerned 'payment of compensation as [a] remedy' for discriminatory dismissal.

39. It was within that strict framework that the Court of Justice considered that where under the applicable national rules the remedy for discriminatory dismissal had to take

16 — Paragraphs 25 and 26.
17 — Paragraph 30.
18 — Paragraph 31.
19 — Paragraph 2.1 of her observations.
20 — Paragraph 27 et seq. of its observations.

the form of financial compensation, that compensation had to be appropriate and constitute full compensation which took into account the effluxion of time when the amount of damages to be paid by the employer was assessed. In that regard, the Court applied the principle previously laid down in its judgment in *Von Colson and Kamann* [21] that '... if a Member State chooses to penalize breaches of [the prohibition of discrimination laid down in Directive 76/207] by the award of compensation, then in order to ensure that it is effective and that it has a deterrent effect, that compensation must in any event be adequate in relation to the damage sustained ...'. [22]

40. In so doing, the Court of Justice in no way laid down a general principle to the effect that any restoration of equality of treatment presupposes payment of interest on account of the effluxion of time. The Court laid down such a requirement only when such restoration took the form of financial compensation imposed as a penalty, and it emphasized that 'the particular circumstances of each breach of the principle of equal treatment should be taken into account'. [23]

41. The main proceedings in this case do not concern 'payment of compensation by way of reparation' for loss or damage and the High Court's question makes no reference whatsoever to the award of compensation in the form of damages. Unlike the abovementioned cases, the present case is not concerned with a penalty system established by national law.

42. The arrears of ICA paid by the United Kingdom to Mrs Sutton cannot be treated in the same way as damages granted as compensation for loss. Payment of those arrears merely restored to Mrs Sutton her right to an award by an administrative authority of benefit to which she was entitled under a system of social protection intended to assist persons who satisfy the criteria conferring entitlement to such benefits.

43. Although it is true that, as a result of the initial refusal to grant ICA to her prior to the outcome of her action, she was the subject of discrimination contrary to the principle laid down by Directive 79/7, that situation was remedied in conformity with national rules. Unlike the case of discriminatory dismissal, that remedy did not take the form of compensation, but merely involved the restoration of her right to receive a social benefit.

44. Consequently, if a parallel were to be drawn with *Marshall II*, it would be that the retroactive award of a social security benefit under Directive 79/7 places Mrs Sutton in a

21 — Case 14/83 *Von Colson and Kamann* v *Land Nordrhein-Westfalen* [1984] ECR 1891.

22 — Paragraph 28.

23 — Paragraph 25 of the judgment in *Marshall II*, cited above.

situation comparable to that of a person who has been the subject of a discriminatory dismissal contrary to Directive 76/207, and whose rights are restored not by means of compensation for the loss suffered but by reinstatement in his employment.

45. The requirement which the Court laid down concerning payment of interest does not extend to the latter case.

46. Consequently, it does not seem to me that the conclusion reached by the Court in *Marshall II* can be applied to this case.

47. As a result of these initial considerations, it is possible to define more precisely the subject-matter of the questions submitted by the High Court. There is no need either to consider whether there is any liability on the part of the United Kingdom entailing the award of damages pursuant to the *Francovich* case or to apply *Marshall II* concerning the award of interest, characterized by Advocate General Van Gerven as 'compensatory', on a sum accorded by way of reparation for the loss suffered. [24]

24 — Point 27 of the Opinion in *Marshall II*.

The award of interest on arrears of benefit

48. I can now deal with the question from the High Court, as formulated anew: must it be possible under Community law for an individual to claim interest on the amount paid by way of arrears of benefit, where the delay in paying the benefit is the result of discrimination prohibited by Directive 79/7? The 'interest' at issue is what Advocate General Van Gerven characterized as 'default interest', that is to say 'awarded on account of effluxion of time'. [25]

49. In that regard, two approaches may be envisaged.

50. The first approach, which supports Mrs Sutton's contention, is based on the need to ensure the full effectiveness of the principle of equal treatment. It may be set out as follows.

51. Since the judgment in *Defrenne III*, [26] the Court has taken the view that generally '... the elimination of discrimination based on sex forms part of [...] fundamental rights', [27] the observance of which the Court has a duty to ensure.

25 — Ibidem, footnote 45.

26 — Case 149/77 *Defrenne* v *Sabena* [1978] ECR 1365.

27 — Paragraph 27.

52. More precisely, the principle of equal treatment for men and women under statutory social security schemes, as set out in Directive 79/7, must be elevated to the level of a superior principle of Community law, to which the Court attaches special importance. That is why the Court considers, for example, that '... having regard to the fundamental importance of the principle of equal treatment ... the exception to the prohibition of discrimination on grounds of sex laid down in Article 7(1)(a) of Directive 79/7 must be strictly interpreted.' [28]

53. Consequently, a woman cannot, on grounds of sex, be refused a benefit to which a man in her situation would be entitled, otherwise that principle would be infringed. That, moreover, is the reason why Mrs Sutton's right to the grant of ICA was finally recognized in the present case.

