Judgment of the Court of Justice, Defrenne, Case 149/77 (15 June 1978)

Caption: In this case, the Court of Justice is called upon to rule on the scope of Article 119 of the EEC Treaty (now Article 141 of the EC Treaty) which provides that men and women should receive equal pay. Even though Article 119 is limited to the problem of pay discrimination between men and women workers, and even though the Court refuses to extend the scope of that Article to other conditions of employment, it nonetheless recognises in its judgment that the elimination of discrimination based on the sex of workers forms part of the general principles of Community law. As that principle forms part of the Community legal system, it may subsequently take the form of precise rules of law, which are directly applicable and which will guarantee the effective equality of men and women workers.

Source: Reports of Cases before the Court. 1978. [s.l.].

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Judgment of the Court of 15 June 1978 [1]

Gabrielle Defrenne v Société Anonyme Belge de Navigation Aérienne Sabena

(preliminary ruling requested by the Cour de Cassation, Belgium)

"Equal conditions of employment for men and women"

Case 149/77

1. Social policy — Men and women workers — Pay — Equality — Principle — Scope — Limits (EEC Treaty, Art. 119)

2. Community law — General principles of law — Fundamental personal rights — Observance ensured by the Court — Discrimination based on sex — Prohibition — Powers of the Community — Limits

1. Article 119 of the EEC Treaty, which is limited to the question of pay discrimination between men and women workers, constitutes a special rule, whose application is linked to precise factors. It cannot be interpreted as prescribing, in addition to equal pay, equality in respect of the other working conditions applicable to men and women.

The fact that the fixing of certain conditions of employment — such as a special age-limit — may have pecuniary consequences is not sufficient to bring such conditions within the field of application of Article 119, which is based on the close connexion which exists between the nature of the services provided and the amount of remuneration.

2. Fundamental personal human rights form part of the general principles of Community law, the observance of which the Court has a duty to ensure. The elimination of discrimination based on sex forms part of those fundamental rights. However, it is not for the Court to enforce the observance of that rule of non-discrimination in respect of relationships between employer and employee which are a matter exclusively for national law.

In Case 149/77

REFERENCE to the Court under Article 177 of the EEC Treaty by the Cour de Cassation, Belgium, for a preliminary ruling in the proceedings pending before that court between

GABRIELLE DEFRENNE, a former air hostess, residing in Brussels-Jette,

and

SOCIÉTÉ ANONYME BELGE DE NAVIGATION AÉRIENNE SABENA, whose registered office is in Brussels,

on the interpretation of Article 119 of the EEC Treaty,

THE COURT

composed of: H. Kutscher, President, M. Sørensen and G. Bosco (Presidents of Chambers), A. M. Donner, J. Mertens de Wilmars, P. Pescatore, Lord Mackenzie Stuart, A. O'Keeffe and A. Touffait, Judges,

Advocate General: F. Capotorti
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the procedure and the observations submitted under Article 20 of the Protocol on the

Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and written procedure

Miss Gabrielle Defrenne was engaged as a trainee air hostess by the Société Anonyme Beige de Navigation Aérienne Sabena on 10 December 1951. On 1 October 1963 her employment was confirmed by a new contract of employment which gave her the duties of "Cabin Steward and Air Hostess — Principal Cabin Attendant".

Miss Defrenne gave up her duties on 15 February 1968 in pursuance of the sixth paragraph of Article 5 of the contract of employment entered into by air crew employed by Sabena, which stated that contracts held by women members of the crew were to terminate on the day on which the employee in question reached the age of 40 years.

When Miss Defrenne left she received an allowance on termination of service equal to twelve months' remuneration.

On 9 February 1970 Miss Defrenne brought an action before the Conseil d'État of Belgium for the annulment of the Royal Decree of 3 November 1969 which laid down special rules governing the acquisition of the right to a pension by air crew in civil aviation.

That action gave rise, following a request for a preliminary ruling, to a judgment of the Court of Justice of 25 May 1971 (Case 80/70 [1971] ECR 445), as a result of which the Conseil d'État dismissed Miss Defrenne's application by a judgment of 10 December 1971.

