

JUDGMENT OF THE COURT

30 January 1985 *

In Case 143/83

Commission of the European Communities, represented by its Legal Adviser, Johannes Føns Buhl, acting as Agent, with an address for service in Luxembourg at the office of Manfred Beschel, a member of its Legal Department, Jean Monnet Building,

applicant,

v

Kingdom of Denmark, represented by Laurids Mikaelson, Legal Adviser of the Ministry of Foreign Affairs, with an address for service in Luxembourg at the office of the Danish Chargé d'Affaires, Ib Bodenhagen, at the Danish Embassy, 11 B Boulevard Joseph-II,

defendant,

APPLICATION for a declaration that by failing to adopt within the prescribed period the measures necessary to implement 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 (Official Journal L 45, p. 19) the Kingdom of Denmark has failed to fulfil its obligations under the EEC Treaty,

THE COURT

composed of: Lord Mackenzie Stuart, President, O. Due and C. Kakouris (Presidents of Chambers), U. Everling, K. Bahlmann, Y. Galmot and R. Joliet, Judges,

Advocate General: P. VerLoren van Themaat

Registrar: P. Heim

gives the following

* Language of the Case: Danish.

** after hearing the Opinion of the Advocate General delivered at the sitting on 24 October 1984,

JUDGMENT

(The account of the facts and issues which is contained in the complete text of the judgment is not reproduced)

Decision

- 1 By application lodged at the Court Registry on 18 July 1983 the Commission of the European Communities brought an action pursuant to Article 169 of the EEC Treaty for a declaration that the Kingdom of Denmark has failed to fulfil its obligations under the EEC Treaty by failing to adopt within the prescribed period the measures necessary to implement 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 (Official Journal L 45, p. 19).
- 2 That directive, adopted on the basis of Article 100 of the Treaty, lays down detailed rules regarding certain aspects of the scope of Article 119 and enacts various provisions whose essential purpose is to improve the legal protection of workers who may be wronged by failure to apply the principle of equal pay. In that context it provides in the first paragraph of Article 1 that

‘The principle of equal pay for men and women outlined in Article 119 of the Treaty... 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’.
- 3 Article 2 of the directive requires Member States to introduce into their national legal systems ‘such measures as are necessary to enable all employees who consider themselves wronged by failure to apply the principle of equal pay to pursue their claims by judicial process after possible recourse to other competent authorities’.
- 4 According to Article 8 the directive was to be implemented within one year of its notification. That period expired on 12 February 1976 with regard to the Kingdom of Denmark, and it therefore adopted Law No 32 of 4 February 1976 on equal pay for men and women (Lovtidende A, p. 64), which provides in Article 1 that

‘Every person who employs men and women to work at the same place of work must pay them the same salary for the same work (‘samme arbejde’) under this Law if he is not already required to do so pursuant to a collective agreement’.

- 5 The Commission considers that the Danish legislation does not fulfil all the obligations resulting from Directive No 75/117 inasmuch as on the one hand it requires employers to pay men and women the same salary exclusively for the same work but not for work to which equal value is attributed, and on the other hand it does not provide for any means of redress enabling workers wronged by the failure to apply the principle of equal pay for work of equal value to pursue their claims.
- 6 The Danish Government, for its part, asserts that Danish law is entirely in conformity with the directive. Danish law does in fact guarantee equal pay not only for the same work but also for work of equal value.
- 7 In that regard the Danish Government states that the Law of 4 February 1976, referred to above, is only a subsidiary guarantee of the principle of equal pay, in cases where observance of that principle is not already ensured under collective agreements. Collective agreements, which govern most employment relationships in Denmark, clearly uphold the idea that the principle of equal pay also applies to work of equal value. That interpretation is based in particular on the 1971 agreement concluded by the main organizations on the labour market, which provides expressly that “‘equal pay” means that the same salary is to be paid for work of the same value regardless of sex’. That practice is confirmed by a decision of the chairman of the Statens Forligsinstitution i Arbejdsstridigheder [National Industrial Conciliation Board], acting as arbitrator, of 8 December 1977, in which he applied the principle of equal pay to work ‘of the same value to and in production at the place of work’.
- 8 It is true that Member States may leave the implementation of the principle of equal pay in the first instance to representatives of management and labour. That possibility does not, however, discharge them from the obligation of ensuring, by appropriate legislative and administrative provisions, that all workers in the Community are afforded the full protection provided for in the directive. That