54. However, besides conferral of the same right, that principle also requires that the amount of benefit so granted be the same, whether it is granted to a man or a women.

28 — Judgment in *Thomas and Others* (paragraph 8); see also the judgments in *Marshall I*, cited above (paragraph 36), and in Case 262/84 *Beets-Proper* [1986] ECR 773, paragraph 38.

55. According to this first approach, the amount of benefit received by Mrs Sutton by way of ICA is lower in actual monetary terms than that which a man in her situation would have received. Although the arrears paid do indeed correspond to the total of the sums which would have been accorded to her, year after year, if her application had been granted with effect from when it was made, it cannot be denied that the value of that sum, paid in 1994, is not the same as it would have been had it been paid regularly since 1987. UKL 5 588.60 in 1994 does not have the same value as UKL 5 588.60 would have had between 1987 and 1994.

56. Consequently, if it is to be fully effective, the principle of equal treatment requires that, when granting a benefit retroactively, regard must be had at least to monetary depreciation.

57. It is said to follow from that reasoning that, in order to ensure that the principle of equal treatment is fully effective, it must be possible under Community law for an individual to claim interest on the amount paid by way of arrears of benefit where the delay in paying the benefit is the result of discrimination prohibited by Directive 79/7.

58. That would not entail laying down a general principle of Community law which systematically required the payment of interest on social security benefits paid after their

due date and which would be binding on national legal systems. The principle would merely have to be applied to situations in which the delay in the payment of benefit arose from an infringement of the principle of equal treatment.

59. However, I am not swayed by that approach.

60. Although it is indisputable that the principle of equal treatment for men and women constitutes a rule of Community law, it should be borne in mind that the practical rules for its implementation have not been laid down in detail.

61. It would therefore be futile to search for such rules in Directive 79/7. The reason for this is that, as the Commission acknowledged at the hearing, the Community has not yet adopted harmonizing rules intended to ensure the effectiveness of the principle in practical terms, particularly in regard to the question of the grant of interest.

62. Moreover, in the present case, the social benefit claimed has been granted to Mrs Sutton. Hence the discrimination has *already* been removed in conformity with the rules of national law and the national system can be regarded as having ensured the effectiveness of the principle *in practice*. In my view, the question whether Mrs Sutton also has a right to interest on the amount of that benefit cannot, in the absence of specific rules, be answered by reference to Community law, but should be left to each Member State to be assessed in conformity with its national provisions.

63. The case-law of the Court of Justice reinforces my view, which is shared by the Swedish and German Governments in their observations in support of the United Kingdom Government.

64. From the principle of cooperation in good faith between the Member States and the Community institutions, laid down in Article 5 of the Treaty, which in the Court's words '... requires the Member States to take all the measures necessary to guarantee the application and effectiveness of Community law', [29] the Court has deduced that in the absence of measures of harmonization '... the right[s] conferred by Community law [on individuals] must be exercised before the national courts in accordance with the conditions laid down by national rules'. [30]

29 — Order in Case C-2/88 Imm. *Zwartveld and Others* [1990] ECR I-3365, paragraph 17.

30 — Judgment in Case 33/76 *Rewe* v *Landwirtschaftskammer Saarland* [1976] ECR 1989, point 5, fifth paragraph. See also the judgment in Case C-208/90 *Emmott* v *Minister for Social Welfare and the Attorney General* [1991] ECR I-4269, paragraph 16.

65. In general terms, the Court has also stated that 'according to the general principles on which the institutional system of the Community is based and which govern the relations between the Community and the Member States, it is for the Member States, by virtue of Article 5 of the Treaty, to ensure that Community regulations ... are implemented within their territory. In so far as Community law, including its general principles, does not include common rules to this effect, the national authorities when implementing Community regulations act in accordance with the procedural and substantive rules of their own national law; however ... this rule must be reconciled with the need to apply Community law uniformly ...'. [31]

66. Moreover, in the context of that general obligation, the third paragraph of Article 189 of the Treaty leaves to the Member States the choice of the ways and means of ensuring the implementation of directives. [32]

67. The obligation on the part of the Member States to ensure the full effectiveness of Community principles for which harmonization rules have not been laid down must therefore be discharged, according to the case-law of the Court of Justice, in compliance with the *principle of institutional autonomy*, which means that the necessary measures for applying the Community rules must be taken, in the context of the national systems, by national institutions and in accordance with the procedures and powers inherent in those systems.

68. The example, given in the course of the proceedings, of the provisions applicable in Germany and Sweden concerning the payment of interest on arrears of social security benefits illustrates the diverse approaches which may be adopted at national level when implementing the principle of equal treatment laid down by Directive 79/7. Thus, in Sweden, as in the United Kingdom, it is not possible to obtain interest on such arrears. The Federal Republic of Germany, for its part, has instituted another system, which permits the grant of interest at a standard rate of 4% in respect of 30-day periods between the date on which the benefit is due and the date of payment.

69. However, the exercise of that discretion left to the Member States cannot be entirely unfettered, otherwise the effectiveness of Community law would be impaired.