Miss Defrenne had previously brought an action before the Tribunal du Travail (Labour Tribunal), Brussels, on 13 March 1968 for an order to Sabena to pay arrears of salary, an increased allowance on termination of service and compensation for the damage suffered as regards her old-age pension.

In a judgment given on 17 December 1970 the Tribunal du Travail, Brussels, dismissed all Miss Defrenne's claims as unfounded.

On 11 January 1971 Miss Defrenne appealed from that judgment to the Cour du Travail (Labour Court), Brussels.

By judgment of 23 April 1975 that court upheld the judgment at first instance on the second and third heads of claim relating to the allowance on termination of service and the pension. As regards the first head of claim (arrears of salary) the Cour du Travail, Brussels, requested the Court of Justice to give a preliminary ruling, on two questions concerning the interpretation of Article 119 of the EEC Treaty.

The Court of Justice gave a ruling on those questions in a judgment of 8 April 1976 (Case 43/75 [1976] ECR 455) following which, by judgment of 24 November 1976, the Cour du Travail, Brussels, awarded Miss Defrenne the sum of Bfrs 12 716 by way of arrears of salary.

On 16 September 1976 Miss Defrenne lodged an appeal before the Cour de Cassation, Belgium, against the judgment of the Cour du Travail, Brussels, of 23 April 1975 in so far as that judgment upheld the judgment of the Tribunal du Travail, Brussels, of 17 December 1970 on the second and third heads of claim (which sought an order to Sabena to pay a supplementary allowance on termination of service and compensation for the damage suffered as regards her pension).

By judgment of 28 November 1977 the Cour de Cassation, Belgium, Third Chamber, decided, in pursuance of Article 177 of the EEC Treaty, to stay the proceedings until the Court of Justice had given a preliminary ruling on the following question:

"Must Article 119 of the Treaty of Rome which lays down the principle that 'men and women should

receive equal pay for equal work' be interpreted by reason of the dual economic and social aim of the Treaty as prescribing not only equal pay but also equal working conditions for men and women, and, in particular, does the insertion into the contract of employment of an air hostess of a clause bringing the said contract to an end when she reaches the age of 40 years, it being established that no such limit is attached to the contract of male cabin attendants who are assumed to do the same work, constitute discrimination prohibited by the said Article 119 of the Treaty of Rome or by a principle of Community law if that clause may have pecuniary consequences, in particular, as regards the allowance on termination of service and pension?"

The judgment of the Cour de Cassation, Belgium, was received at the Court Registry on 12 December 1977.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC written observations were submitted on 16 February 1978 by Miss Defrenne, the appellant. before the Cour de Cassation, on 20 February by the Commission of the European Communities, on 8 March by the Government of the United Kingdom and on 9 March 1978 by the Government of the Italian Republic.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General the Court decided to open the oral procedure without holding any preparatory inquiry.

II — Written observations submitted to the Court

According to *Miss Defrenne*, the appellant before the Cour de Cassation, the Court of Justice is essentially called upon in this instance to decide whether Article 119 of the EEC Treaty, which lays down the principle that men and women should receive equal pay for equal work, permits the introduction of discriminatory conditions of employment as regards those workers, to particular where such conditions involve pecuniary consequences which are discriminatory.

(a) In accordance with the teleological method of interpretation and the principle of effectiveness Article 119 must be interpreted in accordance with the aims of the Treaty and so as to take effect in a manner which corresponds to those aims.

