

JUDGMENT OF THE COURT
27 October 1993

In Case C-338/91,

REFERENCE to the Court under [Article 267 TFEU] by the Raad van Beroep, 's-Hertogenbosch (Netherlands), for a preliminary ruling in the proceedings pending before that court between

H. Steenhorst-Neerings

and

Bestuur van de Bedrijfsvereniging voor Detailhandel, Ambachten en Huisvrouwen

on the interpretation of Article 4(1) of Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security (OJ 1979 L 6, p. 24),

THE COURT,

composed of: O. Due, President, G. F. Mancini, J. C. Moitinho de Almeida, M. Diez de Velasco and D. A. O. Edward (Presidents of Chambers), R. Joliet, G. C. Rodríguez Iglesias, P. J. G. Kapteyn and J. L. Murray, Judges,

Advocate General: M. Darmon,
Registrar: H. A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of:

- Bestuur van de Bedrijfsvereniging voor Detailhandel, Ambachten en Huisvrouwen, by E. H. Pijnacker Hordijk, of the Amsterdam Bar,
- the Netherlands Government, by T. P. Hofstee, Deputy Secretary-General at the Ministry of Foreign Affairs, acting as Agent,
- the Commission of the European [Union], by Karen Banks and Ben Smulders, of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of the Bestuur van de Bedrijfsvereniging voor Detailhandel, Ambachten en Huisvrouwen, the Netherlands Government, represented by T. Heukels, Assistant Legal Adviser at the Ministry of Foreign Affairs, acting as Agent, and the Commission at the hearing on 16 February 1993,

after hearing the Opinion of the Advocate General at the sitting on 31 March 1993,

gives the following

Judgment

- 1 By order of 17 December 1991, received at the Court on 30 December 1991, the Raad van Beroep (Social Security Court), 's-Hertogenbosch (Netherlands), referred to the Court for a preliminary ruling under [Article 267 TFEU] two questions on the interpretation of Article 4(1) of Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security (OJ 1979 L 6, p. 24).
- 2 Those questions were raised in the course of a dispute between Mrs Steenhorst-Neerings, a Netherlands national, and the Bestuur van de Bedrijfsvereniging voor Detailhandel, Ambachten en Huisvrouwen (Board of the Trade Association for Retailers, Craftsmen and Housewives, hereinafter 'the Board of Detam').
- 3 In the Netherlands, the Algemene Arbeidsongeschiktheidswet (General Law on Incapacity for Work, hereinafter 'the AAW') entitled men and unmarried women to benefits after the first year of incapacity for work up to the age of 65.
- 4 The Wet Invoering Gelijke Uitkeringsrechten voor Mannen en Vrouwen (Law of 20 December 1979 introducing equal treatment for men and women as regards entitlement to benefits, Staatsblad 1979, p. 708) extended that entitlement to married women, with the exception of those whose incapacity for work arose before 1 October 1975.
- 5 By several judgments of 5 January 1988, the Centrale Raad van Beroep (Higher Social Security Court) held that in so far as that exception only applied to married women it constituted discrimination on the ground of

sex, contrary to Article 26 of the International Covenant on Civil and Political Rights of 19 December 1966 (Treaty Series vol. 999, p. 171). It concluded that from 1 January 1980, the date when the law on equal treatment of 20 December 1979 referred to above came into force, married women whose incapacity for work arose before 1 October 1975 were also entitled to AAW benefits.

- 6 By virtue of Article 25(2) of the AAW, benefits for incapacity for work are payable not earlier than one year before either the date on which they are claimed or the date on which they are automatically granted, save in special cases where authorized by the competent trade association.
- 7 Article 32(1)(b) of the AAW provides as follows:

'Benefits for incapacity for work shall be withdrawn:

(...)

- (b) when a woman to whom they have been granted becomes entitled to a widow's pension or temporary widow's benefit under the Algemene Weduwen-en Wezenwet.'

The Algemene Weduwen-en Wezenwet (General Law on Widows and Orphans, hereinafter 'the AWW') entitles widows of insured persons, subject to certain conditions, to widows' pensions up to the age of 65.

As from 1963, Mrs Steenhorst-Neerings, born on 13 August 1925, was paid an invalidity pension under the Invaliditeitswet, the legislation in force at that time. In view of the judgments delivered by the Centrale Raad van

Beroep on 5 January 1988 previously referred to, she applied to Detam on 17 May 1988 for AAW benefits.

