JUDGMENT OF THE COURT

29 November 2001 *

In Case C-366/99,

REFERENCE to the Court under Article 234 EC by the Conseil d'État (France) for a preliminary ruling in the proceedings pending before that court between

Joseph Griesmar

and

Ministre de l'Économie, des Finances et de l'Industrie,

Ministre de la Fonction publique, de la Réforme de l'État et de la Décentralisation,

on the interpretation of Article 119 of the EC Treaty (Articles 117 to 120 of the EC Treaty have been replaced by Articles 136 EC to 143 EC), Article 6(3) of the Agreement on Social Policy (OJ 1992 C 191, p. 91) and Council Directive

* Language of the case: French.

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,

composed of: G.C. Rodríguez Iglesias, President, P. Jann, F. Macken, N. Colneric and S. von Bahr (Presidents of Chambers), A. La Pergola, J.-P. Puissochet, L. Sevón, M. Wathelet, V. Skouris (Rapporteur) and J.N. Cunha Rodrigues, Judges,

Advocate General: S. Alber,
Registrar: L. Hewlett, Administrator,

after considering the written observations submitted on behalf of:

— Mr Griesmar, by H. Masse-Dessen, avocat,

— the French Government, by K. Rispal-Bellanger and A. Lercher, acting as Agents,

— the Belgian Government, by P. Rietjens, acting as Agent,

— the Commission of the European Communities, by H. Michard, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of Mr Griesmar, represented by H. Masse-Dessen; of the French Government, represented by C. Bergeot, acting as Agent; and of the Commission, represented by H. Michard, at the hearing on 9 January 2001,

after hearing the Opinion of the Advocate General at the sitting on 22 February 2001,

gives the following

Judgment

1 By decision of 28 July 1999, received at the Court on 4 October 1999, the Conseil d'État (French Council of State) referred for a preliminary ruling under Article 234 EC two questions concerning the interpretation of Article 119 of the EC Treaty (Articles 117 to 120 of the EC Treaty have been replaced by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), Article 6(3) of the Agreement on Social Policy (OJ 1992 C 191, p. 91) and 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).

2 Those questions have arisen in a dispute between Mr Griesmar, on the one hand, and the Minister for Economic Affairs, Finance and Industry and the Minister for the Civil Service, State Reform and Decentralisation, on the other, concerning the legality of the decree awarding Mr Griesmar a retirement pension.

The legal framework

Community law

3 The first and second paragraphs of Article 119 of the Treaty provide:

'Each Member State shall during the first stage ensure and subsequently maintain the application of the principle that men and women should receive equal pay for equal work.

For the purpose of this Article, "pay" means the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which the worker receives, directly or indirectly, in respect of his employment from his employer.'

4 The Agreement on Social Policy entered into force at the same time as the EC Treaty, that is to say, on 1 November 1993.

5 Article 6(1) and (2) of the Agreement on Social Policy reproduces the rules laid down by Article 119 of the Treaty. Article 6(3) of that Agreement states:

'This Article shall not prevent any Member State from maintaining or adopting measures providing for specific advantages in order to make it easier for women to pursue a vocational activity or to prevent or compensate for disadvantages in their professional careers.'

6 Since 1 May 1999, Article 141 EC provides:

'1. Each Member State shall ensure that the principle of equal pay for male and female workers for equal work or work of equal value is applied.

...

4. With a view to ensuring full equality in practice between men and women in working life, the principle of equal treatment shall not prevent any Member State from maintaining or adopting measures providing for specific advantages in order to make it easier for the under-represented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers.'

7 Article 3(1)(a) of Directive 79/7 provides:

'This Directive shall apply to:

(a) statutory schemes which provide protection against the following risks:

— ...

— ...

— old age,

...'

8 Article 4 of Directive 79/7 provides:

'1. 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,

— the obligation to contribute and the calculation of contributions,

— the calculation of benefits including increases due in respect of a spouse and for dependants and the conditions governing the duration and retention of entitlement to benefits.