70. Moreover, the Court has had occasion to point out, in particular in regard to Directive 79/7, the directive at issue in these proceedings, that: 'although [the third paragraph of Article 189 of the Treaty] leaves Member States free to choose the ways and means of ensuring that a directive is implemented, that freedom does not affect the obligation, imposed on all the Member States to which a directive is addressed, to adopt, within the framework of their national legal systems, all

31 — Judgment in Joined Cases 205/82 to 215/82 *Deutsche Milchkontor and Others* v *Germany* [1983] ECR 2633, paragraph 17.

32 — See, for example, the judgments in *Von Colson and Kamann* (paragraph 15) and in *Marshall II* (paragraph 17).

the measures necessary to ensure that the directive is fully effective, in accordance with the objective which it pursues'. [33]

71. Thus, national rules clearly may not be applied in such a way as to wholly negate the exercise of a right based on Community law. That is why, for example, the Court considered that '... until such time as Directive [79/7] has been properly transposed, a defaulting Member State may not rely on an individual's delay in initiating proceedings against it in order to protect rights conferred upon him by the provisions of the directive and that a period laid down by national law in which proceedings must be initiated cannot begin to run before that time'. [34] Similarly, the Court has observed that '... a Member State may not maintain a [national provision depriving women of the right to claim benefits which men in the same situation continue to receive] which ... gives rise to discrimination within the meaning of Article 4(1) of Directive 79/7 between men and women'. [35]

72. Above all, however, the Court has laid down two minimum requirements which the domestic legal system of each Member State must satisfy when, in the absence of Community rules, it introduces the procedural conditions designed to ensure the protection of the rights which individuals derive from Community law: '... such conditions [may] not [be] less favourable than those relating to similar actions of a domestic nature nor framed so as to render virtually impossible the exercise of rights conferred by Community law'. [36]

73. Those requirements seem to me to have been fulfilled in the present case.

74. As to the first requirement, the law of the United Kingdom does not draw any distinction according to whether an individual's right to a social benefit is derived from provisions of national law or Community law. According to the evidence adduced during the proceedings, social security benefits in the United Kingdom never include interest. Whatever the situation of a person claiming a social security benefit, no adjustment is provided for at national level to take account of inflation. A man, in a situation such as that of Mrs Sutton, who, because of an infringement or misapplication of the national rules, has experienced a delay in the grant of the social security benefits to which he was entitled, could not, any more than Mrs Sutton, plead that delay so as to claim interest in order to take account of the change over the course of time in the value of the amount so granted.

33 — Judgment in *Emmott*, cited above (paragraph 18); see also the judgment in *Von Colson and Kamann*, cited above (paragraph 15).

34 — Judgment in *Emmott*, cited above (paragraph 23).

35 — Judgment in Case C-338/91 *Steenhorst-Neerings* v *Bestuur van de Bedrijfsvereniging voor Detailhandel, Ambachten en Huisvrouwen* [1993] ECR I-5475, paragraph 33.

36 — Judgment in *Emmott*, cited above, paragraph 16. See also the judgments in *Rewe*, cited above, paragraph 5, third and sixth subparagraphs; in Case 199/82 *Amministrazione delle Finanze dello Stato* v *San Giorgio* [1983] ECR 3595, paragraph 12; in *Steenhorst-Neerings*, cited above, paragraph 15, and in Case C-401/92 *Johnson II* [1994] ECR I-5483, paragraph 21.

75. As to the second requirement, Mrs Sutton's action tends to show that the national system does not render impossible in practice the exercise of the rights which she derives from Community law. The discriminatory situation in which she had been placed at the outset and which arose from the original refusal to grant ICA to her, contrary to the principle of equal treatment applicable to her in accordance with Directive 79/7, was ultimately remedied since her right to the award of that benefit under national rules has been recognized.

76. A final remark, one already made at the hearing by the representative of the Swedish Government: If my argument were not followed, and on the assumption that in a situation such as that of Mrs Sutton Community law requires interest to be paid on arrears of social security benefits, there would be a risk of 'reverse' discrimination. In Member States such as the United Kingdom or Sweden, which do not provide for the grant of such interest, two parallel systems would exist alongside one another. An individual whose right to benefit had been recognized in accordance with Community law could obtain interest on the amount paid, if there had been a delay in recognizing that right. On the other hand, an individual who derived that right not from Community law but from his own national legal system would be refused payment of interest on the sums awarded in those countries in which no such right is provided for.

77. The conclusion which I have reached renders devoid of purpose any examination of the other three questions submitted by the High Court, which presuppose an affirmative answer to the first question. The date from which interest — if provided for under national law — must be paid, the rate of interest applicable and the basis for calculating that rate are matters in respect of which reference should be made to national provisions.

Conclusion

78. In the light of the foregoing considerations, I suggest that the Court should reply as follows to the question submitted by the national court:

Where a claimant is entitled to a national social security benefit by virtue of falling within the scope 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, Community law does not, in the circumstances of the present case, entitle him or her to interest on the benefit awarded.