

JUDGMENT OF THE COURT (Fourth Chamber)  
24 June 1986 \*

In Case 150/85

REFERENCE to the Court under Article 177 of the EEC Treaty by the Chief Social Security Commissioner for a preliminary ruling in the proceedings pending before him between

**Jacqueline Drake**

and

**Chief Adjudication Officer**

on the interpretation of Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security (Official Journal 1979, L 6, p. 24),

THE COURT (Fourth Chamber)

composed of: K. Bahlmann, President of Chamber, T. Koopmans, G. Bosco, T. F. O'Higgins and F. Schockweiler, Judges,

Advocate General: G. F. Mancini

Registrar: P. Heim

after considering the observations submitted on behalf of

Mrs Drake, by R. Smith, Solicitor, during the written procedure and by R. Drabble, Barrister, during the oral procedure,

the Adjudication Officer, by F. Jacobs QC,

\* Language of the Case: English.

the Commission of the European Communities, by J. Currall, a member of its Legal Department, acting as Agent,

after hearing the Opinion of the Advocate General delivered at the sitting on 22 April 1986,

gives the following

## JUDGMENT

(The account of the facts and issues which is contained in the complete text of the judgment is not reproduced)

### Decision

- 1 By an order of 15 May 1985, which was received at the Court on 20 May 1985, the Chief Social Security Commissioner referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty two questions regarding 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, with a view to determining the compatibility with that directive of a provision of national law laying down conditions for the granting of an invalid care allowance.
- 2 Those questions were raised in the course of proceedings before the Commissioner between Mrs Drake and the Adjudication Officer concerning the latter's refusal to grant Mrs Drake the said invalid care allowance.
- 3 Mrs Drake is married and lives with her husband. Over a number of years, until the middle of 1984, she held a variety of full-time and part-time jobs. In June 1984 her mother, a severely disabled person who receives an attendance allowance under Section 35 (1) of the Social Security Act 1975, came to live with her. Mrs Drake thereupon gave up her work in order to look after her mother.

- 4 The British legislation on invalidity benefits is laid down in the Social Security Act 1975. Section 37 (1) of that Act provides for the payment of an invalid care allowance where (a) the applicant is regularly and substantially engaged in caring for a severely disabled person; (b) the applicant is not gainfully employed; (c) the severely disabled person is such relative of his or such other person as may be prescribed by the law. For the purposes of the application of that provision, Section 37 (2) defines 'severely disabled person' as a person entitled to an attendance allowance under Section 35 of that Act or to any other benefit of the same nature. Under Section 37 (3) the invalid care allowance is not paid: to any person who is under the age of 16 or is engaged in full-time education; to a married woman who lives with her husband or to whose maintenance her husband contributes a weekly sum not less than the weekly rate of the allowance; to a woman where she and a man to whom she is not married are living together as husband and wife.
- 5 On 5 February 1985 Mrs Drake applied for the allowance in respect of the care provided by her to her mother. The Adjudication Officer responsible for the award of the benefit stated that under Section 37 (3) (a) (i) the benefit was not payable to a married woman residing with her husband. In order to accelerate the proceedings, however, he referred the claim to the Social Security Appeal Tribunal.
- 6 By a decision of 1 March 1985 the Tribunal held that that rule constituted discrimination on grounds of sex contrary to Directive 79/7. The Adjudication Officer appealed against that decision to the Chief Social Security Commissioner. In his order referring the matter to the Court of Justice, the Chief Social Security Commissioner states that the sole point at issue between the parties concerns Section 37 (3) (a) (i) of the Social Security Act 1975 and that the other conditions laid down in that Act for the grant of the invalid care allowance are fulfilled.
- 7 The Chief Social Security Commissioner also states in his order that Section 37 (3) of the Act has not been repealed or amended since the entry into force of Directive 79/7, the relevant provisions of which are set out below.

8 Article 1 states that the purpose of the directive is the:

‘... progressive implementation, in the field of social security and other elements of social protection provided for in Article 3, of the principle of equal treatment for men and women in matters of social security, hereinafter referred to as the “principle of equal treatment”’.

According to Article 2, the directive applies to:

‘... 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 to retired or invalided workers and self-employed persons’.

Under Article 3 (1), the directive applies to:

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

- sickness,
- invalidity,
- old age,
- accidents at work and occupational diseases,
- unemployment;

(b) social assistance, in so far as it is intended to supplement or replace the schemes referred to in (a)’.

Article 4 (1) provides that:

‘The principle of equal treatment means that there shall be no discrimination whatsoever on ground 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.’

