OPINION OF ADVOCATE GENERAL LÉGER

delivered on 6 June 1995 *

1. By order of 25 June 1993, the Court of Appeal in Northern Ireland ('the Court of Appeal') referred to the Court four questions for a preliminary ruling on the interpretation of Article 119 of the EEC Treaty and various provisions of Directive 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 [1] and 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. [2]

The facts

2. During 1988 17 women, including Ms Gillespie ('the applicants in the main proceedings'), employed by several public Health Boards in Northern Ireland ('the defendants in the main proceedings'), [3] took maternity leave.

3. In accordance with the contractual terms of employment [4] regulating their pay during such leave, they received during that period:

— full weekly pay for four weeks;

— nine-tenths of full pay for two weeks;

— one-half of full pay for twelve weeks.

4. In November 1988 negotiations within the health service resulted in pay increases backdated to 1 April 1988.

* Original language: French.

1 — OJ 1975 L 45, p. 19.

2 — OJ 1976 L 39, p. 40.

3 — Health services in Northern Ireland.

4 — More favourable than the statutory rules.

5. Calculation of the maternity pay of the applicants in the main proceedings under national legislation reportedly led to:

— a reduction in pay;

— loss of entitlement to part of a pay rise.

6. Taking the view that any reduction in salary and any loss of entitlement to a pay increase during maternity leave were contrary to the principle of equal pay set out in Article 119 of the Treaty and in Article 1 of Directive 75/117 and to the principle of equal treatment set out in Directive 76/207, the applicants in the main proceedings requested that the new pay agreement be applied to them and when, on 10 June 1991, the Industrial Tribunal dismissed their application, they appealed against its decision.

7. Those are the circumstances in which the Court of Appeal has referred the following four questions to the Court for a preliminary ruling:

'1. Do the following provisions, or any of them, namely, (i) Article 119 of the Treaty of Rome, (ii) the Equal Pay Directive (75/117/EEC), or (iii) the Equal Treatment Directive (76/207/EEC) ("the relevant provisions") require that, while a woman is absent from work on the maternity leave provided for by the relevant national legislation or by her contract of service, she be paid the full pay to which she would have been entitled if at the time she had been working normally for her employer?

2. If the answer to Question 1 is "No", do the relevant provisions require that while a woman is on such leave the amount of her pay be determined by reference to certain particular criteria?

3. If the answer to Question 2 is "Yes", what are those criteria?

4. If the answer to each of Questions 1 and 2 is "No", is it the position that none of the relevant provisions has any application or effect as respects the amount of pay to which a woman on such leave is entitled?'

8. Those questions concerning interpretation are very closely interrelated. The first asks the Court to state whether it is required by Community law that a woman on maternity leave should receive the full pay which she would have obtained if she had been working normally during that period. I shall answer that question first. The third question brings the second into focus. In essence, if the answer to the first question is 'no', the Court is asked to state whether those provisions make it possible to determine the criteria to be satisfied where the amount of the pay is less than full pay. If the answer to both questions 1 and 2 is 'no', the Court is asked to state whether the Community legislature has made provision with regard to the amount of a woman's pay during maternity leave. I shall consider those three questions in the second part of my Opinion. To my knowledge, this is the first time that the Court has been asked to rule on these points.

Answer to Question 1: Does Community law preclude payment to a woman, during her maternity leave, of less than the full pay which she would have received if she had been working normally?

9. In order to answer this question, it is necessary to define the scope of the principle of equal pay contained in Article 119 of the Treaty and Article 1 of Directive 75/117 (II) and of the principle that a pregnant woman is entitled to the protection laid down by Directive 76/207 (III), after the relevant provisions of national and Community legislation have been reviewed (I).

I — Legal framework

A — *The national statutory rules and contractual arrangements applicable to women during maternity leave*

10. In Northern Ireland, the *statutory rules* are contained in the Social Security (Northern Ireland) Order 1986 and the Statutory Maternity Pay (General) Regulations (Northern Ireland) 1987. The *contractual arrangements* are set out in the General Council Handbook adopted by the Joint Councils for the Health and Personal Social Services (Northern Ireland).

11. The two sets of rules display the *following similarities*:

(1) subject to fulfilment of the necessary conditions [5] conferring entitlement to pay during maternity leave, women are entitled to eighteen weeks' paid maternity leave;

5 — Those conditions — *which I shall not examine since they are not the subject of questions and have not been contested* — vary according to whether they form part of the statutory rules or the contractual terms.

