

JUDGMENT OF THE COURT

7 May 1991 *

In Case C-229/89,

Commission of the European Communities, represented by Marie Wolfcarius, a member of its Legal Service, acting as Agent, assisted by Francis Herbert, of the Brussels Bar, with an address for service in Luxembourg at the office of Georgios Kremis, a member of its Legal Service, Wagner Centre, Kirchberg,

applicant,

v

Kingdom of Belgium, represented by Robert Hoebaer, Director of Administration in the Ministry for Foreign Affairs, External Trade and Development Cooperation, acting as Agent, assisted by C. Deneve, Director of Administrative Affairs at the Ministry of Employment and Labour, and M. Loix, Assistant Adviser at the Ministry of Social Security, with an address for service in Luxembourg at the Belgian Embassy, 4 Rue des Girondins,

defendant,

APPLICATION for a declaration that the conditions governing the determination of the amount of unemployment benefits and invalidity allowances are incompatible with Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security (Official Journal 1979 L 6, p. 24),

* Language of the case: French.

THE COURT,

composed of: O. Due, President, G. F. Mancini, T. F. O'Higgins, J. C. Moitinho de Almeida, G. C. Rodríguez Iglesias and M. Díez de Velasco, Presidents of Chambers, Sir Gordon Slynn, C. N. Kakouris, R. Joliet, F. A. Schockweiler, F. Grévisse, M. Zuleeg and P. J. G. Kapteyn, Judges,

Advocate General: M. Darmon
Registrar: J. A. Pompe, Deputy Registrar

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 17 October 1990,

after hearing the Opinion of the Advocate General at the sitting on 20 November 1990,

gives the following

Judgment

- 1 By application lodged at the Court Registry on 18 July 1989, the Commission of the European Communities brought an action under Article 169 of the EEC Treaty for a declaration that, by failing to adopt within the period prescribed in Article 8(1) of Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security (Official Journal 1979 L 6, p. 24) all the measures necessary for the complete and correct application of the directive and, in particular, by maintaining in force up to the present date a system for calculating unemployment benefits and invalidity allowances resulting in objectively unjustified indirect discrimination against women, the Kingdom of Belgium has failed to fulfil its obligations under the Treaty.

- 2 The Belgian schemes mentioned in the application were laid down respectively by Royal Decree of 8 August 1986 (*Moniteur belge*, 27. 8. 1986, p. 11825, amending Article 160 of the Royal Decree of 20 December 1963) and by Royal Decree of 30 July 1986 (*Moniteur belge*, 2. 8. 1986, p. 10854, amending the second paragraph of Article 226 and Article 227(1) of the Royal Decree of 4 November 1963).
- 3 Under the terms of Article 4(1) of Directive 79/7/EEC the principle of equal treatment 'means that there shall be no discrimination whatsoever on grounds of sex either directly, or indirectly by reference in particular to matrimonial or family status, in particular as concerns (...) the calculation of benefits including increases due in respect of a spouse and for dependants and the conditions governing the duration and retention of entitlement to benefit.'
- 4 Under Article 8(1) of that directive, the Member States were to adopt the measures necessary to comply with those provisions within six years of its notification, that is by 22 December 1984 at the latest.
- 5 The Belgian provisions on unemployment benefit, which have remained in force after that date, accorded, in so far as the calculation of such benefit is concerned, preferential treatment to unemployed persons who in their capacity as head of household had as a dependant a spouse, a person with whom they were cohabiting, a parent or a child without income. The Commission took the view that this category was predominantly made up of men, and on 2 June 1986 issued a reasoned opinion under Article 169 of the Treaty in which it stated that the Kingdom of Belgium was failing to fulfil its obligations by maintaining a system for calculating unemployment benefits which resulted in objectively unjustified indirect discrimination against women, the latter for the most part falling within the two other categories of unemployed persons laid down in the Belgian rules, namely the 'single' persons' category, that is to say unemployed persons residing alone, and the category of persons residing with a spouse, a cohabiting partner, or a child with earned or replacement income.
- 6 Following that reasoned opinion, the rules complained of were amended by Royal Decree of 8 August 1986, mentioned above, and by the Ministerial Decree of 23 January 1987 (*Moniteur belge* of 11. 2. 1987, p. 1817). The scheme of allowances is based on the division of beneficiaries into three groups:

- a worker residing with a married or cohabiting partner, parent or child with no earned or replacement income (group 1);
 - a worker residing alone (group 2);
 - a worker cohabiting with a person with earned or replacement income (group 3).
- 7 The amount of the allowances under that scheme is calculated on the basis of the previous salary, subject to a ceiling and on the basis of different rates according to group. In the first instance all persons concerned receive a basic allowance of 35% of their previous salary. However, after 18 months of unemployment extended by three months for each year of previous employment, persons belonging to group 3 receive a flat-rate allowance together with a supplement if the total monthly allowances of persons residing with them are below a certain amount. Secondly, persons in groups 1 and 2 receive an additional 5% of previous income for loss of single income. Thirdly, an adaptation supplement fixed at 20% of previous income is paid to all recipients of allowances but is limited to the first year of unemployment for persons in groups 2 and 3.
- 8 With regard to invalidity insurance, the scheme introduced by the Royal Decree of 30 July 1986 follows the same principles as those underlying the unemployment insurance scheme as regards both the division of the recipients of allowances into three groups and the system of calculating the allowance whose amount is proportionate to previous income subject to a ceiling. That amount represents 65% of that income for group 1, 45% for group 2, and 40% for group 3.
- 9 The Commission considers, on the one hand, that the new provisions essentially resulted in a change in the designation of two of the three categories of unemployed persons, such that, apart from the category of 'single' unemployed persons whose designation remains unaltered, the categories 'head of household' and 'cohabiting partners' correspond to the abovementioned groups 1 and 3 respectively.

- 10 The Commission claims, on the other hand, that the Belgian rules maintain in force a system of unemployment allowances similar to the previous one and that they extend the method of calculation to the invalidity assurance scheme. In its view the rate of unemployment benefit and of invalidity allowances favours group 1 and, consequently, gives rise to discrimination between men, who predominate in that group, and women, who constitute the majority in group 3. That discrimination runs counter to Article 4(1) of Council Directive 79/7.
- 11 In its reasoned opinions of 2 June 1986 and 20 June 1988, and then in its application, the Commission points to the existence of discrimination in favour of men on account of the more favourable treatment received by members of group 1. On the other hand, it does not challenge the difference in treatment as between group 2 and group 3 beneficiaries resulting from the 5% increase in previous income for loss of single income which is granted exclusively to unemployed persons in groups 1 and 2.
- 12 Reference is made to the Report for the Hearing for a fuller account of the provisions of the applicable national legislation, the amounts of benefit and allowances, the procedure and the pleas and arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.
- 13 It should be recalled at the outset that in accordance with settled case-law, Article 4(1) of Directive 79/7 precludes less favourable treatment from being accorded to a social group when it is shown to be made up of a much greater number of persons of one or the other sex, unless the provision in question is 'based on objectively justified factors unrelated to any discrimination on grounds of sex' (judgment in Case C-33/89 *Kowalska* [1990] ECR I-2591, paragraph 16).
- 14 It should also be pointed out that the Court has specifically held that a system of benefits providing for supplements not directly based on the sex of the beneficiaries but taking account of their marital status or family situation, in respect of which it emerges that a considerably smaller proportion of women than of men are entitled to such supplements, is contrary to Article 4(1) of the directive

if that system of benefits cannot be justified by reasons which exclude discrimination on grounds of sex (judgment in Case 30/85 *Teuling v Bedrijfsvereniging voor de Chemische Industrie* [1987] ECR 2497, paragraph 13).