2. The principle of equal treatment shall be without prejudice to the provisions relating to the protection of women on the grounds of maternity.'

9 According to Article 7 of Directive 79/7:

'1. This Directive shall be without prejudice to the right of Member States to exclude from its scope:

(a) the determination of pensionable age for the purposes of granting old-age and retirement pensions and the possible consequences thereof for other benefits;

(b) advantages in respect of old-age pension schemes granted to persons who have brought up children; the acquisition of benefit entitlements following periods of interruption of employment due to the bringing up of children;

...

2. Member States shall periodically examine matters excluded under paragraph 1 in order to ascertain, in the light of social developments in the matter concerned, whether there is justification for maintaining the exclusions concerned.'

National law

10 The French scheme governing the retirement of civil servants is set out in the Code des pensions civiles et militaires de retraite (the Civil and Military

Retirement Pensions Code) ('the Code'). The Code at present in force results from Law No 64-1339 of 26 December 1964 (*JORF* of 30 December 1964), replacing the former Code annexed to Decree No 51-590 of 23 May 1951, together with various subsequent amendments.

11 Article L. 1 of the Code provides:

'A pension is a personal monetary benefit for life granted to civil and military servants and, on their death, to their lawful heirs and successors, as remuneration for the services which they performed until their retirement from the service.

The amount of the pension, which takes account of the level, duration and nature of the services performed, guarantees to its recipient, at the end of his or her career, a standard of living commensurate with the dignity of his or her office.'

12 Article L. 12(b) of the Code provides:

'Under conditions determined by rules of public administration, the following service credits shall be added to the periods of service actually completed:

...

(b) A service credit granted to female civil servants for each legitimate child, each natural child of established paternity, and each adopted child, and, subject to the condition that they have been brought up for at least nine years before reaching their twenty-first birthday, for each of the other children listed in paragraph II of Article L. 18'.

13 The children referred to in paragraph II of Article L. 18 of the Code are:

'Legitimate children, natural children of established paternity and adopted children of the pension holder;

Children of the husband resulting from an earlier marriage, his natural children of established maternity, and his adopted children;

Children who are the subject of a delegation of parental authority in favour of the pension holder or her husband;

Children placed under the guardianship of the pension holder or his or her spouse, where this involves actual and permanent custody of the child;

Children fostered in the home of the pension holder or his or her spouse, who, under conditions laid down by decree of the Conseil d'État, evidences actual and permanent assumption of responsibility for the child in question.'

14 Article R. 13 of the Code provides:

'The service credit provided under Article L. 12(b) for female civil servants amounts to one year for each legitimate child, each natural child of recognised paternity, and each other child who, at the date of retirement from the service, has been brought up under the conditions and for the period specified in that article.'

15 So far as determination of the amount of the pension is concerned, the Code provides as follows in Article L. 13 to the first paragraph of Article L. 15:

'Article L. 13

The duration of the service periods and credits which may be awarded is expressed in terms of awardable annuities. Each awardable annuity is paid in the amount of 2% of the basic salary calculated pursuant to the salary index set out in Article L. 15.

Article L. 14

The maximum for awardable annuities in the civil or military pension is fixed at 37.5 annuities.

This may be increased to 40 annuities by virtue of the service credits provided for in Article L. 12.

Article L. 15

Basic salaries are established in accordance with the last salaries subject to taxation in the index corresponding to post, grade, class and step actually held for at least six months by the civil or military servant on cessation of services qualifying for retirement purposes...'

The facts of the main proceedings and the questions submitted for preliminary ruling

16 Mr Griesmar, a French *magistrat* and father of three children, was granted a retirement pension by decree of 1 July 1991, pursuant to the Code.

17 For the calculation of that pension, account was taken of the years of service actually completed by Mr Griesmar. However, no account was taken of the service credit provided for under Article L. 12(b) of the Code, to which female civil servants are entitled in respect of each of their children.