- 9 The Chief Social Security Commissioner considered that a decision on the interpretation of the directive was necessary for his decision in the case; he therefore stayed the proceedings and referred the following questions to the Court for a preliminary ruling:

‘(1) If a Member State provides a benefit payable (provided certain residence and other conditions are met) to a person who is not gainfully employed and is regularly and substantially engaged in caring for a person in respect of whom a benefit is payable as a severely disabled person by reason of that person requiring attention or supervision as prescribed (and provided that that person meets certain residence and other conditions), does the benefit payable to the first-mentioned person constitute the whole or part of a statutory scheme which provides protection against invalidity to which Article 3 (1) (a) of Directive 79/7/EEC applies?

(2) If the answer to the first question is yes, does a condition that a married woman is not entitled to that benefit if she is residing with her husband or he is contributing to her maintenance above a certain level constitute discrimination contrary to Article 4 (1) of that Directive in circumstances where married men do not have to meet a corresponding condition?’

10 Observations were submitted by Mrs Drake, the Adjudication Officer and the Commission.

### Question 1

11 By his first question the Chief Social Security Commissioner seeks to know whether the right to the payment of a benefit to a person who cares for a disabled person constitutes part of a statutory scheme providing protection against the risk of invalidity to which Directive 79/7 applies under Article 3 (1) (a) of that directive.

12 Mrs Drake and the Commission consider that the answer to Question 1 should be in the affirmative.

13 Mrs Drake submits in the first place that the expression 'working population' used in Article 2 of the directive must be interpreted as including individuals who have worked, who wish to return to work, who are of working age, but who are temporarily unable to work because of some particular risk covered by the social security system, which is precisely her situation. She considers that she is therefore a person to whom the directive applies.

14 Secondly, Mrs Drake argues that Article 3 (1) (a) of the directive must be interpreted as applying to any benefit which forms part of a national statutory scheme providing protection against the risks referred to in that provision. She argues that in the United Kingdom the statutory scheme of protection against the risk of invalidity is provided by two benefits, the attendance allowance payable to the disabled person and the invalid care allowance payable to the person who cares for him. It would thus be impossible to describe the relevant statutory scheme without describing both benefits.

5 The Commission argues first of all that a person belongs to the working population for the purposes of Article 2 of the directive if he is in fact working, is unemployed and seeking work, is a former or retired worker, or is prevented from working by reason of illness or invalidity, whether his own or that of a person for whom he is caring. The Commission considers that Mrs Drake gave up work by

reason of invalidity, albeit that of her mother, and that she should therefore be regarded as a member of the working population for the purposes of the directive.

- 16 The Commission argues that the fact that the benefit in question is paid to a third party and not directly to the disabled person does not put it outside the scope of the risk of invalidity, the scheme for which is covered by the directive. It points out that the effectiveness of the directive might be seriously compromised if it were to be held that the way in which the benefit is paid could determine whether or not the benefit was covered by the directive.
- 17 The Adjudication Officer, on the other hand, considers that the invalid care allowance cannot in itself be regarded as providing protection against the risk of invalidity within the meaning of Article 3 (1) (a) of Directive 79/7. In his view, that provision is directed at schemes providing persons with protection against risks to them, not, as in the case of the invalid care allowance, against risks to third parties. He argues that Article 2, which defines the persons to whom the directive applies, is concerned only with persons who are directly affected by one of those risks and thus excludes from the scope of the directive benefits made available to other persons.
- 18 The Adjudication Officer goes on to point out that it is clear from Article 2 and from the preamble to the directive that the benefits to which the directive refers are all work-related. Since the allowance in question is intended for persons who do not work and therefore do not belong to the working population it cannot be regarded as one of those benefits.
- 19 Finally, the Adjudication Officer states that far from being an all-embracing code for the implementation of the principle of equal treatment in matters of social security, Directive 79/7 is only a first step towards equal treatment for men and women in that area. He argues that the scope of the directive is restricted to the working population as defined in Article 2. Allowances such as those at issue in the main proceedings therefore fall outside its scope.

- 20 It must be pointed out first of all that according to the first and second recitals in the preamble to Directive 79/7, the aim of that directive is the progressive implementation of the principle of equal treatment for men and women in matters of social security.
- 21 According to Article 3 (1), Directive 79/7 applies to statutory schemes which provide protection against, *inter alia*, the risk of invalidity (subparagraph (a)) and social assistance in so far as it is intended to supplement or replace the invalidity scheme (subparagraph (b)). In order to fall within the scope of the directive, therefore, a benefit must constitute the whole or part of a statutory scheme providing protection against one of the specified risks or a form of social assistance having the same objective.
- 22 Under Article 2, the term 'working population', which determines the scope of the directive, is defined broadly to include 'self-employed persons, workers and self-employed persons whose activity is interrupted by illness, accident or involuntary employment and persons seeking employment...[and] retired or invalided workers and self-employed persons'. That provision is based on the idea that a person whose work has been interrupted by one of the risks referred to in Article 3 belongs to the working population. That is the case of Mrs Drake, who has given up work solely because of one of the risks listed in Article 3, namely the invalidity of her mother. She must therefore be regarded as a member of the working population for the purposes of the directive.
- 23 Furthermore, it is possible for the Member States to provide protection against the consequences of the risk of invalidity in various ways. For example, a Member State may, as the United Kingdom has done, provide for two separate allowances, one payable to the disabled person himself and the other payable to a person who provides care, while another Member State may arrive at the same result by paying an allowance to the disabled person at a rate equivalent to the sum of those two benefits. In order, therefore, to ensure that the progressive implementation of the principle of equal treatment referred to in Article 1 of Directive 79/7 and defined in Article 4 is carried out in a harmonious manner throughout the Community, Article 3 (1) must be interpreted as including any benefit which in a broad sense forms part of one of the statutory schemes referred to or a social assistance provision intended to supplement or replace such a scheme.



