

JUDGMENT OF THE COURT
25 July 1991 *

In Case C-345/89,

REFERENCE to the Court under Article 177 of the EEC Treaty by the Tribunal de Police (Local Criminal Court), Illkirch, France, for a preliminary ruling in the criminal proceedings pending before that court against

Alfred Stoeckel

on the interpretation of 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 (Official Journal 1976 L 39, p. 40),

THE COURT,

composed of: O. Due, President, G. F. Mancini, T. F. O'Higgins and G. C. Rodríguez Iglesias (Presidents of Chambers), Sir Gordon Slynn, R. Joliet, F. A. Schöckweiler, F. Grévisse and M. Zuleeg, Judges,

Advocate General: G. Tesouro,
Registrar: D. Louberman, Principal Administrator,

after considering the written observations submitted on behalf of:

— Alfred Stoeckel, by Mr Alexander, of the Strasbourg Bar,

— the French Government, by Edwige Belliard, Directeur Adjoint des Affaires Juridiques, Ministry for Foreign Affairs, and Marc Giacomini, Secrétaire des Affaires Etrangères, in the same Ministry, acting as Agents,

* Language of the case: French.

- the Italian Government, by Pier Giorgio Ferri, Avvocato dello Stato, acting as Agent,
- the Commission of the European Communities, by Marie Wolfcarius, a member of its Legal Service, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of Alfred Stoeckel, the French Government, represented by Claude Chavance, Attaché Principal d'Administration Centrale, Direction des Affaires Juridiques, Ministry of Foreign Affairs, the Italian Government and the Commission, at the hearing on 24 January 1990,

after hearing the Opinion of the Advocate General at the sitting on 24 January 1991,

gives the following

Judgment

- 1 By judgment of 4 October 1989, which was received at the Court on 9 November 1989, the Tribunal de Police, Illkirch, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation of 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 (Official Journal 1976 L 39, p. 40, hereinafter referred to as 'the Directive').
- 2 That question was raised in criminal proceedings against Mr Stoeckel, an executive of Suma SA ('Suma'), who was charged with employing 77 women to work at night on 28 October 1988 contrary to Article L 213-1 of the French Code du Travail (Labour Code).

- 3 Pursuant to Article 5 of Directive 76/207, application of the principle of equal treatment with regard to working conditions means that men and women are to be offered the same conditions without discrimination on grounds of sex. To that end, the Member States are to take the measures necessary to ensure that any provisions contrary to the principle of equal treatment are to be abolished (paragraph 2(a)) and that any provisions contrary to that principle are to be revised when the concern for protection which originally inspired them is no longer well founded (paragraph 2(c)). However, by virtue of Article 2(3), the Directive is to be without prejudice to provisions concerning the protection of women, particularly as regards pregnancy and maternity.
- 4 Pursuant to Article 9(1) of the Directive, the Member States were required to put into force the laws, regulations and administrative provisions necessary in order to comply with the Directive within a period of 30 months of its notification and, with respect to Article 5(2)(c), within a period of four years. The latter period expired on 14 February 1980.
- 5 Pursuant to Article L 213-1 of the French Code du Travail, women may not be employed for any nightwork, in particular in plants, factories or workshops of any kind whatsoever. However, the same article provides for a number of exceptions, relating for example to management posts or executive technical posts and to situations where, because of particularly serious circumstances, provision must be made for the prohibition of nightwork by women employees working in successive shifts to be suspended when the national interest so requires, under the conditions and in the circumstances envisaged in the Code du Travail.
- 6 It is apparent from the documents before the Court that, as a result of economic difficulties brought about by foreign competition, Suma found it necessary to consider laying off about 200 people at its Obenheim factory. However, having calculated that the number and the effects of the redundancies could be limited if a continuous shift-work system were adopted, involving nightwork for all the workforce, Suma undertook negotiations with the unions with a view to concluding an agreement between them and the company.