18 By application lodged on 7 September 1992, supplemented by a written pleading of 25 November 1992, Mr Griesmar challenged the decree of 1 July 1991 before the Conseil d'État and sought to have it annulled on the ground that it took account only of the annuities corresponding to his years of service actually completed, without adding to them the service credit under Article L. 12(b) of the Code to which female civil servants were entitled in respect of each of their children.

19 In support of his action, Mr Griesmar argued *inter alia* that Article L. 12(b) of the Code was contrary to Article 119 of the Treaty and at variance with the objectives of Council Directive 86/378/EEC of 24 July 1986 on the implementation of the principle of equal treatment for men and women in occupational social security schemes (OJ 1986 L 225, p. 40) and those of Directive 79/7.

20 In those circumstances, the Conseil d'État decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

'1. Do the pensions provided by the French retirement pension scheme for civil servants constitute pay within the meaning of Article 119 of the Treaty of

Rome (now Article 141 of the Treaty establishing the European Community)? If so, in the light of the requirements of paragraph 3 of Article 6 of the Agreement annexed to Protocol No 14 on Social Policy, is the principle of equal pay breached by the provisions of Article L. 12(b) of the Civil and Military Retirement Pensions Code?

2. If Article 119 of the Treaty of Rome is not applicable, do the provisions of Directive 79/7/EEC of 19 December 1978 prevent France from maintaining in force provisions such as Article L. 12(b) of the Civil and Military Retirement Pensions Code?'

The first question

The application ratione temporis *of the Community provisions referred to in the first question*

21 In view of the fact that the Agreement on Social Policy entered into force on 1 November 1993 and that, with effect from 1 May 1999, the date on which the Treaty of Amsterdam entered into force, Article 119 of the Treaty became Article 141 EC, which added to the wording of Article 119 a paragraph (4) reproducing, apart from some minor differences, Article 6(3) of the Agreement on Social Policy, the French Government is unsure as to the wording to be taken into consideration for the purpose of replying to the first question.

22 It submits in this regard that, if one takes the date of the decree granting Mr Griesmar a retirement pension, that is to say, 1 July 1991, the applicable text

would be Article 119 of the Treaty, and there would be no need to refer to the Agreement on Social Policy, which is subsequent to it. On the other hand, if the material date is taken to be the date of the decision making the reference, that is to say, 28 July 1999, the text applicable would be Article 141 EC. At this latter date, reliance might also be placed, for all relevant purposes, on the Agreement on Social Policy, since the Treaty of Amsterdam did not repeal Protocol No 14 on Social Policy annexed to the EC Treaty ('the Protocol on Social Policy'), which is the protocol to which that agreement is annexed. According to the French Government, there is no reason to take a date later than the entry into force of the EC Treaty and prior to the entry into force of the Treaty of Amsterdam.

23 However, it is clear from a reading of the decision making the reference, taken as a whole, that the Conseil d'État intended, by its first question, to ask the Court to give a ruling on the interpretation of Article 119 of the Treaty and Article 6(3) of the Agreement on Social Policy. The mention in the first question of Article 141 EC next to Article 119 of the Treaty is incidental and designed to indicate the number of the provision which has replaced Article 119 of the Treaty since the entry into force of the Treaty of Amsterdam. There is nothing in the decision making the reference to justify the conclusion that the Conseil d'État intended to submit a question to the Court concerning the interpretation of Article 141 EC, and in particular paragraph 4 of that provision.

24 That being so, it is appropriate, for the purpose of replying to the first question, to take into account Article 119 of the Treaty and Article 6(3) of the Agreement on Social Policy.

The first part of the question

25 In the first part of its first question, the national court is, essentially, seeking to ascertain whether pensions provided under a scheme such as the French retirement scheme for civil servants fall within the scope of Article 119 of the Treaty.