(2) weekly pay during maternity leave is calculated in accordance with the formula contained in Regulation 21 of the 1987 Regulations, that is to say:

(a) the gross figures from the pay cheques for the two months before the qualifying week [6] (gross pay);

(b) multiplied by six;

(c) and divided by 52;

$$\text{or full weekly pay} = \frac{\text{gross pay} \times 6}{52}$$

12. Full weekly pay is to be used as the basis for calculating [7] the remuneration paid to employees during their maternity leave.

6 — The qualifying week is determined by reference to the beginning of the expected week of confinement. It is the 15th week before the beginning of the expected week of confinement.

7 — Or recalculating full weekly pay if there is a pay rise during the period of maternity leave.

13. The amount of such pay *varies according to whether the statutory rules or the contractual arrangements are applied.*

14. Under the *statutory rules*, women *are entitled* to:

(a) nine-tenths of full weekly pay for six weeks:

(b) a flat-rate allowance of UK £47.95 for twelve weeks thereafter.

15. *By contrast, the contractual arrangements* are more favourable in that women receive:

(a) full weekly pay for four weeks;

(b) nine-tenths of full pay for two weeks thereafter;

(c) one-half of full pay for twelve weeks.

16. It is undeniable that the effect of applying either the statutory rules or the contractual arrangements is to reduce the amount of remuneration paid to Irish women during the period of their maternity leave.

B — *Community law*

17. The applicants in the main proceedings base their action on three provisions of Community law: Article 119 of the Treaty and (certain provisions of) Directives 75/117 and 76/207.

18. Article 119 of the Treaty provides as follows:

'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.

Equal pay without discrimination based on sex means:

(a) that pay for the same work at piece rates shall be calculated on the basis of the same unit of measurement;

(b) that pay for work at time rates shall be the same for the same job.'

19. Article 1 of Directive 75/117 provides that:

'The principle of equal pay for men and women outlined in Article 119 of the Treaty, hereinafter "principle of equal pay", means, for the same work or for work to which equal value is attributed, the elimination of

all discrimination on grounds of sex with regard to all aspects and conditions of remuneration.

In particular, where a job classification system is used for determining pay, it must be based on the same criteria for both men and women and so drawn up as to exclude any discrimination on grounds of sex.'

20. The relevant provisions of Directive 76/207 are contained in Article 2(1) and (3) and Article 5(1) and (2)(c):

'*Article 2*

1. For the purposes of the following provisions, the principle of equal treatment shall mean that there shall be no discrimination whatsoever on grounds of sex either directly or indirectly by reference in particular to marital or family status.

(...)

3. This directive shall be without prejudice to provisions concerning the protection of women, particularly as regards pregnancy and maternity.'

'*Article 5*

1. Application of the principle of equal treatment with regard to working conditions, including the conditions governing dismissal, means that men and women shall be guaranteed the same conditions without discrimination on grounds of sex.

2. To this end, Member States shall take the measures necessary to ensure that:

(...)

(c) those laws, regulations and administrative provisions contrary to the principle of equal treatment when the concern for protection which originally inspired them is no longer well founded shall be revised; and that where similar provisions are included in collective agreements labour and management shall be requested to undertake the desired revision.'

II — Does it follow from the principle of equal pay contained in Article 119 of the Treaty and Article 1 of Directive 75/117 that a woman on maternity leave must continue to receive full pay?

In order to answer this question, it is necessary to examine the meaning and scope of that principle.

21. While it is plain — and not disputed — that the pay received by the applicants in the main proceedings pursuant to the national legislation referred to constitutes pay within the meaning of Article 119 of the Treaty and Article 1 of Directive 75/117, [8] is it possible, arguing from the fact that the wording of those Community provisions makes no reference to employees' pregnancy, to contend that that class of workers is excluded from the scope of those rules? The answer to that question requires consideration of the underlying rationale of the Community provisions cited.

22. As early as 1974, [9] the Community legislature noted that the principle of equal pay for men and women [10] and also of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions, [11] is often categorical. [12] In so far as it considers that principle to be fundamental, one of the objectives it set itself as a matter of priority [13] was to adopt legal measures in order to bring practice into line with the law. On the basis of Article 2 of the EC Treaty, it gave notice of a forthcoming social action programme. It also stated that the programme of positive social action intended to harmonize national legislation was to be implemented *in successive stages*. Accordingly it proposed to adopt specific legal measures to protect women in their working lives against any unequal treatment found in practice.