- 7 In an agreement concluded for that purpose on 30 June 1988, it was stipulated that recourse to nightwork was an exceptional measure and that Suma would revert to day-work only as soon as the economic constraints had ceased. In view of the fact that the female workers in the company had the necessary skills for the posts that had been retained, the parties, wishing to ensure that women were given the same opportunities as men, agreed to make all posts available to both men and women, subject to approval by a majority vote of the female workers. A majority voted in favour of the shift-work system and it was introduced with effect from 1 October 1988.
- 8 Before the Tribunal de Police, Mr Stoeckel contended that Article L 213 of the Code du Travail was contrary to Article 5 of Directive 76/207 and to the judgment in Case 312/86 *Commission v France* [1988] ECR 6315, in which the Court held that, by failing to take all the necessary measures to eliminate inequalities prohibited by the Directive, the French Republic had failed to fulfil its obligations.
- 9 In those circumstances, the Tribunal de Police, Illkirch, stayed the proceedings pending a ruling by the Court on the following question:

'Is Article 5 of the Directive of 9 February 1976 sufficiently precise to impose on a Member State an obligation not to lay down in its legislation the principle that nightwork by women is prohibited, as in Article L 213-1 of the French Code du Travail?'
- 10 Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the procedure and the written observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.
- 11 The purpose of the Directive is to implement in the Member States the principle of equal treatment for men and women with regard, *inter alia*, to access to employment and working conditions. To that end, the Directive requires the abolition or the revision of national provisions that are contrary to that principle where the concern for protection which originally inspired them is no longer well founded.

- 12 As the Court stated in its judgment in Case 152/84 *Marshall v Southampton and South-West Hampshire Health Authority* [1986] ECR 723, at paragraph 55, Article 5 of Directive 76/207 does not confer on the Member States the right to limit the application of the principle of equal treatment in its field of operation or subject it to conditions and that provision is sufficiently precise and unconditional to be capable of being relied upon by an individual before a national court in order to avoid the application of any national provision not conforming to Article 5(1), which lays down the principle of equal treatment with regard to working conditions.
- 13 Moreover, pursuant to Article 2(3), the Directive is to be without prejudice to provisions concerning the protection of women, particularly as regards pregnancy and maternity. In its judgment in Case 222/84 *Johnston v Chief Constable of the Royal Ulster Constabulary* [1986] ECR 1651, at paragraph 44, the Court held that it was clear from the express reference to pregnancy and maternity that the Directive was intended to protect a woman's biological condition and the special relationship which exists between a woman and her child.
- 14 The French and Italian Governments submit that the prohibition of nightwork by women, which in any case is subject to numerous exceptions, is in conformity with the general aims of protecting female workers and with particular considerations of a social nature relating, for example, to the risks of attack and the heavier domestic workload borne by women.
- 15 As far as the aims of protecting female workers are concerned, they are valid only if, having regard to the principles mentioned above, there is a justified need for a difference of treatment as between men and women. However, whatever the disadvantages of nightwork may be, it does not seem that, except in the case of pregnancy or maternity, the risks to which women are exposed when working at night are, in general, inherently different from those to which men are exposed.
- 16 As regards the risks of attack, if it is assumed that they are greater at night than during the day, appropriate measures can be adopted to deal with them without undermining the fundamental principle of equal treatment for men and women.

- 17 As far as family responsibilities are concerned, the Court has already held 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' (see the judgment in Case 184/83 *Hofmann v Barmer Ersatzkasse* [1984] ECR 3047).
- 18 Thus, the concern to provide protection, by which the general prohibition of nightwork by women was originally inspired, no longer appears to be well founded and the maintenance of that prohibition, by reason of risks that are not peculiar to women or preoccupations unconnected with the purpose of Directive 76/207, cannot be justified by the provisions of Article 2(3) of the Directive which are referred to in paragraph 3 of this judgment.
- 19 As regards the numerous exceptions provided for in the legislation of the Member States which retain a prohibition of nightwork by women, to which the French and Italian Governments refer, they cannot adequately uphold the objectives of the Directive, since the latter prohibits the laying down of a general principle excluding women from undertaking nightwork, and, moreover, they may be a source of discrimination.
- 20 It follows from the foregoing that it must be stated in reply to the question submitted by the Tribunal de Police, Illkirch, that Article 5 of Directive 76/207 is sufficiently precise to impose on the Member States the obligation not to lay down by legislation the principle that nightwork by women is prohibited, even if that is subject to exceptions, where nightwork by men is not prohibited.

Costs

- 21 The costs incurred by the French and Italian Governments 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 proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the question referred to it by the Tribunal de Police, Illkirch, by judgment of 4 October 1989, hereby rules:

Article 5 of 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 is sufficiently precise to impose on the Member States the obligation not to lay down by legislation the principle that nightwork by women is prohibited, even if that is subject to exceptions, where nightwork by men is not prohibited.

Due

Mancini

O'Higgins

Rodríguez Iglesias

Slynn

Joliet

Schockweiler

Grévisse

Zuleeg

Delivered in open court in Luxembourg on 25 July 1991.

J.-G. Giraud

Registrar

O. Due

President