As is shown by Articles 48 and 117 one of the aims of the EEC Treaty is the abolition of all discrimination as between the nationals of the Member States. Several judgments of the Court of Justice have defined that concept of non-discrimination. Thus, within the Community, equal access to employment and to other working conditions must be achieved between Community citizens of different nationalities. It seems inconceivable, therefore, that the same equality should not exist as between the nationals of a single country as a result, in particular, of discriminatory conditions of employment. As regards Article 119 in particular, the Court has acknowledged its mandatory nature and direct applicability, especially as regards those types of discrimination which derive directly from legislative provisions or collective labour agreements. The issue in this instance concerns precisely a collective labour agreement which forms an integral part of the contract of employment which contains, as regards female cabin staff, a clause fixing an age-limit to which male cabin stewards doing equal work are not subject. That clause is clearly discriminatory on grounds of sex. The mere fact of providing for a lower age-limit for women may be classed as discrimination as regards remuneration, since the consequence of a clause of that nature is undeniably to deprive the women of their employment and therefore of their remuneration from the moment at which it comes into force.

The age-limit laid down in Miss Defrenne's contract of employment can only be regarded as indicating permanent physical unfitness, consisting to the very fact of reaching the age of 40 years. Permanent physical unfitness is in fact expressly provided for in the contract of employment, both as regards female and male staff. In those circumstances, to award a lesser allowance to the female staff on the ground of a special type of physical unfitness constitutes discrimination which has pecuniary consequences as regards the allowance on termination of service.

The principle that men and women should receive equal pay for equal work cannot be applied unless there is, to begin with, equality in conditions of employment. The contrary would result in depriving Article 119 of its objective: discrimination as regards conditions of employment would lead to discrimination as regards

salary between two workers doing equal work.

(b) The question before the Court of Justice relates also to the existence of a principle of Community law prohibiting discrimination between men and women on grounds of sex.

As regards, first, the concept of principles of law or general principles of law, as applied by the Cour de Cassation of Belgium, and, secondly, the case-law of the Court of Justice concerning general principles of law and the protection of fundamental rights, it must be noted that the principle of equal pay for men and women is a fundamental principle of the Treaty and that the Staff Regulations of Officials of the Communities contain a general rule against discrimination on grounds of sex. If, in the case of officials of the European institutions, the general principle of law which prohibits discrimination on grounds of sex forms part of Community law to be applied by the Court of Justice, that same principle of law must also apply to women workers employed in the Member States, since they are covered by a guarantee of non-discrimination expressly laid down in Article 119 of the Treaty, which is only a specific application of the general principle.

Furthermore, in the context of Community law Article 119 can only be understood as one of the formal expressions of a principle that there shall be no discrimination on grounds of sex. The aim of the Treaty is to ensure social progress and to seek the constant improvement of living and working conditions; it must also ensure equality in competition. To operate with female staff whose careers are reduced allows Sabena an advantage of approximately 20 % over airlines in which the length of career is the same for men and women. Thus, the economic objectives of the Treaty also require the application of the general principle that there shall be no discrimination on grounds of sex.

(c) Thus, Article 119 of the EEC Treaty embraces the principle that there shall be equal conditions of employment and in the matters covered by the Treaty — which include work — the principle that there shall be no discrimination on grounds of sex is a principle of Community law applied by the Court of Justice by reason of the social and economic objectives of the Treaty.

After explaining the legal position in Italy as regards equal pay and noting that the Italian Republic has fully implemented both Article 119 of the Treaty and 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 (Official Journal L 45, p. 19), the *Government of the Italian Republic* states its interest in seeing the principles of equality and social values generally applied in all the Member States of the Community.

(a) In order to ensure and maintain the full and effective application of the principle that men and women should receive equal pay it is necessary to achieve the equality, in principle, of all working conditions which have a direct or indirect effect on pay. Article 119 also prohibits those types of indirect discrimination as regards pay which are brought about by the expedient of discrimination in working conditions. It imposes on the Member States and on all persons operating within the territory of the Community an obligation to achieve the desired result.

(b) The principle that men and women shall be equal in the sphere of working conditions also is not only stated by Article 119; it is also contained by implication in Article 117, which aims at harmonization while improvement is being maintained. It is, moreover, the expression of a fundamental right.