23. Among the positive social measures for attaining that objective, it referred to a proposal for a directive on the implementation of the principle of equal pay for men and women, namely Directive 75/117 which is thus the first social action measure to be undertaken by the Council. The aim of the directive is to implement the principle that men and women should receive equal pay contained in Article 119 of the Treaty. [14]

8 — Although the Court has never, to my knowledge, had to rule on this point, it can hardly be doubted but that it would apply, in this case, the same solution as that arrived at in the judgment in Case 171/88 *Rinner-Kühn* v *FWW Spezial-Gebäudereinigung GmbH&Co. KG* ([1989] ECR 2743, paragraph 7). In that judgment, the Court held that the continued payment of wages to an employee in the event of illness falls within the concept of 'pay', even though a proportion of that pay was reimbursed to the employer by sickness insurance funds.

9 — Council Resolution of 21 January 1974 concerning a social action programme (OJ 1974 C 13, p. 1).

10 — 'The principle of equal pay'.

11 — 'The principle of equal treatment'.

12 — Council Resolution cited in footnote 10 above, 'Attainment of full and better employment in the Community', fourth indent, p. 2.

13 — Ibid., p. 3, paragraph 4.

14 — First recital in the preamble to Directive 75/117.

24. Measures intended to protect female workers who are pregnant constitute practical and specific applications of the general provisions applicable to women.

25. Article 1 of Directive 75/117 does not refer to pregnant women, but in so far as only women can give birth the biological difference between women and men must not be used to discriminate as regards pay.

26. Consequently, the fact that a woman is pregnant cannot be relied on in order to reduce her pay on the grounds that she has become less productive or that her pregnancy entails special arrangements justifying a pay cut. Therefore, in accordance with Article 119 of the Treaty and Article 1 of Directive 75/117, a woman's pregnancy has no bearing on her pay while she is working, that is to say *before her maternity leave*. To hold otherwise would beyond any doubt constitute direct discrimination on grounds of sex.

27. Accordingly, Article 1 of Directive 75/117 which, as I have pointed out, provides that 'the principle of equal pay for men and women outlined in Article 119 of the Treaty, hereinafter "principle of equal pay", means, for the same work or for work to which equal value is attributed, the elimination of all discrimination on grounds of sex with regard to all aspects and conditions of remuneration', is to be interpreted as meaning that a pregnant woman must, while she is working, be treated just as she was before the new condition, namely pregnancy, occurred. *The Community legislature gives no indication as to the amount of such pay. It is for the competent national authorities to determine the amount of pay.* However, it points out that the fundamental principle of equality between the sexes calls for equal pay for the same work, whether done by a man or a woman, or for work of equal value.

28. To illustrate the point, using the facts of the case, the principle of equal pay requires a pregnant woman stopping work in order to take maternity leave after April to receive full pay with the increase, before going on maternity leave, that is to say during the months actually worked. Hence if she stops work in July she should receive back-pay, taking into account the whole of the pay rise awarded in November, for the months from April to July. To take the opposite view would be to infringe Article 119 of the Treaty and Article 1 of Directive 75/117.

29. However, in the case before the Court, the applicants in the main proceedings challenge the amount of pay received while on

maternity leave, *that is during a period in which they were not working*. On the basis of the principle of equal pay enshrined in Article 119 of the Treaty and in Directive 75/117, they claim that they are entitled to the pay which they would have received had they continued to work.

30. As we have seen, the introduction of that principle presupposes the existence of discrimination on grounds of sex. On the subject of discrimination, the Court's consistent case-law is both clear and well established. [15] The Court recently had occasion to rule on that subject again in its judgment of 14 February 1995 in *Schumacker*, in which it followed its previous decisions:

'Discrimination can arise only through the application of different rules to comparable situations or the application of the same rule to different situations'. [16]

31. In its judgment of 14 July 1994 in Case C-32/93 *Webb*, the Court ruled that the situation of a woman who finds herself incapable, by reason of pregnancy, of performing the task for which she was recruited is *sui generis* and cannot be compared in any way with that of a man similarly incapable for medical or other reasons: '... pregnancy is not in any way comparable with a pathological condition, and even less so with unavailability for work on non-medical grounds, both of which are situations that may justify the dismissal of a woman without discriminating on grounds of sex'. [17]

32. *A fortiori* it would be incorrect, in legal terms, to attempt to compare the situation of a man at work with that of a woman on maternity leave. Consequently, Article 119 of the Treaty and Article 1 of Directive 75/117 are not relevant to this case.

