JUDGMENT OF THE COURT
31 May 1995 *

In Case C-400/93,

REFERENCE to the Court under Article 177 of the EEC Treaty by the Faglige Voldgiftsret (Denmark) for a preliminary ruling in the proceedings pending before that court between

Specialarbejderforbundet i Danmark

and

Dansk Industri, formerly **Industriens Arbejdsgivere**, acting for Royal Copenhagen A/S,

on the interpretation of Article 119 of the EEC Treaty and 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 (OJ 1975 L 45, p. 19),

THE COURT,

composed of: G. C. Rodríguez Iglesias, President, F. A. Schockweiler (Rapporteur) and C. Gulmann (Presidents of Chambers), G. F. Mancini, C. N. Kakouris,

* Language of the case: Danish.

J. C. Moitinho de Almeida, J. L. Murray, D. A. O. Edward, J.-P. Puissochet, G. Hirsch and L. Sevón, Judges,

Advocate General: P. Léger,
Registrar: H. von Holstein, Deputy Registrar,

after considering the written observations submitted on behalf of:

— the Specialarbejderforbundet i Danmark, by Ulrik Jørgensen, adviser at the Landsorganisationen i Danmark,

— Dansk Industri, acting for Royal Copenhagen A/S, by Niels Overgaard, director of Dansk Industri,

— the German Government, by Ernst Röder, Ministerialrat in the Federal Ministry of Economic Affairs, and Bernd Kloke, Regierungsrat zur Anstellung at the same ministry, acting as Agents,

— the Portuguese Government, by Luís Fernandes, director of the Legal Service of the Directorate-General for the European Communities at the Ministry of Foreign Affairs, and Fernando Ribeiro Lopes, Director-General for the Regulation of Working Conditions at the Ministry of Employment and Social Security, acting as Agents,

— the United Kingdom, by John E. Collins, Assistant Treasury Solicitor, acting as Agent, and David Pannick QC,

— the Commission of the European Communities, by Hans Peter Hartvig, Legal Adviser, and Marie Wolfcarius, of the Legal Service, acting as Agents, having regard to the Report for the Hearing,

after hearing the oral observations of Specialarbejderforbundet i Danmark, represented by Ulrik Jørgensen; Dansk Industri, acting for Royal Copenhagen A/S, represented by Allan K. Larsen, Principal Adviser; the German Government, represented by Ernst Röder; the United Kingdom, represented by John E. Collins and David Pannick QC, and the Commission, represented by Hans Peter Hartvig and Marie Wolfcarius, at the hearing on 31 January 1995,

after hearing the Opinion of the Advocate General at the sitting on 21 February 1995,

gives the following

Judgment

1 By order of 27 August 1993, received at the Court on 31 August 1993, the Faglige Voldgiftsret (Arbitration Board) referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty four questions on the interpretation of Article 119 of the EEC Treaty and 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 (OJ 1975 L 45, p. 19; hereinafter 'the Directive').

2 Those questions were raised in proceedings between the Specialarbejderforbundet i Danmark (Union of Semi-skilled Workers in Denmark, hereinafter 'Specialarbejderforbundet') and Dansk Industri (Confederation of Danish Industry), acting on behalf of Royal Copenhagen A/S (hereinafter 'Royal Copenhagen').

3 Royal Copenhagen is a ceramics producer employing some 1 150 workers, 40% men and 60% women in the manufacture of such products. Its employees may be divided into three groups: turners, who use a variety of tech-niques to mould the porcelain clay mass; painters, who decorate the products; and unskilled workers, who are engaged in operating the kilns, sorting and polishing, transport within the factory and so forth.

4 The turners' group consists of some 200 persons and the painters' group 453 persons. Those groups may in turn be divided into a number of subgroups, such as, within the first group, automatic-machine operators, who man machines which automatically mould ceramic products, and, within the second, blue-pattern painters, who decorate the products by brush, and ornamental-plate painters, who spray-paint ornamental plates which already have a pattern and then remove the paint from certain parts of the pattern with a sponge.

5 All these employees are covered by the same collective agreement, under which they are in principle paid on a piece-work basis, that is to say, the level of their pay is wholly or partially dependent on their output. They may however opt to be paid a fixed hourly rate which is the same for all the groups. In practice, approximately 70% of the turners and 70% of the painters are paid by the piece: their pay consists of a fixed element, paid as a basic hourly wage, and a variable element, paid by reference to the number of items produced.