26 Under the second paragraph of Article 119 of the Treaty, 'pay' for the purposes of that article is to be understood as meaning 'the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which the worker receives, directly or indirectly, in respect of his employment from his employer'.

27 According to settled case-law, although advantages in the nature of social security benefits are not in principle alien to the concept of pay, that concept, as defined in Article 119 of the Treaty, cannot be extended to encompass social security schemes or benefits — such as, for example, retirement pensions — which are directly governed by statute to the exclusion of any element of negotiation within the undertaking or occupational sector concerned and which are obligatorily applicable to general categories of employees. Such schemes give employees the benefit of a statutory scheme, to the financing of which workers, employers and, possibly, the public authorities contribute to an extent that is determined not so much by the employment relationship between the employer and the worker as by considerations of social policy (see, *inter alia*, Case 80/70 *Defrenne* [1971] ECR 445, paragraphs 7 and 8; Case 170/84 *Bilka* [1986] ECR 1607, paragraphs 17 and 18; Case C-262/88 *Barber* [1990] ECR I-1889, paragraphs 22 and 23; and Case C-7/93 *Beune* [1994] ECR I-4471, paragraph 24).

28 Replying to the question whether pensions provided under a civil service retirement scheme such as that organised by the Algemene Burgerlijke Pensioenwet (Netherlands General Civil Pension Law) fall within the scope of Article 119 of the Treaty, the Court pointed out, in paragraphs 23 and 43 of its judgment in *Beune*, cited above, that, of the criteria for characterising a pension scheme which it had adopted on the basis of the situations that had been brought before it, the only possible decisive criterion is whether the pension is paid to the worker by reason of the employment relationship between him and his former employer, that is to say, the criterion of employment based on the actual wording of Article 119 of the Treaty.

29 The Court did, admittedly, accept that that criterion cannot be regarded as exclusive, inasmuch as pensions paid by statutory social security schemes may reflect, wholly or in part, pay in respect of work (*Beune*, paragraph 44).

30 However, considerations of social policy, of State organisation, of ethics, or even the budgetary concerns which influenced, or may have influenced, the establishment of a scheme by the national legislature cannot prevail if the pension concerns only a particular category of workers, if it is directly related to the period of service and if its amount is calculated by reference to the civil servant's last salary. The pension paid by the public employer is in that case entirely comparable to that paid by a private employer to his former employees (*Beune*, paragraph 45).

31 So far as concerns the scheme at issue in the main proceedings in the present case, it must first be pointed out that civil servants who benefit under that scheme must be regarded as constituting a particular category of workers. They are distinguished from employees grouped within an undertaking or group of undertakings in a particular sector of the economy, or in a trade or inter-trade sector, only by reason of the specific features governing their employment relationship with the State, or with other public employers or bodies (see, to this effect, *Beune*, paragraph 42).

32 Second, it follows from Article L. 1 of the Code that the pension there referred to is granted in remuneration for the services performed by civil servants until their retirement from the service, and its amount takes account of the level, duration and nature of the services performed.

33 It is clear from Articles L. 13 to L. 15 of the Code and from the information provided by the French Government during the proceedings before the Court that that amount results from the multiplication of a basic amount by a rate. The rate

is established by annuities, which are determined by the eligible years of service. Each annuity is equivalent to 2%, subject to the proviso that the rate obtained after taking into account the years of service cannot exceed 75%. The basic amount is the salary corresponding to the last salary index applicable to the civil servant during his or her final six months at work. That index depends on the level of the post, that is to say, the grade, and the time spent in the post, that is to say, seniority, expressed in terms of steps. Various service credits may serve to supplement the number of annuities.

34 It follows that the pension provided under the French retirement scheme for civil servants is determined directly by length of service and that its amount is calculated on the basis of the salary which the person concerned received during his or her final six months at work.