33. However, before tackling the last point in this section, I should like to observe that the documents in the case do not allow one of the claims made by the applicants in the main proceedings (payment of the backdated pay increase [18]) to be rejected out of hand. The principle of equal pay laid down by the abovementioned Community provisions would stand in the way of the exclusion, by and large, as a result of the combined effect of the statutory method of recalculating increased full pay [19] and the system for awarding pay increases established by the defendants in the main proceedings, [20] of the specific category of pregnant women from

15 — See, in particular, the judgment in Case 283/83 *Racke* v *Hauptzollamt Mainz* [1984] ECR 3791, paragraph 7.

16 — Case C-279/93 *Finanzamt Köln-Altstadt* v *Schumacker* [1995] ECR I-225, paragraph 30.

17 — Case C-32/93 *Webb* v *EMO Air Cargo* [1994] ECR I-3567, paragraph 25.

18 — See paragraph 6 of this Opinion.

19 — See paragraphs 11 to 15 of this Opinion.

20 — See paragraph 4 of this Opinion.

receipt of the pay increase so awarded. In any case, that would be a matter for the national court to verify.

III — Does it follow from the principle that pregnant women have a lawful right to protection contained in Directive 76/207 that the pay of a woman on maternity leave must be maintained?

In order to answer this question, it is necessary to examine the meaning and scope of this principle as well.

34. I submit that on the basis of Directive 76/207, this question must also be answered in the negative for three main reasons: the wording of the Community legislation concerned, the rationale behind it and the case-law of the Court.

35. *First*, in Directive 76/207 there is no provision or statement as to the amount that ought to be paid to women on maternity leave. Articles 2(1) and (3) and 5(1) of this directive set out the principle that pregnant women are entitled to protection. The directive accordingly authorizes the Member States, as a subsidiary matter, to take specific measures to protect women but *its purpose is not to achieve harmonization in this field. This issue, namely the determination of the amount of a woman's pay during maternity leave, is therefore exclusively a matter for the Member States.*

36. The only harmonization measure provided for by Directive 76/207 — *arising from Article 2(1) read in conjunction with Article 5(1)* — is the prohibition on dismissing women during the period of maternity leave. Moreover, the Court has consistently said so, holding that such dismissal constitutes direct discrimination on grounds of sex. [21] The Court has also equated a refusal to employ a woman on account of pregnancy with dismissal on the same account. [22]

37. *Secondly*, the underlying rationale of the directive is clearly set out in the preamble thereto by the reference to the Council's Resolution of 21 January 1974. It forms part of the social action programme of which the Community legislature gave notice as early as 1974. Its aim is to extend the principle of equal treatment for men and women to access to employment and *to working conditions other than pay.* [23] The objective of Directive 76/207 is not to harmonize legislation on pay — for which end Directive

21 — To this effect, see the judgments in Case C-421/92 *Habermann-Beltermann* v *Arbeiterwohlfahrt* [1994] ECR I-1657, paragraph 26, and *Webb*, cited above, paragraph 19.

22 — To this effect, see the judgment in Case C-177/88 *Dekker* v *Stichting Vormingscentrum voor Jong Volwassenen (VJV-Centrum) Plus* [1990] ECR I-3941, paragraphs 12 and 14.

23 — That is apparent from an examination of the second and third recitals in the preamble to Directive 76/207.

75/117 was specifically enacted [24] — or to establish a special Community system for the protection of pregnant women. Its aim is to restore equal opportunities for men and women 'by removing existing inequalities which affect women's opportunities in the areas referred to in Article 1(1)'. [25] It authorizes derogations from the principle of strict equality between men and women with a view to reducing or eliminating inequalities arising from the biological condition of women during that very special period. In other words, to borrow a quotation from legal literature, that directive, which enshrines a woman's right to protection during pregnancy and maternity, '... by reserving the exercise of certain rights to women, or even by prohibiting them from undertaking certain harmful occupations, [is intended] to restore in practice equality that would only be impaired by strict parity in the legal provisions'. [26] On this point my analysis tallies with that of Advocate General Tesauro in his Opinion of 6 April 1995 in *Kalanke*, currently pending before the Court. [27]

38. *Thirdly*, let me state that, on the basis of an examination of the Court's case-law, none of the provisions of Directive 76/207 enables the questions submitted by the Court of Appeal to be answered in the affirmative.

