

Judgment of the Court of 8 April 1976. - Gabrielle Defrenne v Société anonyme belge de navigation aérienne Sabena. - Reference for a preliminary ruling: Cour du travail de Bruxelles - Belgium. - The principle that men and women should receive equal pay for equal work. - Case 43-75.

■ *Article 119 EEC Treaty*

„Each Member State shall in the course of the first stage ensure and subsequently maintain the application of the principle of equal remuneration for equal work as between men and women workers.

For the purposes of this Article, remuneration shall mean the ordinary basic or minimum wage or salary and any additional emoluments whatsoever payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the workers' employment.

Equal remuneration without discrimination based on sex means:

(a) that remuneration for the same work at piece-rates shall be calculated on the basis of the same unit of measurement; and

(b) that remuneration for work at time-rates shall be the same for the same job."

Parties

IN CASE 43/75

REFERENCE TO THE COURT UNDER ARTICLE 177 OF THE EEC TREATY BY THE COUR DU TRAVAIL (LABOUR COURT), BRUSSELS , FOR A PRELIMINARY RULING IN THE ACTION PENDING BEFORE THAT COURT BETWEEN

*GABRIELLE DEFRENNE , FORMER AIR HOSTESS , RESIDING IN BRUSSELS-JETTE ,
AND*

SOCIETE ANONYME BELGE DE NAVIGATION AERIENNE SABENA , THE REGISTERED OFFICE OF WHICH IS AT BRUSSELS ,

Subject of the case

ON THE INTERPRETATION OF ARTICLE 119 THE EEC TREATY ,

Grounds

1 BY A JUDGMENT OF 23 APRIL 1975 , RECEIVED AT THE COURT REGISTRY ON 2 MAY 1975 , THE COUR DU TRAVAIL , BRUSSELS , REFERRED TO THE COURT UNDER ARTICLE 177 OF THE EEC TREATY TWO QUESTIONS CONCERNING THE EFFECT AND IMPLEMENTATION OF ARTICLE 119 OF THE TREATY REGARDING THE PRINCIPLE THAT MEN AND WOMEN SHOULD RECEIVE EQUAL PAY FOR EQUAL WORK .

2 THESE QUESTIONS AROSE WITHIN THE CONTEXT OF AN ACTION BETWEEN AN AIR HOSTESS AND HER EMPLOYER , SABENA S.A . , CONCERNING COMPENSATION CLAIMED BY THE APPLICANT IN THE MAIN ACTION ON THE GROUND THAT , BETWEEN 15 FEBRUARY 1963 AND 1 FEBRUARY 1966 , SHE SUFFERED AS A FEMALE WORKER DISCRIMINATION IN TERMS OF PAY AS COMPARED WITH MALE COLLEAGUES WHO WERE DOING THE SAME WORK AS ' CABIN STEWARD ' .

3 ACCORDING TO THE JUDGMENT CONTAINING THE REFERENCE , THE PARTIES AGREE THAT THE WORK OF AN AIR HOSTESS IS IDENTICAL TO THAT OF A CABIN STEWARD AND IN THESE CIRCUMSTANCES THE EXISTENCE OF DISCRIMINATION IN PAY TO THE DETRIMENT OF THE AIR HOSTESS DURING THE PERIOD IN QUESTION IS NOT DISPUTED .

THE FIRST QUESTION (DIRECT EFFECT OF ARTICLE 119)

4 THE FIRST QUESTION ASKS WHETHER ARTICLE 119 OF THE TREATY INTRODUCES ' DIRECTLY INTO THE NATIONAL LAW OF EACH MEMBER STATE OF THE EUROPEAN COMMUNITY THE PRINCIPLE THAT MEN AND WOMEN SHOULD RECEIVE EQUAL PAY FOR EQUAL WORK AND DOES IT THEREFORE , INDEPENDENTLY OF ANY NATIONAL PROVISION , ENTITLE WORKERS TO INSTITUTE PROCEEDINGS BEFORE NATIONAL COURTS IN ORDER TO ENSURE ITS OBSERVANCE?