35 Consequently, such a pension satisfies the criterion of employment which the Court, in *Beune*, held to be decisive for the purpose of characterising, with respect to Article 119 of the Treaty, pensions provided under a retirement scheme for civil servants.

36 The French Government has, admittedly, pointed out, without being challenged, that, unlike the Netherlands scheme at issue in *Beune*, which was a supplementary pension scheme operating by capitalisation and based on joint management, the French retirement scheme for civil servants is a basic scheme under which the amount of the pensions provided is not guaranteed by a retirement pension fund but results directly from the annual law on finances, and thus without the need for management or capitalisation of any fund.

37 However, it follows from paragraphs 37 and 38 of *Beune* that neither the criterion derived from the supplementary nature of a pension in relation to a basic

pension provided by a statutory social security scheme nor the criterion relating to the arrangements for funding and managing a pension scheme is conclusive for the purpose of determining whether the scheme in question falls within the scope of Article 119 of the Treaty.

38 In the light of the foregoing, the answer to the first part of the first question must be that pensions provided under a scheme such as the French retirement scheme for civil servants fall within the scope of Article 119 of the Treaty.

The second part of the question

The existence of a difference in treatment on grounds of sex

39 It should be borne in mind from the outset that the principle of equal pay set out in Article 119 of the Treaty, like the general principle of non-discrimination of which it is a particular expression, presupposes that male and female workers whom it covers are in comparable situations (see Case C-218/98 *Abdoulaye and Others* [1999] ECR I-5723, paragraph 16).

40 Consequently, in order to reply to the second part of the first question, it is necessary to determine whether, in relation to the grant of the service credit at issue in the main proceedings, the situations of a male civil servant and a female civil servant who are respectively the father and mother of children are comparable.

41 In that regard, it is settled case-law that, for the purpose of applying the principle of equal pay, the situation of a male worker is not comparable to that of a female worker where the advantage granted to the female worker alone is designed to offset the occupational disadvantages, inherent in maternity leave, which arise for female workers as a result of being away from work (*Abdoulaye and Others*, cited above, paragraphs 18, 20 and 22).

42 The Court has defined the scope of the protection which Community law confers on women by reason of maternity in its case-law on Article 2(3) 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 (OJ 1976 L 39, p. 40), which provides that 'this Directive shall be without prejudice to provisions concerning the protection of women, particularly as regards pregnancy and maternity'.

43 According to that case-law, Article 2(3) of Directive 76/207 is intended to protect a woman's biological condition and the special relationship between a woman and her child over the period which follows pregnancy and childbirth, by preventing that relationship from being disturbed by the multiple burdens which would result from the simultaneous pursuit of employment (see Case 184/83 *Hofmann* [1984] ECR 3047, paragraph 25; Case 222/84 *Johnston* [1986]

ECR 1651, paragraph 44; Case 312/86 *Commission* v *France* [1988] ECR 6315, paragraph 13; and Case C-285/98 *Kreil* [2000] ECR I-69, paragraph 30).

44 While the Court has ruled that maternity leave granted to a woman on expiry of the statutory protective period falls within the scope of Article 2(3) of Directive 76/207 (*Hofmann*, cited above, paragraph 26), it has also held that measures designed to protect women in their capacity as parents, which is a capacity which both male and female workers may have, cannot find justification in that provision of Directive 76/207 (*Commission* v *France*, cited above, paragraph 14).

45 The case-law cited in paragraphs 43 and 44 of the present judgment can also properly be applied for the purpose of determining whether the situations of a male worker and a female worker are comparable for the purpose of applying the principle of equal pay in regard to a measure which confines a service credit for the calculation of retirement pensions to female workers who have had children.

46 It is thus necessary to establish whether that credit is designed to offset the occupational disadvantages which arise for female workers as a result of being absent from work during the period following childbirth, in which case the situation of a male worker is not comparable to that of a female worker, or whether it is designed essentially to offset the occupational disadvantages which arise for female workers as a result of having brought up children, in which case it will be necessary to examine the question whether the situations of a male civil servant and a female civil servant are comparable.