6 The group of automatic-machine operators paid by the piece comprises 26 persons, all men, and accounts for approximately 18% of all turners paid by the piece. The group of blue-pattern painters paid by the piece comprises 156 persons, 155 women and 1 man, and accounts for approximately 49% of the group of

painters paid by the piece. The group of ornamental-plate decorators paid by the piece comprises 51 persons, all women, and accounts for approximately 16% of the group of painters paid by the piece.

7 In April 1990, the average hourly pay of the automatic-machine operators paid by the piece was DKR 103.93, including a fixed element of DKR 71.69, with the highest earner receiving DKR 118 per hour and the lowest earner DKR 86 per hour. During the same period, the average hourly pay of the blue-pattern painters paid by the piece was DKR 91, including a fixed element of DKR 57, with the highest earner receiving DKR 125 per hour and the lowest DKR 72 per hour, and the average hourly pay of the ornamental-plate decorators paid by the piece was DKR 116.20, including a fixed element of DKR 35.85, with the highest earner receiving DKR 159 per hour and the lowest DKR 86 per hour.

8 The Specialarbejderforbundet considered that Royal Copenhagen was infringing the requirement of equal pay because the average hourly piece-work pay of the group of blue-pattern painters, all but one of whom were women, was less than that of the group of automatic-machine operators, all of whom were men. It brought proceedings before the Faglige Voldgiftsret of Copenhagen, seeking an order that Royal Copenhagen acknowledge that the blue-pattern painters perform work of equal value to that of the automatic-machine operators and bring the average hourly piece-work pay of the former up to the level of that of the latter.

9 The Faglige Voldgiftsret, considering that the outcome of the proceedings depended on the interpretation of Article 119 of the Treaty and of the Directive, decided to seek a preliminary ruling from the Court. It stated in its order that the reference to the Court did not extend to the question of the value of the work

carried out by the different groups of workers but comprised various questions arising from the fact that the main proceedings concerned pay based on piece-work and also the question of the Specialarbejderforbundet's choice of the groups of workers to be compared.

10 Consequently it referred the following questions to the Court:

'1. Do Article 119 of the EEC Treaty and Directive 75/117/EEC of 10 February 1975 on equal pay for men and women apply to systems of pay in which earnings depend either entirely or in large measure on the results of the work of individual employees (piece-work pay schemes)?

If Question 1 is answered in the affirmative, answers are requested to the following additional questions:

2. Are the rules on equal pay contained in Article 119 of the EEC Treaty and in Directive 75/117/EEC of 10 February 1975 on equal pay for men and women applicable in the case of the comparison of two groups of wage earners in so far as the average hourly earnings for one group of piece-workers, consisting predominantly of women and performing one type of work, are appreciably lower than the average hourly earnings for the second group of piece-workers, consisting predominant-ly of men and performing a different type of work, in so far as it can be assumed that the work performed by the men and women is of equal value?

3. On the basis that one group consists predominantly of women and the other predominantly of men, can requirements be imposed as to the composition of

the groups, for example with regard to the number of persons in the groups or the proportion which they represent among the total workforce of the undertaking?

Can the directive be applied, if necessary, to procure for two groups of — for instance — female employees the same pay by means of an intervening comparison with a group of male employees?

One way in which the problem may be illustrated is as follows:

A group of predominantly male workers (Group A) and two groups of predominantly female workers (Groups B and C) perform work of the same value; the average piece-work earnings are highest in the case of Group C, second highest in the case of Group A and lowest in the case of Group B. Can Group B compare itself with Group A and demand that its pay be raised to the level of that of Group A; can Group A thereupon demand that its pay be raised to the level of that of Group C; finally, can Group B thereupon demand that its pay be raised to the new level enjoyed by Group A — which is that of Group C?

4. In determining whether the principle of equal pay has been infringed, does any significance attach to the facts that:

(a) one group is involved in predominantly mechanized production, whereas the second group is engaged in working exclusively by hand;

(b) the piece-work rates are determined by negotiation between both sides of industry or by negotiation at local level;

(c) it can be established that there are differences in the employee's choice of work rate. If this fact is relevant, who bears the burden of proving that such differences exist?;

(d) there are appreciable pay variations within one or both of the groups compared;

(e) the fixed portion of the piece-work pay is not the same for both of the groups compared;

(f) differences between the two groups exist with regard to paid breaks and freedom to organize one's work;

(g) it is not possible to ascertain the factors which have determined the level of the piece-work rate;

(h) the work of one of the groups compared involves a particular requirement of physical strength, while the work of the other group has a particular requirement of dexterity;

(i) it can be established that differences exist with regard to inconveniences at work such as noise, temperature, and intensive, repetitive or monotonous work?'