(c) The discrimination at issue in the main action appears to be comparable, within the meaning of the case-law of the Court of Justice, to “direct” discrimination: it derives from a contractual provision, it may be identified by means of purely legal analyses and it exists in relation to equal work carried out in a single establishment. It may, in addition, be regarded as “indirect and disguised” discrimination, inasmuch as it arises out of a provision which does not directly concern the amount of the remuneration, but whose application has repercussions on that remuneration.

Certain differences in working conditions, which also influence the amount of remuneration, may be

justified by the natural inequality of the sexes. However, such differences must be regarded as special exceptions from the principle of equality and, as such, must be dealt with and regulated by the legal systems of the Member States. They cannot be established on the basis of a contract or, generally speaking, on the basis of rules of private law.

(d) In its judgment of 8 April 1976 the Court of Justice ruled that, having regard to "important considerations of legal certainty affecting all the interests involved", no retroactive effect should attach to the recognition of the directly applicable nature of Article 119, except as regards the main action within the context of which its judgment was given and the other actions already pending. The Government of the Italian Republic is — for reasons which it sets out in full — in favour of that view. A clause against retroactive effect might equally appear in the judgment of the Court in the present case: to state a principle of law, according to which Article 119 of the EEC Treaty prohibits discrimination in pay between men and women, even if such discrimination derives from a difference in working conditions, would be to introduce a new rule of case-law, in relation to which it would still be necessary to protect the requirements of legal certainty.

(e) The question submitted by the Cour de Cassation, Belgium, might therefore receive the following reply:

"Article 119 of the EEC Treaty must be interpreted as a rule having direct effect for the purpose of eliminating differences existing in working conditions which result, directly or indirectly, in unequal pay for the same work or work of the same value, and which cannot reasonably be justified by the natural difference between the sexes.

The duty to eliminate the difference which exists between the working conditions of men and women cannot be relied on in order to support claims relating to pay periods prior to the date of this judgment."

The *Government of the United Kingdom* submits that Article 119 is only concerned to ensure that the pay derived by the employee from labour performed by him or her shall not be affected by the sex of that employee. It does not purport to deal expressly or by implication with any inequality of the sexes in other respects such as the age at which an employee qualifies or ceases to qualify for employment, or at which he or she may retire and/or become entitled to a pension.

In its judgment of 8 April 1976 the Court of Justice distinguished expressly between direct and overt discrimination and indirect and disguised discrimination. The former could be measured by the national courts; in regard to indirect and disguised discrimination the taking of appropriate measures at Community and national level would be required. The issues raised by the main action are not within the area of direct applicability of Article 119; they should be dealt with by appropriate Community and national measures. On the Community level such measures may be seen in the Council Resolution of 21 January 1974, concerning a social action programme (Official Journal C 13, p. 1) and in Directive No 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 L 39, p. 40). It follows that Community action in conjunction with national legislation is the appropriate manner in which to further the principle of equal treatment for men and women in the field of employment, particularly as regards provisions for death or retirement, and not by adopting the strained and untenable interpretation which Miss Defrenne seeks to place on Article 119.

If it were possible to interpret Article 119 or Articles 2, 3 and 117 as imposing obligations to achieve equal treatment other than in the field of pay, such obligations would not be directly applicable so as to give rise to rights to which the courts of Member States would be bound to give effect at the suit of one individual against another. The question of equality in relation to retirement age and pension entitlement raises issues which are too complex for determination by the direct application of the provisions of the Treaty. Furthermore, such a solution would have unacceptable financial and economic consequences.

The answer to be given to the question referred to the Court of Justice should be as follows:

Article 119 of the Treaty of Rome requires equal working conditions for men and women only in so far as these can be held to govern the consideration which an employee obtains in return for work performed under the contract of employment, and inserting into the contract of employment of a woman a clause bringing the contract to an end at an earlier age than a man doing the same work does not constitute discrimination prohibited by the said Article 119 or by any principle of Community law which can be held to be directly applicable so as to confer on an individual a right which can be relied upon before a national court.

The *Commission of the European Communities* observes that in support of her appeal the appellant before the Cour de Cassation is relying both on the infringement of Article 119 of the EEC Treaty and on the breach of a general principle of Community law based on Articles 2, 3 and 117 of that Treaty.