- 10 By decision of 9 November 1989, the Board of Detam granted the benefits she had applied for, on the basis of incapacity for work of between 80 and 100%, with effect from 17 May 1987, that is to say, in accordance with Article 25(2) of the AAW, one year before the claim was submitted. In the same decision, applying Article 32(1)(b), it withdrew the benefits with effect from 1 July 1989 on the ground that since that date Mrs Steenhorst-Neerings was entitled to a widow's pension under the AAW.
- 11 Mrs Steenhorst-Neerings challenged that decision before the Raad van Beroep, s'-Hertogenbosch, which decided that the dispute raised questions concerning the interpretation of [Union] law and accordingly referred the following questions to the Court of Justice for a preliminary ruling:
 - '1. Does [Union] law require that married women who became unfit for work before 1 October 1975 be entitled to benefits under the Algemene Arbeidsongeschiktheidswet with retroactive effect to 23 December 1984, the expiry date for transposition of the directive, if those women did not apply for the benefits, for the reasons set out in the order making the reference, until after 5 January 1988 (the date on which certain judgments were delivered by the Centrale Raad van Beroep regarding equal treatment of men and women)?
 2. Is a national provision such as that contained in Article 32(1)(b) of the Algemene Arbeidsongeschiktheidswet compatible with Article 4(1) of Directive 79/7/EEC if it is applied in practice (at least from 1 December 1987) to both widows and widowers who are unfit for work, but refers on the face of it exclusively to widows who are unfit for work?'
- 12 Reference is made to the Report for the Hearing for a fuller account of the

facts of the case, the procedure and the written observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

Question 1

- 13 The essence of the first question is whether [Union] law precludes the application of a national rule of law according to which benefits for incapacity for work are payable not earlier than one year before the date of claim, where an individual seeks to rely on rights conferred directly by Article 4(1) of Directive 79/7 with effect from 23 December 1984 and where, on the date of claim, the Member State concerned had not yet properly transposed that provision into national law.
- 14 By virtue of Article 4(1) of Directive 79/7 Member States may not maintain beyond 23 December 1984, the expiry date for transposition of the directive, any inequality of treatment which is attributable to the previously applicable conditions for entitlement to benefit (*Dik and Others v College van Burgemeester en Wethouders* Case 80/87 [1988] ECR 1601); if the directive has not been implemented that provision may be relied on by individuals after that date in order to preclude the application of any national provision inconsistent with the directive (*Netherlands v Federatie Nederlandse Vakbeweging* Case 71/85 [1986] ECR 3855).
- 15 The right to claim benefits for incapacity for work under the same conditions as men conferred on married women by the direct effect of Article 4(1) of Directive 79/7 must be exercised under the conditions determined by national law, provided that, as the Court has consistently held, those conditions are no less favourable than those relating to similar domestic actions and that they are not framed so as to render virtually impossible the exercise of rights conferred by [Union] law (see, *inter alia*, Case C-208/90 *Emmott* [1991] ECR I-4269, paragraph 16).

- 16 The national rule restricting the retroactive effect of a claim for benefits for incapacity for work satisfies the two conditions set out above.
- 17 However, the Commission considers that according to the judgment in *Emmott* (paragraphs 21, 22 and 23), the time-limits for proceedings brought by individuals seeking to avail themselves of their rights are applicable only when a Member State has properly transposed the directive and that that principle applies in this case.
- 18 That argument cannot be upheld.
- 19 The Court held in *Emmott* that so long as a directive has not been properly transposed into national law individuals are unable to ascertain the full extent of their rights, and that therefore until such time as a directive 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 within which proceedings must be brought cannot begin to run before that time. However, the facts in *Emmott* are clearly distinguishable from those of this case.
- 20 In *Emmott*, the applicant in the main proceedings had relied on the judgment of the Court in *McDermott and Cotter* (Case 286/85 [1987] ECR 1453) in order to claim entitlement by virtue of Article 4(1) of Directive 79/7, with effect from 23 December 1984, to invalidity benefits under the same conditions as those applicable to men in the same situation. The administrative authorities had then declined to adjudicate on her claim since Directive 79/7 was the subject of proceedings pending before a national court. Finally, even though Directive 79/7 had still not been correctly transposed into national law, it was claimed that the proceedings she had brought to obtain a ruling that her claim should have been accepted were out of time.

- 21 It should be noted first that, unlike the rule of domestic law fixing time-limits for bringing actions, the rule described in the question referred for a preliminary ruling in this case does not affect the right of individuals to rely on Directive 79/7 in proceedings before the national courts against a defaulting Member State. It merely limits the retroactive effect of claims made for the purpose of obtaining the relevant benefits.
- 22 The time-bar resulting from the expiry of the time-limit for bringing proceedings serves to ensure that the legality of administrative decisions cannot be challenged indefinitely. The judgment in *Emmott* indicates that that requirement cannot prevail over the need to protect the rights conferred on individuals by the direct effect of provisions in a directive so long as the defaulting Member State responsible for those decisions has not properly transposed the provisions into national law.
- 23 On the other hand, the aim of the rule restricting the retroactive effect of claims for benefits for incapacity for work is quite different from that of a rule imposing mandatory time-limits for bringing proceedings. As the Government of the Netherlands and the defendant in the main proceedings explained in their written observations, the first type of rule, of which examples can be found in other social security laws in the Netherlands, serves to ensure sound administration, most importantly so that it may be ascertained whether the claimant satisfied the conditions for eligibility and so that the degree of incapacity, which may well vary over time, may be fixed. It also reflects the need to preserve financial balance in a scheme in which claims submitted by insured persons in the course of a year must in principle be covered by the contributions collected during that same year.
- 24 The reply to the first question must therefore be that [Union] law does not preclude the application of a national rule of law whereby benefits for incapacity for work are payable not earlier than one year before the date of claim, in the case where an individual seeks to rely on rights conferred directly by Article 4(1) of Directive 79/7 with effect from 23 December 1984 and where on the date the claim for benefit was made the Member State concerned had not yet properly transposed that provision into national law.