47 It is important to note in this regard that, so far as the conditions governing the grant of the credit at issue in the main proceedings are concerned, Article L. 12(b) of the Code draws a distinction between, on the one hand, legitimate children, natural children of established paternity and adopted children of the pension holder and, on the other hand, the other children listed in Article L. 18, paragraph II, of the Code.

48 While the credit is granted to a female civil servant without any other condition in the case of the first category of children, grant of the credit to a female civil servant for the second category of children is subject to the condition that she has raised them for at least nine years prior to their twenty-first birthday.

49 Mr Griesmar argues that his status as father derives from the existence of children within the first category and that his situation is in this regard comparable to that of a female civil servant who has children in that category. He points out in particular that, in contrast to the credit defined by reference to Article L. 18, paragraph II, of the Code, the credit for children within the first category is granted to a female civil servant exclusively by reason of her status as mother, and there is thus no need for her to prove that she has brought up those children.

50 Mr Griesmar adds that, so far as those children are concerned, the credit is not designed to offset occupational disadvantages attaching to the circumstance of being a mother because its grant is not linked to absence from the service as a result of maternity leave. In the first place, he argues, the credit is granted even in respect of children born at a time when their mother had not yet acquired civil-servant status or had lost that status. Second, the credit applies also in respect of adopted children, even though adoption leave is granted, without distinction, to the father or the mother. Furthermore, the credit is for one year whereas neither maternity leave nor adoption leave lasts so long.

51 For its part, the French Government explains that the credit at issue in the main proceedings has been reserved for female civil servants who have had children, in order to address a social reality, namely the disadvantages which they incur in the course of their professional career by virtue of the predominant role assigned to them in bringing up children. The purpose of that credit is thus to offset the disadvantages which female civil servants who have had children encounter in their professional life, even though they have not ceased working in order to bring up their children.

52 In that connection, it should first be observed that, even if the credit at issue in the main proceedings is granted, in particular, to female civil servants in respect of their legitimate and natural children, thus 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. First, there is nothing in Article L. 12(b) of the Code which establishes a link between the credit provided for and any career disadvantages resulting from maternity leave. It does not even require that children through whom a credit entitlement arises must have been born at a time when their mother had the status of civil servant. Second, the credit under consideration is also granted in respect of adopted children without being linked to a prior grant of adoption leave to the mother.

53 The explanations provided by the French Government in regard to the purpose served by Article L. 12(b) of the Code not only confirm that there is no link between the credit at issue in the main proceedings and the period following childbirth, during which the mother benefits from maternity leave and is absent from work, but also, on the contrary, emphasise that this credit is linked to a separate period, namely that devoted to bringing up the children.

54 That analysis is not invalidated by the fact that, in the case of the legitimate, natural or adopted children of the pension holder, Article L. 12(b) of the Code

does not make the grant of the credit subject to the condition that the pension holder has brought up those children, whereas that condition is imposed in regard to the other children mentioned in Article L. 18, paragraph II, of the Code.

55 It appears that the national legislature used a single criterion for granting the credit at issue in the main proceedings, namely that relating to the bringing-up of the children and that, in the case of legitimate, natural or adopted children, it simply took it for granted that they were brought up at the home of their mother. It should also be noted in this connection that, as counsel for Mr Griesmar pointed out at the hearing without being contradicted, that credit dates back to 1924 and its purpose, as explained in the relevant preparatory documents, was to facilitate the female civil servant's return to her home in order for her to be better able to bring up her children.

56 Second, the situations of a male civil servant and a female civil servant may be comparable as regard the bringing-up of children. In particular, the fact that female civil servants are more affected by the occupational disadvantages entailed in bringing up children, because this is a task generally carried out by women, does not prevent their situation from being comparable to that of a male civil servant who has assumed the task of bringing up his children and has thereby been exposed to the same career-related disadvantages.

