

Case C-137/94

The Queen

v

Secretary of State for Health, ex parte Cyril Richardson

(Reference for a preliminary ruling
from the Divisional Court of the Queen's Bench
Division of the High Court of Justice)

(Equality between men and women — Exemption from prescription charges —
Scope of Directive 79/7/EEC — Link with pensionable age —
Temporal effects of judgment)

Opinion of Advocate General Elmer delivered on 13 July 1995 I - 3410
Judgment of the Court (Sixth Chamber), 19 October 1995 I - 3422

Summary of the Judgment

1. *Social policy — Equal treatment for men and women in matters of social security — Matters covered by Directive 79/7 — Statutory scheme exempting certain categories of persons from prescription charges — Included*
(Council Directive 79/7, Art 3(1))

2. *Social policy — Equal treatment for men and women in matters of social security — Directive 79/7 — Derogation allowed in respect of possible consequences for other benefits of different pensionable ages — Scope — Limited to forms of discrimination necessarily and objectively linked to the difference in pensionable ages — Discrimination with regard to exemption from prescription charges — Excluded*
(Council Directive 79/7, Art. 7(1)(a))

3. *Preliminary rulings — Interpretation — Temporal effects of rulings on interpretation — Retroactive effect — Limitation by the Court — Conditions — Ruling interpreting Directive 79/7 on equal treatment of men and women in matters of social security — Conditions not satisfied — Importance for the Member State concerned of the financial consequences of the judgment — Not a decisive criterion*
(EC Treaty, Art. 177; Council Directive 79/7, Arts 4(1) and 7(1)(a))

1. Article 3(1) of Directive 79/7 on the progressive implementation of the principle of equal treatment for men and women in matters of social security is to be interpreted as meaning that a statutory scheme exempting various categories of persons, in particular certain old people, from prescription charges falls within the scope of the directive.

pursuant to that provision, has set the pensionable age for women at 60 years and for men at 65 years also to provide that women are be exempt from prescription charges at the age of 60 and men only at the age of 65.

Although it does not strictly form part of national social security rules, such a scheme affords to those entitled under it protection against the risk of sickness referred to in that provision.

Such discrimination with regard to prescription charges is not necessarily and objectively linked to the difference in retirement age. First, from the point of view of financial equilibrium, it is not necessary in connection with pensions, in view of the fact that the grant of benefits under non-contributory schemes to persons in respect of whom certain risks have materialized without reference to their entitlement to an old-age pension by virtue of contribution periods completed by them has no direct influence on the financial equilibrium of contributory pension schemes, nor does that appear to be the case in connection with the social security system as a whole. Secondly,

2. Article 7(1)(a) of Directive 79/7 on the progressive implementation of the principle of equal treatment for men and women in matters of social security does not allow a Member State which,

from the point of view of coherence between the retirement pension scheme and other benefit schemes, it is not necessary because, although it is true that the increase in health costs linked to age may justify an exemption from prescription charges being granted after a certain age, there is no requirement that that benefit should be granted at the statutory age of retirement, established at different ages according to sex, which is not necessarily the age at which working life ceases or revenue diminishes as a consequence.

3. The interpretation which the Court of Justice gives to a rule of Community law in exercising its jurisdiction under Article 177 of the Treaty clarifies and defines where necessary the meaning and scope of that rule as it must be, or ought to have been, understood and applied from the time of its entry into force. It follows that the rule as so interpreted may, and must, be applied by the courts even to legal relationships arising and established before the judgment ruling on the request for interpretation, provided that in other respects the conditions enabling an action relating to the application of that rule to be brought before the courts having jurisdiction are satisfied.

It is only exceptionally that the Court may, in application of a general principle of legal certainty inherent in the Community legal order, be moved to restrict the possibility for any person concerned of

relying upon the provisions thus interpreted with a view to calling in question legal relationships established in good faith.

There is no reason for the Court to avail itself of that possibility in a judgment finding that the derogation from equality between men and women in matters of social security allowed by Article 7(1)(a) in relation to retirement age does not authorize discrimination between men and women as regards the age from which there is entitlement to exemption from prescription charges: the Member State in question was not unaware that the exemption from prescription charges fell within the scope of the directive, even though the Commission, notified of the discrimination which was being practised, did not consider it necessary to act in order to bring it to an end, and the financial consequences which might ensue for the State as a result of having infringed the prohibition against discrimination do not in themselves justify limitation in time of the effects of a preliminary ruling.

If the temporal effect of the judgment is not limited, it follows that the direct effect of Article 4(1) of Directive 79/7 may be relied upon in support of a claim for damages, in respect of periods prior to the date of the ruling on its interpretation, by persons who have not brought legal proceedings or made an equivalent claim prior to that date.