(a) It is not disputed that air hostesses and male cabin attendants do equal work and that in pursuance of Article 119 air hostesses must receive the same pay as cabin attendants. It is, however, necessary to discover whether the term “equal pay” within the meaning of Article 119 must also be understood to mean that all working conditions must be equal and whether the pecuniary consequences of the insertion into the contract of employment of an air hostess of a clause bringing the said contract to an end, whereas no such clause is attached to the contract of cabin attendants, must be regarded as contrary to the principle that men and women should receive equal pay for equal work.

It is necessary to decide whether the aim of Article 119 is to lay down a general principle of equality between men and women, which relates to all the elements governed by contract and regulation which bear any relationship to work, or whether it seeks to ensure that in each Member State workers receive equal pay for equal work, without regard to their sex.

As regards the first alternative, pay would have to be understood as referring to all working conditions and conditions of employment, and, in particular, to those relating to recruitment and dismissal, including social security benefits in general and pension schemes in particular, which bear the closest resemblance to pay. However, the Court of Justice has ruled that “a retirement pension established within the framework of a social security scheme laid down by legislation does not constitute consideration which the worker receives indirectly in respect of his employment from his employer within the meaning of the second paragraph of Article 119” of the EEC Treaty. The essential aim of Article 119 is, therefore, to ensure that in each Member State men and women receive the same pay, whether direct or indirect, for the same work. It does not lay down any general principle of equality between men and women as regards every factor which bears some relationship to the work. The strict nature of the principle laid down by Article 119 is directly linked to the limited scope of its field of application.

Thus, the question of the fixing of a limit by the parties to a contract of employment does not fall within the field of application of Article 119.

As regards the question whether it is also impossible to regard the pecuniary consequences which result from the fixing of such a limit as discriminatory within the meaning of Article 119, it should be noted that on the question of pensions, the Court of Justice has already given a ruling in its judgment of 25 May 1971. That judgment formed the basis for the dismissal by the Cour du Travail, Brussels, of Miss Defrenne’s claim for compensation for the damage suffered as regards her old-age pension.

As regards the allowance on termination of service, Miss Defrenne maintains that that allowance is clearly an indirect consideration such as is referred to in Article 119 and that she ought therefore to have received an allowance equal to that which would be received in pursuance of the collective agreement of 1963 by a cabin steward who, having the same seniority and being of the same age, is declared permanently unfit for employment.

Consideration of the national fiscal and social laws does not permit a confident reply to be given to the question whether such an allowance on termination of service is or is not in the nature of a factor in remuneration. Furthermore, such a consideration is only of minor interest: quite apart from its results, if an allowance were awarded to a man at the end of his career and refused under the same circumstances to a

woman, or awarded on the basis of a smaller amount, all other things being equal, in particular, seniority in the service, that would clearly constitute discrimination within the meaning of Article 119. In the present case air hostesses and cabin stewards both receive the same amount by way of the allowance on termination of service. The only difference between the treatment of the female cabin staff and that of the male cabin staff is the age at which that allowance is awarded.

Similarly, it might be considered that an allowance on grounds of permanent unfitness for service is a consideration in cash which the worker receives directly in respect of his employment from his employer, within the meaning of Article 119. Here again, however, it must be noted that the male and female members of the air crew are treated in the same manner by Sabena and that if they are declared permanently unfit for employment they receive an allowance which is exactly equal and is calculated on the basis of the same criteria, without any distinction based on sex.

Miss Defrenne is confusing two situations, both of which it is true give rise to an allowance by the employer but which are totally different in nature and not really comparable, that is, first, that of an employee who is declared permanently unfit for work and, secondly, that of an employee who has reached an age-limit fixed by agreement. In any event it is for the national court to make a decision in that regard.