The first question

11 The national court's first question asks whether Article 119 of the Treaty and the Directive apply to piece-work pay schemes in which pay depends entirely or in large measure on the individual output of each worker.

12 Article 119, by stating expressly in subparagraph (a) of its third paragraph that equal pay without discrimination based on sex means that pay for the same work at piece rates is to be calculated on the basis of the same unit of measurement, itself provides that the principle of equal pay applies to piece-work pay schemes.

13 Moreover the Court has already held that Article 119 prohibits any discrimination with regard to pay as between men and women, whatever the system which gives rise to such inequality (Case C-262/88 *Barber* v *Guardian Royal Exchange Assurance Group* [1990] ECR I-1889, paragraph 32).

14 That conclusion is borne out by the first paragraph of Article 1 of the Directive, which provides that the principle of equal pay for men and women means the elimination of all discrimination on grounds of sex 'with regard to all aspects and conditions of remuneration'.

15 The reply to the first question should accordingly be that Article 119 of the Treaty and the Directive apply to piece-work pay schemes in which pay depends entirely or in large measure on the individual output of each worker.

Preliminary observations on the other questions

16 Before turning to consider the other questions, it must be stressed that the pay at issue in the main proceedings does not depend exclusively on the individual work of each worker but includes a fixed element consisting of a basic hourly wage which is not the same for the different groups of workers concerned.

17 It is for the national court to assess the extent to which it is necessary to take that factor into account in reaching a decision in the main proceedings.

18 It should also be noted that the assessment to be made by the national court, in reaching a decision in the main proceedings, as to whether there is sex discrimination contrary to Article 119 of the Treaty and Article 1 of the Directive will necessarily have to be a global assessment in the light of all the factors set out in the replies to the second, third and fourth questions.

The second question and paragraphs (c), (d), (e) and (g) of the fourth question

19 The national court's second question and paragraphs (c), (d), (e) and (g) of its fourth question, which it is appropriate to consider together, ask, first, whether the principle of equal pay set out in Article 119 of the Treaty and Article 1 of the Directive applies where, in a piece-work pay scheme, the average pay of one group of workers consisting predominantly of women carrying out one type of work is

appreciably lower than the average pay of a group of workers consisting predominantly of men carrying out another type of work to which equal value is attributed, and, secondly, what is the significance of factors such as those referred to in paragraphs (c), (d), (e) and (g) of the fourth question.

20 It follows from paragraph 12 of this judgment that in a piece-work pay scheme the principle of equal pay requires that the pay of two groups of workers, one consisting predominantly of men and the other predominantly of women, is to be calculated on the basis of the same unit of measurement.

21 Where the unit of measurement is the same for two groups of workers carrying out the same work or is objectively capable of ensuring that the total individual pay of workers in the two groups is the same for work which, although different, is considered to be of equal value, the principle of equal pay does not prohibit workers belonging to one or the other group from receiving different total pay if that is due to their different individual output.

22 It follows that in a piece-work pay scheme the mere finding that there is a difference in the average pay of two groups of workers, calculated on the basis of the total individual pay of all the workers belonging to one or the other group, does not suffice to establish that there is discrimination with regard to pay.

23 It is for the national court, which alone is competent to assess the facts, to decide whether the unit of measurement applicable to the work carried out by the two groups of workers is the same or, if the two groups carry out work which is

different but considered to be of equal value, whether the unit of measurement is objectively capable of ensuring that their total pay is the same. It is also for that court to ascertain whether a pay differential relied on by a worker belonging to a group consisting predominantly of women as evidence of sex discrimination against that worker compared with a worker belonging to a group consisting predominantly of men is due to a difference between the units of measurement applicable to the two groups or to a difference in individual output.