57 Article L. 12(b) of the Code does not permit a male civil servant who is in such a situation to receive the credit at issue in the main proceedings, even if he is in a position to prove that he did in fact assume the task of bringing up his children.

58 Consequently, irrespective of the question whether such proof should also be demanded of female civil servants who have children, it must be held that Article

L. 12(b) of the Code introduces a difference in treatment on grounds of sex in regard to male civil servants who have in fact assumed the task of bringing up their children.

59 It remains to determine whether Article L. 12(b) of the Code may be justified under Article 6(3) of the Agreement on Social Policy.

Article 6(3) of the Agreement on Social Policy

60 Mr Griesmar argues that because the Protocol on Social Policy introduced, by means of the agreement annexed to it, an entirely novel rule, namely the possibility of discrimination, not in regard to equal treatment, but in regard to equal pay, it cannot be applied retroactively to pensions awarded before it entered into force. In the alternative, he argues that, since the credit at issue in the main proceedings is not linked to any disadvantage relating to the circumstance of being a mother, as it is granted irrespective of any leave or any adverse affect on career, Article L. 12(b) of the Code infringes the principle of equal treatment set out in Article 119 of the Treaty, even if Article 6(3) of the Agreement on Social Policy were to be regarded as applicable.

61 Referring to statistical data, the French Government lays stress on the greater frequency of the use of parental leave by women, which affects their pension rights, and on the duration of the careers of female civil servants, which is on average two years shorter than that of male civil servants. It states that, even though the statistics do not establish a direct link between the benefit of parental leave and length of career, it can hardly be doubted that the bringing-up of children is an important factor, perhaps the most important factor, in explaining the shorter duration of the careers of female civil servants at the date of their retirement. The credit introduced by Article L. 12(b) of the Code is thus designed

to offset, for the benefit of women, the disadvantages, so far as the rate and basis of calculation of retirement pensions are concerned, ensuing from a break in career for the purpose of bringing up children.

62 It should be noted in this regard that Article 6(3) of the Agreement on Social Policy allows Member States to maintain or adopt measures providing for specific advantages in order to make it easier for women to pursue a vocational activity or to prevent or compensate for disadvantages in their careers at work.

63 It is clearly the case, without there being any need to rule on the question whether Article 6(3) of that agreement introduces a new rule, that the credit introduced by Article L. 12(b) of the Code is not a measure contemplated in that provision of the Agreement on Social Policy.

64 Article 6(3) of the Agreement on Social Policy authorises national measures intended to eliminate or reduce actual instances of inequality which result from the reality of social life and affect women in their professional life. It follows that 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.

65 In the light of the arguments raised and the information placed before the Court, the measure at issue in the main proceedings does not appear to be of a nature such as to offset the disadvantages to which the careers of female civil servants are exposed by helping those women in their professional life. On the contrary, that measure 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.

66 It is significant in this regard that, although the measure provided for under Article L. 12(b) of the Code dates back to 1924, it has, to this day, still not been possible to resolve, by means of that provision, the problems which such a female civil servant may encounter in her career.

67 The answer to the second part of the first question must therefore be that, notwithstanding what is provided in Article 6(3) of the Agreement on Social Policy, a provision such as Article L. 12(b) of the Code infringes the principle of equal pay inasmuch as it excludes male civil servants who are able to prove that they assumed the task of bringing up their children from entitlement to the credit which it introduces for the calculation of retirement pensions.

The second question

68 This question is posed in the event that Article 119 of the Treaty is not applicable to pensions provided under a scheme such as the French retirement scheme for civil servants. It follows from the answer to the first part of the first question that pensions provided under such a scheme do fall within the scope of that provision of the Treaty.

69 It is for that reason unnecessary to reply to the second question.

Limitation in time of the present judgment

70 During the hearing, the French Government requested the Court to limit in time the effects of the present judgment if its answer to the first question were to differ from the view taken by the French Government.