Question 2

- 28 The Court has consistently held that although it has no jurisdiction under [Article 267 TFEU] to rule on the compatibility of national law with [Union] law, it does have jurisdiction to provide the national court with the guidance as to the interpretation of [Union] law necessary to enable it to assess that compatibility for the purpose of deciding the case before it (see, *inter alia*, Case C-369/89 *Piaggeme* [1991] ECR I-2971, paragraph 7).
- 26 Accordingly, the essence of the second question must be understood as being whether Article 4(1) of Directive 79/7 precludes the application by the national courts of a legislative provision according to which only women forfeit their benefits for incapacity for work on being awarded a widow's pension, if that provision is consistently applied by the courts to both widows and widowers who are unfit for work.
- 27 The first point to note is that both the Government of the Netherlands and Detam have observed that according to Article 3(2), Directive 79/7 does not apply to provisions concerning survivors' benefits, so the question arises whether a provision governing the cumulability of benefits for incapacity for work with survivors' benefits, such as that in Article 32(1)(b) of the AAW, is covered by the directive.
- 28 In that regard suffice it to state that Article 32(1)(b) concerns the withdrawal of benefits for incapacity for work and that Directive 79/7 applies to such benefits by virtue of Article 3(1)(a). It is irrelevant that the withdrawal occurs as a result of the award of a benefit, in this case survivors' benefits, falling outside the scope of Directive 79/7.
- 29 Next, Article 4(1) of Directive 79/7 prohibits all discrimination on grounds

of sex, in particular regarding the conditions of access to statutory schemes, including those providing protection against the risk of invalidity.

- 30 By virtue of that provision women are entitled to claim benefits for incapacity for work under the same conditions as those applicable to men.
- 31 A national provision depriving women of the right to claim benefits which men in the same situation continue to receive thus constitutes discrimination within the meaning of Directive 79/7.
- 32 Finally, the Court has consistently held that Member States must implement directives in a manner which fully satisfies the requirement of legal certainty and must therefore transpose their terms into national law as binding provisions (see *Commission v Belgium* Case 239/85 [1986] ECR 3645, paragraph 7).
- 33 Consequently, a Member State may not maintain a provision which according to its wording gives rise to a discrimination within the meaning of Article 4(1) of Directive 79/7 between men and women.
- 34 If, however, despite its wording, the national courts consistently apply such a provision without distinction to women and men in the same situation, the national courts are not precluded from continuing to apply that provision in disputes before them in accordance with such case-law, which enables them to ensure that Article 4(1) of Directive 79/7 is given full effect for so long as the Member State has not yet adopted the legislation necessary to implement it in full.
- 35 The reply to the second question must therefore be that Article 4(1) of Directive 79/7 does not preclude the application by the national courts of a legislative provision according to which only women forfeit their benefits

for incapacity for work on being awarded a widow's pension, if that provision is consistently applied by the courts to both widows and widowers who are unfit for work.

Costs

- 36 The costs incurred by the Government of the Netherlands and the Commission of the European [Union], which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT,

In answer to the questions referred to it by the Raad van Beroep, 's-Hertogenbosch (Netherlands), by order of 17 December 1991, hereby rules:

- 1. [Union] law does not preclude the application of a national rule of law according to which benefits for incapacity for work are payable not earlier than one year before the date of claim, in the case where an individual seeks to rely on rights conferred directly by Article 4(1) of Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security with effect from 23 December 1984 and where on the date the claim for benefit was made the Member State concerned had not yet properly transposed that provision into national law.**
- 2. Article 4(1) of Directive 79/7 does not preclude the application by the**

national courts of a legislative provision according to which only women forfeit their benefits for incapacity for work on being awarded a widow's pension, if that provision is consistently applied by the courts to both widows and widowers who are unfit for work.

Due
Edward

Mancini
Joliet
Murray

Moitinho de Almeida
Rodriguez Iglesias

Diez de Velasco
Kapteyn

Delivered in open court in Luxembourg on 27 October 1993.

J.-G. Giraud
Registrar

O. Due
President