The difficulty of the question lies entirely in the fact that it is not possible to compare — as it would be appropriate to do — situations which are absolutely identical for men and women. It is therefore extremely difficult to give a final opinion on that point. The only thing which may be said is that discrimination in working conditions and conditions of employment is not, as such, covered by Article 119 but that any discrimination which results therefrom as regards pay may be regarded as contrary to Article 119.

(b) As regards Articles 2, 3 and 117 of the Treaty it must be remembered that in its Resolution of 21 January 1974 the Council fixed among the measures to be adopted those for the purpose of “achieving equality between men and women as regards access to employment and vocational training and advancement, and as regards working conditions, including pay”, that as regards pay it further adopted Directive No 75/117 and, as regards the employment of women in general, Directive No 76/207. Social security is, however, excluded from the latter, since the gradual implementation of the principle of equal treatment in that field is to be brought about by subsequent measures. In one of its recitals Directive No 76/207 sets out almost word for word Article 117 of the EEC Treaty. Having regard to the social objective of the Treaty, therefore, Article 117 may be regarded as a general principle of Community law, to be implemented in order to complete equality of treatment between men and women, since it was not completely achieved by Article 119. However, according to Article 9 of the directive the Member States are allowed a period of 30 months in order to bring into force the measures necessary for its implementation. Thus it is only as from August 1978 that discrimination in the form of an age-limit of the type referred to in the main action will be prohibited at Community level.

As things are at present, Miss Defrenne can claim rights on the basis of a general principle of Community law only if such a principle were recognized as having direct effect. Having regard to its wording and vast content Article 117 cannot be regarded as being of that nature.

The above considerations relate only to the rights guaranteed by Community law and to the obligations of the Member States as regards its application. They do not prejudge either the lawful nature of the contested clause in the agreement as regards national legislation which may already have been adopted for the implementation of the directive or the fundamental rights which the Member States must guarantee to their nationals under their constitution or international undertakings.

(c) The reply to be given to the question submitted by the Cour de Cassation of Belgium might be as follows:

Article 119 of the Treaty, which lays down the principle that men and women should receive equal pay for equal work, refers only to equal pay. That provision prohibits only discrimination which, for equal work, affects any form of or factor in pay but does not cover discrimination in conditions of employment and

working conditions.

In accordance with Article 9 of Council Directive No 76/207 of 9 February 1976 the Member States must put into force the laws, regulations and administrative provisions necessary in order to comply with that directive and, in particular, with regard to working conditions, including the conditions governing dismissal, guarantee men and women with the same conditions without discrimination on grounds of sea, within a period of 30 months from the notification of the directive.

III — Oral procedure

Miss Defrenne, the appellant before the Cour de Cassation, represented by Jacqueline Heynderickx, of the Brussels Bar, the Government of the United Kingdom, represented by Peter Denys Scott, and the Commission of the European Communities, represented by its Legal Adviser, Marie-Josée Jonczy, submitted their oral observations and their replies to the questions raised by the Court at the hearing on 2 May 1978.

The Advocate General delivered his opinion at the hearing on 30 May 1978.

Decision

1 By judgment of 28 November 1977, received at the Court on 12 December 1977, the Cour de Cassation of Belgium referred to the Court under Article 177 of the EEC Treaty a preliminary question relating to the scope of the principle prohibiting discrimination between men and women workers laid down by Article 119 of the Treaty.

2 That question arose within the context of an action brought before the Belgian labour courts by the appellant in the main action, Miss Gabrielle Defrenne, a former air hostess, against the Société Beige de Navigation Aérienne Sabena following the termination of her employment, in accordance with the terms of her contract, when she reached the age-limit of 40 years.

3 Miss Defrenne had originally brought an action before the Tribunal du Travail, Brussels, on the basis of Article 119 of the EEC Treaty, the object of which was to order Sabena to pay:

(1) Compensation by reason of the fact that, as a woman worker, she had suffered discrimination in the matter of pay as compared with her male colleagues carrying out the same work as cabin stewards;

(2) A supplementary allowance on termination of service, representing the difference between the allowance actually received by her on her departure and the allowance which would have been received by a cabin steward at the age of 40 with the same seniority who had been declared permanently unfit for employment;

(3) Compensation for the damage suffered by the appellant as regards her pension.

