

Case C-342/93

Joan Gillespie and Others
v
Northern Health and Social Services Board and Others

(Reference for a preliminary ruling
from the Court of Appeal in Northern Ireland)
(Equal treatment for men and women — Maternity pay)

Opinion of Advocate General Léger delivered on 6 June 1995	I - 477
Judgment of the Court, 13 February 1996	I - 492

Summary of the Judgment

- 1. Social policy — Men and women — Equal pay — Pay — Definition — Benefit paid during maternity leave — Included*
(EEC Treaty, Art. 119; Council Directive 75/117)

2. *Social policy — Men and women — Equal pay — Maternity leave — Requirement to maintain full pay — None — Criteria for determining the level of benefit paid — None, subject to observance of the purpose of maternity leave — Requirement, when correlating previous salary and benefit, to take account of backdated pay rises*
(EEC Treaty, Art. 119; Council Directive 75/117)

1. The definition of 'pay' for the purposes of Article 119 of the Treaty and Directive 75/117 relating to the application of the principle of equal pay for men and women includes all consideration which workers receive directly or indirectly from their employers in respect of their employment. Consideration classed as pay includes inter alia consideration paid by the employer by virtue of legislative provisions and under a contract of employment whose purpose is to ensure that workers receive income even where, in certain cases specified by the legislature, they are not performing any work provided for in their contracts of employment.

requires that women should continue to receive full pay during maternity leave, nor lays down specific criteria for determining the amount of benefit payable to them during that period, provided that the amount is not set so low as to jeopardize the purpose of maternity leave, which is the protection of women before and after giving birth. In order to assess the adequacy of that amount, the national court must take account, not only of the length of maternity leave, but also of the other forms of social protection afforded by national law in the case of justified absence from work.

It follows that the benefit paid by an employer under legislation or collective agreements to a woman on maternity leave falls within the definition of 'pay'.

2. The principle of equal pay laid down in Article 119 of the Treaty and set out in detail in Directive 75/117 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women neither

However, to the extent that they are calculated on the basis of pay received by a woman before the commencement of maternity leave, the amount of those benefits must include pay rises awarded between the beginning of the period covered by reference pay and the end of maternity leave, as from the date on which they take effect. To deny such an increase to a woman on maternity leave would discriminate against her purely in her capacity as a worker since, had she not been pregnant, she would have received the pay rise.