- 15 The documents before the Court show that, according to the statistics provided by the Belgian Government, male unemployed persons or invalids are appreciably more numerous in group 1, and that, conversely, women make up the majority of persons falling within group 3.
- 16 In such circumstances a system of unemployment and invalidity benefits linked respectively to family responsibilities in some cases and the existence of a spouse's income in others would be contrary to Article 4(1) of the directive, if the Belgian Government could not justify it on grounds other than discrimination based on sex.
- 17 According to the Belgian Government, the difference in incidence as between men and women in the three categories of beneficiaries reflects a social phenomenon, namely the fact that there are fewer women than men in the working population.
- 18 It is, however, not possible to obtain from considerations of that kind, based on the unequal situation of men and women in the Belgian working population, objective criteria unrelated to any discrimination on grounds of sex.
- 19 On the other hand, if the Kingdom of Belgium can show that the means chosen meet a necessary aim of its social policy and that they are suitable and requisite for attaining that aim, the mere fact that the system of allowances favours a much greater number of male workers cannot be regarded as an infringement of the principle of equal treatment (judgment in Case 171/88 *Rinner-Kühn* [1989] ECR 2743, paragraph 14).

- 20 The Kingdom of Belgium contends in that connection that its national system seeks to grant to each individual, within the limits necessarily imposed by budgetary resources and without limitation as to time, a minimum replacement income, having regard to the family situation of the claimant, who may be faced with supplementary needs because he had dependants or, on the other hand, may benefit from a spouse's income.
- 21 The grant of such an income forms an integral part of the social policy of the Member States.
- 22 The aim of the Belgian legislation is to take into consideration the existence of different needs. On the one hand, it recognizes the greater burdens resulting from unemployment for households with only one income and, on the other hand, it takes into account the financial aid which the spouse's income represents for the unemployed person. Moreover, it seeks to encourage the persons concerned to adapt themselves to their new financial situation by avoiding too sudden a drop in their income during the first year, whilst enabling the unemployed person with dependants to bear the expenses of a household beyond a period of 18 months. Those principles and objectives form part of a social policy which in the current state of Community law is a matter for the Member States which enjoy a reasonable margin of discretion as regards both the nature of the protective measures and the detailed arrangements for their implementation (judgment in *Hofmann v Barmer Ersatzkasse* [1984] ECR 3047, paragraph 27).
- 23 The ceiling applied in taking into account previous income and the existence of a maximum amount of benefit which may be granted, the determination of a flat-rate allowance for members of group 3 after a certain period of unemployment and the grant of a supplement if the total monthly allowances of cohabiting persons in group 3 do not reach a level corresponding to the maximum amount paid to group 1 beneficiaries, constitute elements which, amongst others, are intended to give to the replacement income introduced in Belgium the character of a guaranteed social minimum for families. It is clear from the documents before the Court that the increases granted to persons cohabiting with a spouse or children without income do not exceed the amount of the charges which may reasonably be imputed to the presence of those persons.

- 24 With regard to a guaranteed minimum subsistence level, the Court has already held that Community law does not preclude a Member State, in controlling its social expenditure, from taking into account the relatively greater needs of beneficiaries who have a dependent spouse or a dependent child or receive only a very small income, in relation to the needs of single persons. In fact, the Court held that Directive 79/7 did not preclude legislation under which the guarantee previously applicable to all workers suffering from an incapacity for work whose income was approximately equal to the statutory minimum wage that their (net) benefits would be at least equal to the (net) statutory minimum wage is restricted to persons having a dependent spouse or child or whose spouse has a very small income (judgment in *Teuling* cited above, paragraphs 22 and 23).
- 25 Accordingly, if for reasons of social policy a Member State may exclude single workers from receipt of a benefit, it may, *a fortiori*, reduce the allowance paid to them on the ground that there is no dependent person.
- 26 It follows from all the foregoing considerations that the Belgian Government has shown that its system of unemployment and invalidity benefits corresponds to a legitimate objective of social policy, involving increases suitable and requisite for attaining that aim; it is therefore justified by reasons unrelated to discrimination on grounds of sex.
- 27 It follows that the Commission's application is unfounded and must therefore be dismissed.

Costs

- 28 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the applicant has failed in its pleas, it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

- (1) Dismisses the Commission's application;**
- (2) Orders the Commission to pay the costs.**

Due	Mancini	O'Higgins	Moitinho de Almeida
Rodríguez Iglesias	Díez de Velasco	Slynn	Kakouris Joliet
Schockweiler	Grévisse	Zuleeg	Kapteyn

Delivered in open court in Luxembourg on 7 May 1991

J.-G. Giraud
Registrar

O. Due
President