

JUDGMENT OF THE COURT
OF 27 MARCH 1980 ¹

**Macarthy's Ltd.
v Wendy Smith**
(preliminary ruling requested
by the Court of Appeal in London)

“Equal pay for men and women”

Case 129/79

1. *Social policy — Male and female workers — Pay — Equality — Principle — Scope — Application not confined to the contemporaneous performance of “equal work” — Difference in pay due to factors unconnected with any discrimination on grounds of sex — Matter for the national court or tribunal to decide*
(EEC Treaty, Art. 119)
2. *Social policy — Male and female workers — Pay — Equality — Criteria of assessment — Work actually performed*
(EEC Treaty, Art. 119)

1. The first paragraph of Article 119 of the EEC Treaty applies directly, and without the need for more detailed implementing measures on the part of the Community or the Member States, to all forms of direct and overt discrimination which may be identified solely with the aid of the criteria of equal work and equal pay referred to by the article in question. Cases where men and women receive unequal pay for equal work carried out in the same establishment or service are among the forms of discrimination which may be thus judicially identified.

In such a situation the decisive test lies in establishing whether there is a difference in treatment between a man and a woman performing “equal work” within the meaning of Article 119. That concept is entirely qualitative in character in that it is exclusively concerned with the nature of the services in question. Its scope may not therefore be restricted by its being confined to situations in which men and women are contemporaneously doing equal work for the same employer.

¹ — Language of the Case: English.

It cannot, however, be ruled out that a difference in pay between two workers occupying the same post but at different periods in time may be explained by the operation of factors which are unconnected with any discrimination on grounds of sex. That is a question of fact which it is for the court or tribunal to decide.

2. In cases of actual discrimination falling within the scope of the direct application of Article 119 comparisons are confined to parallels which may

be drawn on the basis of concrete appraisals of the work actually performed by employees of different sex within the same establishment or service.

The principle of equal pay enshrined in Article 119 therefore applies to the case where it is established that, having regard to the nature of her services, a woman has received less pay than a man who was employed prior to the woman's period of employment and who did equal work for the employer.

In Case 129/79

REFERENCE to the Court under Article 177 of the EEC Treaty by the Court of Appeal in London for a preliminary ruling in the action pending before that court between

MACARTHYS LTD., wholesale dealers in pharmaceutical products, having their registered office in London

and

MRS WENDY SMITH, a former employee of Macarthys Ltd.

on the interpretation of Article 119 of the EEC Treaty und Article 1 of Council Directive No 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women,