4 By a judgment of 17 December 1970 the Tribunal du Travail dismissed that action in its entirety as unfounded.

5 By a judgment of 23 April 1975 on the appeal lodged by the applicant in the original action the Cour du Travail, Brussels, upheld the judgment at first instance on the second and third heads of claim.

6 For the purpose of giving judgment on the first head of claim that court referred to the Court of Justice two preliminary questions which formed the subject of Case 43/75 on 8 April 1976 ([1976] ECR 455).

7 Following the preliminary ruling, the Cour du Travail by a judgment of 24 November 1976 awarded the

applicant the sum of Bfrs 12 716 by way of the arrears of remuneration claimed, increased by interest and costs.

8 Miss Defrenne lodged an appeal in cassation against the judgment of the Cour du Travail as regards the heads of claim which it had dismissed and the Cour de Cassation in turn referred the matter to the Court of Justice under Article 117 of the Treaty.

9 It must be recalled again that, in the same context, Miss Defrenne had brought an action before the Conseil d'État of Belgium against the Belgian Royal Decree of 3 November 1969 on retirement pensions for civil aviation air crew, which related, in particular, to the validity of a provision of that decree excluding air hostesses from the scheme in question.

10 For its part the Conseil d'État referred to the Court of Justice certain questions relating to the interpretation of Article 119 of the Treaty, which formed the subject of the judgment of 25 May 1971 in Case 80/70 ([1971] ECR 445).

11 In order to resolve the questions at present before it, the Cour de Cassation has referred to the Court a preliminary question, worded in two parts, which requires clear replies inasmuch as it relates, first, to the determination of the field of application of Article 119 of the Treaty and, secondly, to the possible existence of a general principle of Community law, the aim of which is to eliminate discrimination between men and women workers as regards conditions of employment and working conditions other than remuneration in the strict sense.

The first part of the question — scope of Article 119 of the EEC Treaty

12 The first part of the question raised by the Cour de Cassation seeks to discover whether the principle of equal pay laid down by Article 119 may be interpreted as requiring general equality of working conditions for men and women, so that the insertion into the contract of employment of an air hostess of a clause bringing the contract to an end when she reaches the age of 40 years, it being established that no such limit is attached to the contract of male cabin attendants who carry out the same work, constitutes discrimination prohibited by the said provision.

13 According to the appellant in the main action Article 119 must be given a wide interpretation, inasmuch as it is only a specific statement of a general principle against discrimination which has found many expressions in the Treaty.

14 In particular she claims that the contested clause contained in the contract of employment of air hostesses, fixing an age-limit of 40, is subject to the rule against discrimination contained in Article 119 by reason of the fact that, first, a woman worker can receive pay equal to that received by men only if the requirement regarding equal conditions of employment is first satisfied and, secondly, that the age-limit imposed on air hostesses by the contract of employment has pecuniary consequences which are prejudicial as regards the allowance on termination of service and pension.

15 The field of application of Article 119 must be determined within the context of the system of the social provisions of the Treaty, which are set out in the chapter formed by Article 117 *et seq.*

16 The general features of the conditions of employment and working conditions are considered in Articles 117 and 118 from the point of view of the harmonization of the social systems of the Member States and of the approximation of their laws in that field.

17 There is no doubt that the elimination of discrimination based on the sex of workers forms part of the programme for social and legislative policy which was clarified in certain respects by the Council Resolution of 21 January 1974 (Official Journal C 13, p. 1).

18 The same thought also underlies Council Directive No 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 L 39, p. 40).

19 In contrast to the provisions of Articles 117 and 118, which are essentially in the nature of a programme, Article 119, which is limited to the question of pay discrimination between men and women workers, constitutes a special rule, whose application is linked to precise factors.

20 In these circumstances it is impossible to extend the scope of that article to elements of the employment relationship other than those expressly referred to.