24 The Court has, however, held (Case C-127/92 *Enderby* v *Frenchay Health Authority* [1993] ECR I-5535, paragraphs 13 and 14) that the burden of proof, which is normally on the worker bringing legal proceedings against his employer with a view to removing the discrimination of which he believes himself to be the victim, may be shifted when that is necessary to avoid depriving workers who appear to be the victims of discrimination of any effective means of enforcing the principle of equal pay. Thus in particular where an undertaking applies a system of pay which is wholly lacking in transparency it is for the employer to prove that his practice in the matter of wages is not discriminatory if a female worker establishes, in relation to a relatively large number of employees, that the average pay for women is less than that for men (Case 109/88 *Handels- og Kontorfunktionærernes Forbund i Danmark* v *Dansk Arbejdsgiverforening ('Danfoss')* [1989] ECR 3199, paragraph 16). Similarly, where significant statistics disclose an appreciable difference in pay between two jobs of equal value, one of which is carried out almost exclusively by women and the other predominantly by men, so that there is prima facie case of sex discrimination, Article 119 of the Treaty requires the employer to show that that difference is based on objectively justified factors unrelated to any discrimination on grounds of sex (*Enderby*, cited above, paragraphs 16 and 19).

25 Admittedly, in a piece-work pay scheme such a prima facie case of discrimination does not arise solely because significant statistics disclose appreciable differences

between the average pay of two groups of workers, since those difference may be due to differences in individual output of the workers constituting the two groups.

26 If however, in a system such as that in the main proceedings where the individual pay taken into account in calculating the average pay of the two groups of workers consists of a variable element depending on each worker's output and a fixed element differing according to the group of workers concerned (fourth question, paragraph (e)), it is not possible to identify the factors which determined the rates or units of measurement used to calculate the variable element in the pay (fourth question, paragraph (g)), the objective of not depriving workers of any effective means of enforcing the principle of equal pay may require the employer to bear the burden of proving that the differences found are not due to sex discrimination.

27 It is for the national court to ascertain whether, in the light in particular of those factors and the extent of the differences between the average pay of the two groups of workers, the conditions for so shifting the burden of proof are satisfied in the main proceedings. If so, it will be open to the employer for example to demonstrate that the pay differentials are due to differences in the choice by the workers concerned of their rate of work (fourth question, paragraph (c)) and to rely on major differences between total individual pay within each of those groups (fourth question, paragraph (d)).

28 The reply to the second question in conjunction with paragraphs (c), (d), (e) and (g) of the fourth question should accordingly be that the principle of equal pay set out in Article 119 of the Treaty and Article 1 of the Directive means that the mere

finding that in a piece-work pay scheme the average pay of a group of workers consisting predominantly of women carrying out one type of work is appreciably lower than the average pay of a group of workers consisting predominantly of men carrying out another type of work to which equal value is attributed does not suffice to establish that there is discrimination with regard to pay. However, where in a piece-work pay scheme in which individual pay consists of a variable element depending on each worker's output and a fixed element differing according to the group of workers concerned it is not possible to identify the factors which determined the rates or units of measurement used to calculate the variable element in the pay, the employer may have to bear the burden of proving that the differences found are not due to sex discrimination.

The third question

29 According to the order for reference, the third question, which has two limbs, arises because the pay discrimination complained of by the plaintiff in the main proceedings concerns the automatic-machine operators' group and the blue-pattern painters' group, which in fact are simply subgroups of two larger groups, turners and painters. The plaintiff argues that its choice of two relatively small groups is justified because in order to compare pay it is necessary to have homogeneous groups, particularly as regards the training of the workers involved. The plaintiff thus considers that it is legitimate to distinguish within the painters' group between the blue-pattern painters, with one and a half years' training, and the ornamental-plate painters, with three months' training. Observing moreover that the training requirements of the blue-pattern painters are more demanding than those of the automatic-machine operators who, in contrast to the other turners, have an apprenticeship of only one to four months depending on the items they are to produce, the plaintiff submits that if it is accepted that their work is of equal

value the pay of the former should even be higher than that of the latter. It considers, finally, that the fact that the working conditions of the blue-pattern painters differ from those of the automatic-machine operators does not alter the discriminatory nature of the pay differential since the physical constraints on the automatic-machine operators are counterbalanced by the dexterity required of the blue-pattern painters, and the inconveniences from noise and temperature suffered by the former find their counterpart in the ergonomic problems caused to the latter by sedentary and monotonous work.

