

Case C-366/99

Joseph Griesmar

v

**Ministre de l'Économie, des Finances et de l'Industrie and
Ministre de la Fonction publique, de la Réforme de l'État et de
la Décentralisation**

(Reference for a preliminary ruling from the Conseil d'État (France))

(Social policy — Equal treatment for men and women — Applicability of Article 119 of the EC Treaty (Articles 117 to 120 of the EC Treaty have been replaced by Articles 136 EC to 143 EC) or Directive 79/7/EEC — French civil and military retirement pension scheme — Service credit for children awarded only to female civil servants — Whether permissible in the light of Article 6(3) of the Agreement on Social Policy or the provisions of Directive 79/7/EEC)

Opinion of Advocate General Alber delivered on 22 February 2001 I-9386
Judgment of the Court, 29 November 2001 I-9413

Summary of the Judgment

1. *Social policy — Men and women — Equal pay — Pay — Concept — Scheme for retirement pensions for civil servants provided to them by reason of their employment relationship — Included*
(*Art. 119 of the EC Treaty (Arts 117 to 120 of the EC Treaty have been replaced by Arts 136 EC to 143 EC)*)
2. *Social policy — Men and women — Equal pay — Article 119 of the Treaty (Articles 117 to 120 of the Treaty have been replaced by Articles 136 EC to 143 EC) — Service credit for calculation of the retirement pension awarded only to female civil servants who have had children — Male civil servants able to demonstrate that they assumed responsibility for bringing up their children excluded from entitlement to that credit — Not permissible*
(*Art. 119 of the EC Treaty (Arts 117 to 120 of the EC Treaty have been replaced by Arts 136 EC to 143 EC); Agreement on Social Policy, Art. 6(3)*)

1. Pensions provided under a scheme such as the French retirement scheme for civil servants fall within the scope of Article 119 of the Treaty (Articles 117 to 120 of the EC Treaty have been replaced by Articles 136 EC to 143 EC).

Article 119 of the Treaty, pensions provided under a retirement scheme for civil servants.

(see paras 28, 34, 35 and 38, and operative part)

The pension provided under that scheme, which is determined directly by length of service and the amount of which is calculated on the basis of the salary which the person concerned received during his or her final six months at work, satisfies the criterion based on the finding that the pension is provided to the worker by reason of the employment relationship between him and his former employer, that is to say, the criterion of employment which the Court, in its judgment in Case C-7/93 *Beune*, held to be decisive for the purpose of classifying, with respect to

2. Notwithstanding what is provided in Article 6(3) of the Agreement on Social Policy, which allows Member States to maintain or adopt measures providing for specific advantages designed to make it easier for women to pursue a vocational activity or to prevent or compensate for disadvantages in their careers at work, the principle of equal pay is infringed by a national provision which limits to female civil servants

who have had children a service credit for the calculation of their retirement pension inasmuch as it excludes from entitlement to that credit male civil servants who are able to prove that they assumed the task of bringing up their children.

In that connection, first, even if the credit in issue is granted, in particular, to female civil servants in respect of their biological children, the grant of that credit is not linked to maternity leave or to the disadvantages which a female civil servant incurs in her career as a result of being absent from work during the period following the birth of a child. On the contrary, that credit is linked to a different period, namely that devoted to bringing up the children. Second, by not permitting a male civil servant who has brought up his children to receive the credit in issue, even if he is in a position to prove that he did in fact assume the task of bringing up his children, the national provision introduces a difference in

treatment on grounds of sex in regard to those male civil servants who have in fact assumed the task of bringing up their children.

Furthermore, the credit introduced by the national provision is not a measure contemplated in Article 6(3) of the Agreement on Social Policy, as the national measures covered by that provision must, in any event, contribute to helping women conduct their professional life on an equal footing with men. The measure in question is limited to granting female civil servants who are mothers a service credit at the date of their retirement, without providing a remedy for the problems which they may encounter in the course of their professional career.

(see paras 52, 53, 57, 58, 62-65 and operative part)