5 IF THE ANSWER TO THIS QUESTION IS IN THE AFFIRMATIVE , THE QUESTION FURTHER ENQUIRES AS FROM WHAT DATE THIS EFFECT MUST BE RECOGNIZED .

6 THE REPLY TO THE FINAL PART OF THE FIRST QUESTION WILL THEREFORE BE GIVEN WITH THE REPLY TO THE SECOND QUESTION .

7 THE QUESTION OF THE DIRECT EFFECT OF ARTICLE 119 MUST BE CONSIDERED IN THE LIGHT OF THE NATURE OF THE PRINCIPLE OF EQUAL PAY , THE AIM OF THIS PROVISION AND ITS PLACE IN THE SCHEME OF THE TREATY .

8 ARTICLE 119 PURSUES A DOUBLE AIM .

9 FIRST , IN THE LIGHT OF THE DIFFERENT STAGES OF THE DEVELOPMENT OF SOCIAL LEGISLATION IN THE VARIOUS MEMBER STATES , THE AIM OF ARTICLE 119 IS TO AVOID A SITUATION IN WHICH UNDERTAKINGS ESTABLISHED IN STATES WHICH HAVE ACTUALLY IMPLEMENTED THE PRINCIPLE OF EQUAL PAY SUFFER A COMPETITIVE DISADVANTAGE IN INTRA-COMMUNITY COMPETITION AS COMPARED WITH UNDERTAKINGS ESTABLISHED IN STATES WHICH HAVE NOT YET ELIMINATED DISCRIMINATION AGAINST WOMEN WORKERS AS REGARDS PAY .

10 SECONDLY , THIS PROVISION FORMS PART OF THE SOCIAL OBJECTIVES OF THE COMMUNITY , WHICH IS NOT MERELY AN ECONOMIC UNION , BUT IS AT THE SAME TIME INTENDED , BY COMMON ACTION , TO ENSURE SOCIAL PROGRESS AND SEEK THE CONSTANT IMPROVEMENT OF THE LIVING AND WORKING CONDITIONS OF THEIR PEOPLES , AS IS EMPHASIZED BY THE PREAMBLE TO THE TREATY .

11 THIS AIM IS ACCENTUATED BY THE INSERTION OF ARTICLE 119 INTO THE BODY OF A CHAPTER DEVOTED TO SOCIAL POLICY WHOSE PRELIMINARY PROVISION , ARTICLE 117 , MARKS ' THE NEED TO PROMOTE IMPROVED WORKING CONDITIONS AND AN IMPROVED STANDARD OF LIVING FOR WORKERS , SO AS TO MAKE POSSIBLE THEIR HARMONIZATION WHILE THE IMPROVEMENT IS BEING MAINTAINED ' .

12 THIS DOUBLE AIM , WHICH IS AT ONCE ECONOMIC AND SOCIAL , SHOWS THAT THE PRINCIPLE OF EQUAL PAY FORMS PART OF THE FOUNDATIONS OF THE COMMUNITY .

13 FURTHERMORE , THIS EXPLAINS WHY THE TREATY HAS PROVIDED FOR THE COMPLETE IMPLEMENTATION OF THIS PRINCIPLE BY THE END OF THE FIRST STAGE OF THE TRANSITIONAL PERIOD .

14 THEREFORE , IN INTERPRETING THIS PROVISION , IT IS IMPOSSIBLE TO BASE ANY ARGUMENT ON THE DILATORINESS AND RESISTANCE WHICH HAVE DELAYED THE ACTUAL IMPLEMENTATION OF THIS BASIC PRINCIPLE IN CERTAIN MEMBER STATES .