39. First and foremost, in its judgment of 12 July 1984 in *Hofmann*, the Court stated, with regard to the rationale underlying the directive, that:

'... the directive is not designed to settle questions concerned with the organization of the family, or to alter the division of responsibility between parents'. [28]

'It should further be added, with particular reference to paragraph (3), that, by reserving to Member States the right to retain or introduce provisions which are intended to protect women in connection with "pregnancy and maternity", the directive recognizes the legitimacy, in terms of the principle of equal treatment, of protecting a woman's needs in two respects. First, it is legitimate to ensure the protection of a woman's biological condition during pregnancy and thereafter until such time as her physiological and mental functions have returned to normal after childbirth; secondly, it is legitimate to protect 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'. [29]

40. The Court acknowledged therefore that the Member States could introduce derogat-

24 — Ibid. This does not mean harmonization of the amount of pay.

25 — Article 2(4) of Directive 76/207.

26 — M. Darmon and J. G. Huglo: 'L'Égalité de traitement entre les hommes et les femmes dans la jurisprudence de la Cour de Justice des Communautés européennes: un univers en expansion', *RTDE* (1), January-March 1992, p. 10.

27 — Case C-450/93 *Kalanke* v *Freie Hansestadt Bremen* [1995] ECR I-3051, paragraph 17.

28 — Case 184/83 *Hofmann* v *Barmer Ersatzkasse* [1984] ECR 3047, paragraph 24.

29 — Ibid., paragraph 25.

ing measures in favour of pregnant women but it set limits to their discretion.

41. The Court accordingly held in its judgment of 15 May 1986 in *Johnston* [30] that Article 2(3) of Directive 76/207 is to be interpreted strictly:

'... Like Article 2(2) of the directive, Article 2(3), which also determines the scope of Article 3(2)(c), must be interpreted strictly. It is clear from the express reference to pregnancy and maternity that the directive is intended to protect a woman's biological condition and the special relationship which exists between a woman and her child. That provision of the directive does not therefore allow women to be excluded from a certain type of employment on the ground that public opinion demands that women be given greater protection than men against risks which affect men and women in the same way and which are distinct from women's specific needs of protection, such as those expressly mentioned.'

42. Similarly, in the judgment of 25 October 1988 in Case 312/86, [31] the Court confirmed its position, holding that Article 2(3) cannot be used to justify measures intended to protect women in a capacity which is not peculiar to women, for example as older workers or parents.

43. The Court has accordingly *restricted the Member States' discretion* as to the social measures which they adopt in order to guarantee the protection of women in connection with pregnancy and maternity, first, to offsetting the disadvantages which women, by comparison with men, suffer with regard to the retention of employment, and secondly, *to protecting both types of women's needs as defined in Hofmann*, cited above. [32]

44. The Court has also dealt with the question of how to interpret those provisions of Community law *in the absence of specific national legislation laying down measures in favour of pregnant women.*

45. Thus, in *Hertz*, in which judgment was given on 8 November 1990, [33] the Court was asked whether the dismissal of a female worker on account of repeated absences due to illness arising from her pregnancy was contrary to Directive 76/207. The Court refused *in the absence of a specific provision of national law justified by Article 2(3)* to consider that Article 2(1) in conjunction

30 — Case 222/84 *Johnston* v *Chief Constable of the Royal Ulster Constabulary* [1986] ECR 1651, paragraph 44.

31 — Case 312/86 *Commission* v *France* [1988] ECR 6315, paragraphs 12 to 16.

32 — Paragraph 27.

33 — Case C-179/88 *Handels-og Kontorfunktionaerernes Forbund i Danmark* v *Dansk Arbejdsgiverforening* [1990] ECR I-3979.

with Article 5(1) of Directive 76/207 precluded such dismissal and held that it did not constitute discrimination. [34]

46. The Court has therefore refused to extend the scope *ratione materiae* of the protection for pregnant workers provided for by Directive 76/207, [35] *in the absence of national rules adopted pursuant to Article 2(3) of Directive 76/207*. For that reason, the Court cannot accept that a provision of national law, whether statutory or contractual, which does not require employers to maintain full pay for women on maternity leave is contrary to Community law.