30 The order for reference also indicates that although the group of automatic-machine operators paid by the piece, comprising only 26 persons, consists exclusively of men, the group of turners paid by the piece, which comprises 143 persons, consists as to 70% of men and as to 30% of women. Furthermore, while the group of blue-pattern painters paid by the piece comprises 155 women and 1 man and the group of ornamental-plate painters paid by the piece comprises 51 women, the group of painters paid by the piece, comprising 317 persons, consists as to 95% of women and as to 5% of men. Finally, although the average pay of the group of automatic-machine operators paid by the piece, comprising exclusively men, is higher than that of the group of blue-pattern painters paid by the piece, comprising, with one exception, exclusively women, it is lower than that of the group of ornamental-plate painters paid by the piece, comprising exclusively women.

31 In those circumstances, the national court's third question read as a whole asks whether, in a piece-work pay scheme, the composition of the groups of workers whose average pay is to be compared in order to ascertain whether there is any sex discrimination must be determined by reference to specific criteria, in particular as to the number of workers in the group and the proportion which they represent of the total workforce; alternatively, may those groups, through the selection of arbitrary criteria, be so formed as to consist exclusively of men or of women so that in

certain circumstances a comparison of two groups of workers made up of men and of women respectively may entail equalizing the pay of two groups of workers made up of women where the average pay of one such group of women is lower and that of the other higher than the pay of the group made up of men.

32 Consideration of whether the principle of equal pay has been observed requires a comparison between the pay of workers of different sexes for the same work or for work to which equal value is attributed.

33 Where such a comparison involves the average pay of two groups of workers paid by the piece, it must in order to be relevant encompass groups each comprising all the workers who, taking account of a set of factors such as the nature of the work, the training requirements and the working conditions, can be considered to be in a comparable situation.

34 The comparison must moreover cover a relatively large number of workers in order to ensure that the differences found are not due to purely fortuitous or short-term factors or to differences in the individual output of the workers concerned.

35 It is for the national court to make the necessary assessments of the facts of the main proceedings in the light of the abovementioned criteria.

36 It follows however from the foregoing that a comparison is not relevant where it involves groups formed in an arbitrary manner so that one comprises predominantly women and the other predominantly men with a view to carrying out successive comparisons and thereby bringing the pay of the group consisting predominantly of women to the level of that of another group also formed in an arbitrary manner so that it consists predominantly of women.

37 The fact that, within a wider group consisting predominantly of women, a distinction is drawn between two subgroups on the basis of differences in training requirements and that subsequently, of those two subgroups consisting predominantly of women, the subgroup which in terms of training requirements is closest to a group consisting predominantly of men is not used for the purposes of comparing pay with the group consisting predominantly of men may constitute evidence that the groups to be compared have been formed in such an arbitrary manner.

38 The answer to the third question should accordingly be that, for the purposes of the comparison to be made between the average pay of two groups of workers paid by the piece, the national court must satisfy itself that the two groups each encompass all the workers who, taking account of a set of factors such as the nature of the work, the training requirements and the working conditions, can be considered to be in a comparable situation and that they cover a relatively large number of workers ensuring that the differences are not due to purely fortuitous or short-term factors or to differences in the individual output of the workers concerned.

The fourth question, paragraphs (a), (f), (h) and (i)

39 The national court's fourth question, paragraphs (a), (f), (h) and (i), asks what significance should be attached when ascertaining whether the principle of equal pay has been observed to factors such as, first, the fact the work done by one of the groups of workers in question involves machinery and requires in particular muscular strength whereas that done by the other group is manual work requiring in particular dexterity and, secondly, the fact that there are differences between the work of the two groups with regard to paid breaks, freedom to organize one's own work and work-related inconveniences.

40 There can be sex discrimination between two groups of workers only if the two groups carry out, if not the same work, at least work to which equal value is attributed.

41 A pay differential between two groups of workers does not constitute discrimination contrary to Article 119 of the Treaty and to the Directive if it may be explained by objectively justified factors unrelated to any discrimination on grounds of sex (see in particular Case 170/84 *Bilka* v *Weber von Hartz* [1986] ECR 1607, paragraph 30).

42 The national court, which is alone competent to assess the facts, must consequently ascertain whether, in the light of the facts relating to the nature of the

work carried out and the conditions in which it is carried out, equal value may be attributed to it or whether those facts may be considered to be objective factors unrelated to any discrimination on grounds of sex which are such as to justify any pay differentials.