15 IN PARTICULAR , SINCE ARTICLE 119 APPEARS IN THE CONTEXT OF THE HARMONIZATION OF WORKING CONDITIONS WHILE THE IMPROVEMENT IS BEING MAINTAINED , THE OBJECTION THAT THE TERMS OF THIS ARTICLE MAY BE OBSERVED IN OTHER WAYS THAN BY RAISING THE LOWEST SALARIES MAY BE SET ASIDE .

16 UNDER THE TERMS OF THE FIRST PARAGRAPH OF ARTICLE 119 , THE MEMBER STATES ARE BOUND TO ENSURE AND MAINTAIN ' THE APPLICATION OF THE PRINCIPLE THAT MEN AND WOMEN SHOULD RECEIVE EQUAL PAY FOR EQUAL WORK ' .

17 THE SECOND AND THIRD PARAGRAPHS OF THE SAME ARTICLE ADD A CERTAIN NUMBER OF DETAILS CONCERNING THE CONCEPTS OF PAY AND WORK REFERRED TO IN THE FIRST PARAGRAPH .

18 FOR THE PURPOSES OF THE IMPLEMENTATION OF THESE PROVISIONS A DISTINCTION MUST BE DRAWN WITHIN THE WHOLE AREA OF APPLICATION OF ARTICLE 119 BETWEEN , FIRST , DIRECT AND OVERT DISCRIMINATION WHICH MAY BE IDENTIFIED SOLELY WITH THE AID OF THE CRITERIA BASED ON EQUAL WORK AND EQUAL PAY REFERRED TO BY THE ARTICLE IN QUESTION AND , SECONDLY , INDIRECT AND DISGUISED DISCRIMINATION WHICH CAN ONLY BE IDENTIFIED BY REFERENCE TO MORE EXPLICIT IMPLEMENTING PROVISIONS OF A COMMUNITY OR NATIONAL CHARACTER .

19 IT IS IMPOSSIBLE NOT TO RECOGNIZE THAT THE COMPLETE IMPLEMENTATION OF THE AIM PURSUED BY ARTICLE 119 , BY MEANS OF THE ELIMINATION OF ALL DISCRIMINATION , DIRECT OR INDIRECT , BETWEEN MEN AND WOMEN WORKERS , NOT ONLY AS REGARDS INDIVIDUAL UNDERTAKINGS BUT ALSO ENTIRE BRANCHES OF INDUSTRY AND EVEN OF THE ECONOMIC SYSTEM AS A WHOLE , MAY IN CERTAIN CASES INVOLVE THE ELABORATION OF CRITERIA WHOSE IMPLEMENTATION NECESSITATES THE TAKING OF APPROPRIATE MEASURES AT COMMUNITY AND NATIONAL LEVEL .

20 THIS VIEW IS ALL THE MORE ESSENTIAL IN THE LIGHT OF THE FACT THAT THE COMMUNITY MEASURES ON THIS QUESTION , TO WHICH REFERENCE WILL BE MADE IN ANSWER TO THE SECOND QUESTION , IMPLEMENT ARTICLE 119 FROM THE POINT OF VIEW OF EXTENDING THE NARROW CRITERION OF ' EQUAL WORK ' , IN ACCORDANCE IN PARTICULAR WITH THE PROVISIONS OF CONVENTION NO 100 ON EQUAL PAY CONCLUDED BY THE INTERNATIONAL LABOUR ORGANIZATION IN 1951 , ARTICLE 2 OF WHICH ESTABLISHES THE PRINCIPLE OF EQUAL PAY FOR WORK ' OF EQUAL VALUE ' .

21 AMONG THE FORMS OF DIRECT DISCRIMINATION WHICH MAY BE IDENTIFIED SOLELY BY REFERENCE TO THE CRITERIA LAID DOWN BY ARTICLE 119 MUST BE INCLUDED IN PARTICULAR THOSE WHICH HAVE THEIR ORIGIN IN LEGISLATIVE PROVISIONS OR IN COLLECTIVE LABOUR AGREEMENTS AND WHICH MAY BE DETECTED ON THE BASIS OF A PURELY LEGAL ANALYSIS OF THE SITUATION .