47. *Moreover*, as the Irish Government points out, the salary payments received by the applicants in the main proceedings do not by themselves constitute all the benefits awarded to women on maternity leave. Thus, under the social policy pursued by the Irish authorities, other benefits intended to protect women may exist. That observation is, it seems to me, highly significant and, in the words used by the Court in the *Hofmann* judgment, cited above:

'Such measures (for the protection of women in connection with pregnancy and maternity) are, as (...) the United Kingdom has rightly observed, *closely linked to the general system of social protection in the various Member States*. It must therefore be concluded that the Member States enjoy a reasonable margin of discretion as regards both the nature of the protective measures and the detailed arrangements for their implementation.' [36]

48. Consequently, in the absence of Community harmonization measures, it cannot plausibly be argued that national legislation which does not provide for a woman's pay to be maintained during maternity leave is contrary to Article 2(1) in conjunction with Article 5(1) of Directive 76/207. To decide otherwise, as the Irish Government has observed, would threaten to upset the balance of the entire social welfare system.

49. The Community legislature has enacted legislation specifically to protect women who are pregnant, have recently given birth or are breastfeeding. The measure concerned is Council Directive 92/85/EEC of 19 October 1992. [37] That directive, which is intended to coordinate the working conditions of that category of female workers throughout the Member States, entered into force on 19 October 1994. *Although it is not applicable to this case*, it is interesting to note that the initial draft on the protection at work of women who are pregnant or who have recently given birth, as drawn up by the Commission and proposed to the Council

34 — Paragraph 19.

35 — As it appears from Articles 2(1) and 5(1) viewed together, that is to say dismissal during the period of maternity leave. See paragraph 36 of this Opinion.

36 — Paragraph 27, emphasis added.

37 — On the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual directive within the meaning of Article 16(1) of Directive 89/391/EEC) (OJ 1992 L 348, p. 1).

on 17 October 1990, [38] provided, in Article5, [39] for a woman's pay to be maintained during maternity leave (that is, for at least fourteen weeks). That proposal was not adopted by the Council. Article 11 of Directive 92/85 provides as follows:

'In order to guarantee workers within the meaning of Article 2 (that is, those who are pregnant, have recently given birth or are breastfeeding) the exercise of their health and safety protection rights as recognized in this article, it shall be provided that:

(...)

2. in the case referred to in Article 8 (maternity leave), the following must be ensured:

(...)

(b) maintenance of a payment to, and/or entitlement to an adequate allowance for, workers within the meaning of Article 2;

3. the allowance referred to in point 2(b) shall be deemed adequate if it guarantees income at least equivalent to that which the worker concerned would receive in the event of a break in her activities on grounds connected with her state of health, subject to any ceiling laid down under national legislation.'

50. This is *a further argument* in support of my view. In adopting that wording, the Council evinced the intention of leaving tothe Member States the question of entitlement to maintenance of full pay during maternity leave.

51. I therefore conclude that the applicants in the main proceedings are likewise unjustified in relying on Directive 76/207 to support their claim that Community law requires women to receive full pay during maternity leave. Accordingly, in the absence of any Community legislation specifically making provision for this, it is a matter for the Member States.

Answer to Questions 2, 3 and 4: Since Community law does not require women to receive full pay while on maternity leave and does not give any indication as to the amount which they ought to be paid, [40] is it necessary to establish the criteria to be complied with where a lesser amount is paid?

52. In the absence of any Community legislation on which to base my reasoning, answering this question would involve

38 — COM(90) 406 *final* — SYN 303 (OJ 1990 C 281, p. 3).

39 — Ibid., p. 32.

40 — See paragraphs 22, 23, 27, 35, 37 and 48 of this Opinion.

assessing a Member State's entire social system with respect to the protection of women during the period of maternity leave, and in a way appraising the legality or even the expediency of the relevant national legislation. It is settled case-law [41] that it is not for the Court, in proceedings under Article 177 of the EEC Treaty, to assess from the point of view of Community law the features of a measure adopted by one of the Member States.

53. To conclude, in the light of the foregoing considerations, I propose that the questions submitted by the Court of Appeal should be answered as follows:

(1) Article 119 of the EEC Treaty, Council Directive 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 and 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 do not require the Member States to pay to a woman absent from work on maternity leave granted under the relevant national legislation or by her contract of employment the full salary to which she would have been entitled if she had been working normally during that period.

(2) The abovementioned provisions of Community law do not affect the amount of pay to which a woman on maternity leave is entitled and, accordingly, do not permit the establishment of the criteria to be complied with where a lesser amount is paid.

41 — Judgment in Case 9/70 *Grad* v *Finanzamt Traunstein* [1970] ECR 825.