43 The reply to the fourth question, paragraphs (a), (f), (h) and (i), should accordingly be that, when ascertaining whether the principle of equal pay has been observed, it is for the national court to decide whether, in the light of circumstances such as, first, the fact that the work done by one of the groups of workers in question involves machinery and requires in particular muscular strength whereas that done by the other group is manual work requiring in particular dexterity and, secondly, the fact that there are differences between the work of the two groups with regard to paid breaks, freedom to organize one's own work and work-related inconveniences, the two types of work are of equal value or whether those circumstances may be considered to be objective factors unrelated to any discrimination on grounds of sex which are such as to justify any pay differentials.

The fourth question, paragraph (b)

44 The national court's fourth question, paragraph (b), asks what significance should be attached so far as concerns equal pay for men and women to the fact that the rates of pay are determined by collective bargaining or by negotiation at local level.

45 Since Article 119 of the Treaty is mandatory in nature, the prohibition on discrimination between men and women applies not only to the action of public author-

ities but also extends to all agreements which are intended to regulate paid labour collectively, as well as to contracts between individuals (see in particular Case 43/75 *Defrenne* v *Sabena* [1976] ECR 455, paragraph 39).

46 None the less, the fact that the rates of pay have been determined by collective bargaining or by negotiation at local level may be taken into account by the national court as a factor in its assessment of whether differences between the average pay of two groups of workers are due to objective factors unrelated to any discrimination on grounds of sex.

47 The answer to the fourth question, paragraph (b), should accordingly be that the principle of equal pay for men and women also applies where the elements of the pay are determined by collective bargaining or by negotiation at local level but that the national court may take that fact into account in its assessment of whether differences between the average pay of two groups of workers are due to objective factors unrelated to any discrimination on grounds of sex.

Costs

48 The costs incurred by the German and Portuguese Governments, the United Kingdom and the Commission of the European Communities, 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 action 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 Faglige Voldgiftsret by order of 27 August 1993, hereby rules:

1. Article 119 of the EEC Treaty and 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 apply to piece-work pay schemes in which pay depends entirely or in large measure on the individual output of each worker.

2. The principle of equal pay set out in Article 119 of the Treaty and Article 1 of Directive 75/117 means that the mere finding that in a piece-work pay scheme the average pay of a group of workers consisting predominantly of women carrying out one type of work is appreciably lower than the average pay of a group of workers consisting predominantly of men carrying out another type of work to which equal value is attributed does not suffice to establish that there is discrimination with regard to pay. However, where in a piece-work pay scheme in which individual pay consists of a variable element depending on each worker's output and a fixed element differing according to the group of workers concerned it is not possible to identify the

factors which determined the rates or units of measurement used to calculate the variable element in the pay, the employer may have to bear the burden of proving that the differences found are not due to sex discrimination.

3. For the purposes of the comparison to be made between the average pay of two groups of workers paid by the piece, the national court must satisfy itself that the two groups each encompass all the workers who, taking account of a set of factors such as the nature of the work, the training requirements and the working conditions, can be considered to be in a comparable situation and that they cover a relatively large number of workers ensuring that the differences are not due to purely fortuitous or short-term factors or to differences in the individual output of the workers concerned.

4. When ascertaining whether the principle of equal pay has been observed, it is for the national court to decide whether, in the light of circumstances such as, first, the fact that the work done by one of the groups of workers in question involves machinery and requires in particular muscular strength whereas that done by the other group is manual work requiring in particular dexterity and, secondly, the fact that there are differences between the work of the two groups with regard to paid breaks, freedom to organize one's own work and work-related inconveniences, the two types of work are of equal value or whether those circumstances may be considered to be objective factors unrelated to any discrimination on grounds of sex which are such as to justify any pay differentials.

5. **The principle of equal pay for men and women also applies where the elements of the pay are determined by collective bargaining or by negotiation at local level. However, the national court may take that fact into account in its assessment of whether differences between the average pay of two groups of workers are due to objective factors unrelated to any discrimination on grounds of sex.**

Rodríguez Iglesias Schockweiler Gulmann Mancini

Kakouris Moitinho de Almeida Murray Edward

Puissochet Hirsch Sevón

Delivered in open court in Luxembourg on 31 May 1995.

R. Grass

Registrar

G. C. Rodríguez Iglesias

President