State guarantee must cover all cases where effective protection is not ensured by other means, for whatever reason, and in particular cases where the workers in question are not union members, where the sector in question is not covered by a collective agreement or where such an agreement does not fully guarantee the principle of equal pay.

- 9 In that respect the Danish law in question does not exhibit the clarity and precision necessary for the protection of the workers concerned. Even accepting the assertions of the Danish Government that the principle of equal pay for men and women, in the broad sense required by the directive, is implemented in collective agreements, it has not been shown that the same implementation of that principle is guaranteed for workers whose rights are not defined in such agreements.
- 10 Since those workers are not unionized and work in small or medium-sized businesses, particular care must be taken to guarantee their rights under the directive. The principles of legal certainty and the protection of individuals thus require an unequivocal wording which would give the persons concerned a clear and precise understanding of their rights and obligations and would enable the courts to ensure that those rights and obligations are observed.
- 11 In this case it appears that the wording of the Danish law does not fulfil those conditions inasmuch as it sets out the principle of equal pay without speaking of work of equal value, thus restricting the scope of the principle. The fact that in the preamble to the draft law the Government stated that the expression 'same work' was interpreted in Denmark in so broad a sense that the addition of the expression 'work to which equal value is attributed' would not entail any real extension is not sufficient to ensure that the persons concerned are adequately informed.
- 12 The relevance of those considerations is not affected by the fact that during the preparatory work which led to the adoption of Directive No 75/117 the Danish Government entered a declaration in the Council minutes to the effect that 'Denmark is of the view that the expression "same work" can continue to be used in the context of Danish labour law'.

- 13 The Court has consistently held that such unilateral declarations cannot be relied upon for the interpretation of Community measures, since the objective scope of rules laid down by the common institutions cannot be modified by reservations or objections which Member States may have made at the time the rules were being formulated.
- 14 The conclusion must therefore be that the Kingdom of Denmark has failed to fulfil its obligations under the first paragraph of Article 1 of Directive No 75/117 by failing, in the text of Law No 32 of 4 February 1976, to extend the principle of equal pay to work of equal value. Since that finding implies that the law in question does not ensure that employees who consider themselves wronged by failure to apply that principle in a case of work of equal value are able to pursue their claims by judicial process in accordance with Article 3 of the directive, there is no need to make a separate finding on that head.
- 15 It should be added that during the hearing doubts were expressed with regard to the condition laid down in Article 1 of the Danish law in question, according to which the principle of equal pay for the same work is to be interpreted in relation only to a 'single workplace'. Since, however, the Commission did not formally raise that objection there is no reason to decide that question.
- 16 For all those reasons it must be declared that by failing to adopt within the prescribed period all the measures necessary to implement Council Directive No 75/117 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, the Kingdom of Denmark has failed to fulfil its obligations under the EEC Treaty.

Costs

- 17 Under Article 69 (2) of the Rules of Procedure the unsuccessful party is to be ordered to pay the costs. Since the defendant has failed in its submissions it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

1. Declares that by failing to adopt within the prescribed period the measures necessary to implement 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, the Kingdom of Denmark has failed to fulfil its obligations under the EEC Treaty.
2. Orders the Kingdom of Denmark to pay the costs.

Mackenzie Stuart

Due

Kakouris

Everling

Bahlmann

Galmot

Joliet

Delivered in open court in Luxembourg on 30 January 1985.

Registrar

P. Heim

President

A. J. Mackenzie Stuart