71 In support of that request, the French Government submitted that any misinterpretation by the French authorities of Article 119 of the Treaty and Article 6(3) of the Agreement on Social Policy stems from a legal uncertainty discernible in the Court's case-law concerning positive action in favour of women. It referred in this connection to the Court's judgments in Case C-450/93 *Kalanke* [1995] ECR I-3051, Case C-409/95 *Marschall* [1997] ECR I-6363, Case C-158/97 *Badeck and Others* [2000] ECR I-1875, and in *Abdoulaye and Others*. The last-mentioned judgment, it suggested, might have led the French authorities to take the view that Article L. 12(b) of the Code was justified.

72 The French Government went on to state that the financial equilibrium of retirement pensions for civil servants would be thrown into disarray if the credit provided for under Article L. 12(b) of the Code were to be granted with retroactive effect to all retired male civil servants who have had children. Such

retroactive application would have an estimated cost of between FRF 3 and 5 billion per annum. These figures do not take account of the effect which the Court's judgment would have on pensions payable on survivorship, given that it is extremely difficult to make estimates in regard to pensions of that kind.

73 It must be pointed out that the interpretation which the Court gives to a provision of Community law clarifies and defines its meaning and scope only as it should have been understood and applied from the time of its entry into force (see the judgment of 20 September 2001 in Case C-184/99 *Grzelczyk* [2001] ECR I-6193, paragraph 50 and the case-law there cited).

74 It is only exceptionally that the Court may, in application of the general principle of legal certainty inherent in the Community legal order, be moved to restrict the possibility for any person concerned to rely upon a provision which it has interpreted with a view to calling into question legal relationships established in good faith (*Grzelczyk*, cited above, paragraph 51).

75 It is also settled case-law that the financial consequences which might ensue for a Member State from a preliminary ruling do not in themselves justify limiting the temporal effect of the ruling (*Grzelczyk*, paragraph 52).

76 The Court has taken that step only in quite specific circumstances, where there was a risk of serious economic repercussions owing in particular to the large number of legal relationships entered into in good faith on the basis of rules considered to be validly in force and where it appeared that both individuals and national authorities had been led into adopting practices which did not comply with Community law by reason of objective, significant uncertainty regarding the

implications of Community provisions, an uncertainty to which the conduct of other Member States or the Community institutions may even have contributed (*Grzelczyk*, paragraph 53).

77 It need merely be observed in this regard that the credit at issue in the main proceedings is, in terms of the detailed rules governing its award and of its objective, entirely different from the measures which were the subject of the judgments cited by the French Government, with the result that that government cannot rely on those judgments in order to demonstrate the existence of objective and significant uncertainty as to the validity of that credit from the point of view of Community law. Moreover, in so far as the finding made in paragraph 67 of the present judgment is concerned, it is not established that the number of retired male civil servants who are able to prove that they assumed the task of bringing up their children is such as to give rise to serious economic repercussions.

78 There are, therefore, no grounds for limiting the temporal effects of the present judgment.

Costs

79 The costs incurred by the French and Belgian Governments and by the Commission, 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 Conseil d'État by decision of 28 July 1999, hereby rules:

Pensions provided under a scheme such as the French retirement scheme for civil servants fall within the scope 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).

Notwithstanding what is provided in Article 6(3) of the Agreement on Social Policy, a provision such as Article L. 12(b) of the French Civil and Military Retirement Pensions Code infringes the principle of equal pay inasmuch as it excludes male civil servants who are able to prove that they assumed the task of bringing up their children from entitlement to the credit which it introduces for the calculation of retirement pensions.

Rodríguez Iglesias	Jann	Macken
Colneric	von Bahr	La Pergola
Puissochet	Sevón	Wathelet
Skouris	Cunha	Rodrigues

Delivered in open court in Luxembourg on 29 November 2001.

R. Grass — Registrar

G.C. Rodríguez Iglesias — President