21 In particular, the fact that the fixing of certain conditions of employment such as a special age-limit — may have pecuniary consequences is not sufficient to bring such conditions within the field of application of Article 119, which is based on the close connexion which exists between the nature of the services provided and the amount of remuneration.

22 That is *a fortiori* true since the touchstone which forms the basis of Article 119 — that is, the comparable nature of the services provided by workers of either sex — is a factor as regards which all workers are *ex hypothesi* on an equal footing, whereas in many respects an assessment of the other conditions of employment and working conditions involves factors connected with the sex of the workers, taking into account considerations affecting the special position of women in the work process.

23 It is, therefore, impossible to widen the terms of Article 119 to the point, first, of jeopardizing the direct applicability which that provision must be acknowledged to have in its own sphere and, secondly, of intervening in an area reserved by Articles 117 and 118 to the discretion of the authorities referred to therein.

24 The reply to the first part of the question must therefore be that Article 119 of the Treaty cannot be interpreted as prescribing, in addition to equal pay, equality in respect of the other working conditions applicable to men and women.

The second part of the question — the existence of a general principle prohibiting discrimination based on sex in conditions of employment and working conditions

25 The second part of the question asks whether, apart from the specific provisions of Article 119, Community law contains any general principle prohibiting discrimination based on sex as regards the conditions of employment and working conditions of men and women.

26 The Court has repeatedly stated that respect for fundamental personal human rights is one of the general principles of Community law, the observance of which it has a duty to ensure.

27 There can be no doubt that the elimination of discrimination based on sex forms part of those fundamental rights.

28 Moreover, the same concepts are recognized by the European Social Charter of 18 November 1961 and by Convention No 111 of the International Labour Organization of 25 June 1958 concerning discrimination in respect of employment and occupation.

29 Attention must be drawn in this regard to the fact that in its judgments of 7 June 1972 in Case 20/71 *Sabbatini (née Bertoni)* v *European Parliament* ([1972] ECR 345) and 20 February 1975 in Case 21/74 *Airola* v *Commission of the European Communities* ([1975] ECR 221), the Court recognized the need to ensure equality in the matter of working conditions for men and women employed by the Community itself, within the context of the Staff Regulations of Officials.

30 On the other hand, as regards the relationships of employer and employee which are subject to national law, the Community had not, at the time of the events now before the Belgian courts, assumed any

responsibility for supervising and guaranteeing the observance of the principle of equality between men and women in working conditions other than remuneration.

31 As has been stated above, at the period under consideration Community law contained only the provisions in the nature of a programme laid down by Articles 117 and 118 of the Treaty, which relate to the general development of social welfare, in particular as regards conditions of employment and working conditions.

32 It follows that the situation before the Belgian courts is governed by the provisions and principles of internal and international law in force in Belgium.

33 The reply to the second part of the question must therefore be that at the time of the events which form the basis of the main action there was, as regards the relationships between employer and employee under national law, no rule of Community law prohibiting discrimination between men and women in the matter of working conditions other than the requirements as to pay referred to in Article 119 of the Treaty.

Costs

34 The costs incurred by the Government of the United Kingdom, the Government of the Italian Republic and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable.

35 As these proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the action pending before the Cour de Cassation of Belgium, 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 Cour de Cassation of Belgium by judgment of 28 November 1977, hereby rules:

Article 119 of the EEC Treaty cannot be interpreted as prescribing, in addition to equal pay, equality in respect of the other working conditions applicable to men and women.

At the time of the events which form the basis of the main action there was, as regards the relationships between employer and employee under national law, no rule of Community law prohibiting discrimination between men and women in the matter of working conditions other than the requirements as to pay referred to in Article 119 of the Treaty.

Kutscher
Sørensen
Bosco
Donner
Mertens de Wilmars
Pescatore
Mackenzie Stuart
O’Keeffe
Touffait

Delivered in open court in Luxembourg on 15 June 1978.

A. Van Houtte
Registrar

H. Kutscher
President

1 — Language of the Case: French.