- 24 Moreover, the payment of the benefit to a person who provides care still depends on the existence of a situation of invalidity inasmuch as such a situation is a condition *sine qua non* for its payment, as the Adjudication Officer admitted during the oral procedure. It must also be emphasized that there is a clear economic link between the benefit and the disabled person, since the disabled person derives an advantage from the fact that an allowance is paid to the person caring for him.
- 25 It follows that the fact that a benefit which forms part of a statutory invalidity scheme is paid to a third party and not directly to the disabled person does not place it outside the scope of Directive 79/7. Otherwise, as the Commission emphasized in its observations, it would be possible, by making formal changes to existing benefits covered by the directive, to remove them from its scope.
- 26 The answer to the first question referred by the Chief Social Security Commissioner must therefore be that a benefit provided by a Member State and paid to a person caring for a disabled person forms part of a statutory scheme providing protection against invalidity which is covered by Directive 79/7 pursuant to Article 3 (1) (a) of that directive.

## Question 2

- 27 Since Question 1 has been answered in the affirmative, it is necessary to examine Question 2, which concerns the issue whether discrimination on grounds of sex contrary to Article 4 (1) of Directive 79/7 arises where legislation provides that a benefit which forms part of one of the statutory schemes referred to in Article 3 (1) of the directive is not payable to a married woman who lives with or is maintained by her husband, although it is paid in corresponding circumstances to a married man.
- 28 Mrs Drake, the Commission and the Adjudication Officer all suggest that that question should be answered in the affirmative.
- 29 Mrs Drake and the Commission argue that the exclusion of married women from such a benefit, where married men residing with their wives are not excluded, constitutes a clear example of direct discrimination on grounds of sex.

- 30 The Adjudication Officer himself has recognized that the provision governing the benefit in question places certain categories of women (married women living with their husbands and women who live with a man as husband and wife) at a disadvantage by precluding them from obtaining that benefit.
- 31 It should be noted that Article 4 (1) of Directive 79/7 provides that the implementation of the principle of equal treatment, with regard in particular to the scope of schemes and the conditions of access to them, means that there should be no discrimination whatsoever on grounds of sex.
- 32 That provision embodies the aim of the directive, set out in Article 1, that is to say the implementation, in the field of social security and between men and women, of the principle of equal treatment, a principle which the Court has frequently described as fundamental.
- 33 It follows from the foregoing that a national provision such as that at issue before the Chief Social Security Commissioner is contrary to the aim, as stated above, of the directive, which under Article 189 of the Treaty is binding on the Member States as to the result to be achieved.
- 34 The answer to Question 2 must therefore be that discrimination on grounds of sex contrary to Article 4 (1) of Directive 79/7 arises where legislation provides that a benefit which forms part of one of the statutory schemes referred to in Article 3 (1) of that directive is not payable to a married woman who lives with or is maintained by her husband, although it is paid in corresponding circumstances to a married man.

## Costs

The costs incurred by the Commission of the European Communities, which submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of a step in the action before the Chief Social Security Commissioner, the decision as to costs is a matter for him.

On those grounds,

THE COURT (Fourth Chamber),

in answer to the questions referred to it by the Chief Social Security Commissioner by an order of 15 May 1985, hereby rules:

- (1) A benefit provided by a Member State and paid to a person caring for a disabled person forms part of a statutory scheme providing protection against invalidity which is covered by Directive 79/7/EEC pursuant to Article 3 (1) (a) of that directive.**
- (2) Discrimination on grounds of sex contrary to Article 4 (1) of Directive 79/7/EEC arises where legislation provides that a benefit which forms part of one of the statutory schemes referred to in Article 3 (1) of that directive is not payable to a married woman who lives with or is maintained by her husband, although it is paid in corresponding circumstances to a married man.**

Bahlmann

Koopmans

Bosco

O'Higgins

Schockweiler

Delivered in open court in Luxembourg on 24 June 1986.

P. Heim

K. Bahlmann

Registrar

President of the Fourth Chamber