22 THIS APPLIES EVEN MORE IN CASES WHERE MEN AND WOMEN RECEIVE UNEQUAL PAY FOR EQUAL WORK CARRIED OUT IN THE SAME ESTABLISHMENT OR SERVICE , WHETHER PUBLIC OR PRIVATE .

23 AS IS SHOWN BY THE VERY FINDINGS OF THE JUDGMENT MAKING THE REFERENCE , IN SUCH A SITUATION THE COURT IS IN A POSITION TO ESTABLISH ALL THE FACTS WHICH ENABLE IT TO DECIDE WHETHER A WOMAN WORKER IS RECEIVING LOWER PAY THAN A MALE WORKER PERFORMING THE SAME TASKS .

24 IN SUCH SITUATION , AT LEAST , ARTICLE 119 IS DIRECTLY APPLICABLE AND MAY THUS GIVE RISE TO INDIVIDUAL RIGHTS WHICH THE COURTS MUST PROTECT .

25 FURTHERMORE , AS REGARDS EQUAL WORK , AS A GENERAL RULE , THE NATIONAL LEGISLATIVE PROVISIONS ADOPTED FOR THE IMPLEMENTATION OF THE PRINCIPLE OF EQUAL PAY AS A RULE MERELY REPRODUCE THE SUBSTANCE OF THE TERMS OF ARTICLE 119 AS REGARDS THE DIRECT FORMS OF DISCRIMINATION .

26 BELGIAN LEGISLATION PROVIDES A PARTICULARLY APPOSITE ILLUSTRATION OF THIS POINT , SINCE ARTICLE 14 OF ROYAL DECREE NO 40 OF 24 OCTOBER 1967 ON THE EMPLOYMENT OF WOMEN MERELY SETS OUT THE RIGHT OF ANY FEMALE WORKER TO INSTITUTE PROCEEDINGS BEFORE THE RELEVANT COURT FOR THE APPLICATION OF THE PRINCIPLE OF EQUAL PAY SET OUT IN ARTICLE 119 AND SIMPLY REFERS TO THAT ARTICLE .

27 THE TERMS OF ARTICLE 119 CANNOT BE RELIED ON TO INVALIDATE THIS CONCLUSION .

28 FIRST OF ALL , IT IS IMPOSSIBLE TO PUT FORWARD AN ARGUMENT AGAINST ITS DIRECT EFFECT BASED ON THE USE IN THIS ARTICLE OF THE WORD ' PRINCIPLE ' , SINCE , IN THE LANGUAGE OF THE TREATY , THIS TERM IS SPECIFICALLY USED IN ORDER TO INDICATE THE FUNDAMENTAL NATURE OF CERTAIN PROVISIONS , AS IS SHOWN , FOR EXAMPLE , BY THE HEADING OF THE FIRST PART OF THE TREATY WHICH IS DEVOTED TO ' PRINCIPLES ' AND BY

ARTICLE 113 , ACCORDING TO WHICH THE COMMERCIAL POLICY OF THE COMMUNITY IS TO BE BASED ON ' UNIFORM PRINCIPLES ' .

29 IF THIS CONCEPT WERE TO BE ATTENUATED TO THE POINT OF REDUCING IT TO THE LEVEL OF A VAGUE DECLARATION , THE VERY FOUNDATIONS OF THE COMMUNITY AND THE COHERENCE OF ITS EXTERNAL RELATIONS WOULD BE INDIRECTLY AFFECTED .

30 IT IS ALSO IMPOSSIBLE TO PUT FORWARD ARGUMENTS BASED ON THE FACT THAT ARTICLE 119 ONLY REFERS EXPRESSLY TO ' MEMBER STATES ' .

31 INDEED , AS THE COURT HAS ALREADY FOUND IN OTHER CONTEXTS , THE FACT THAT CERTAIN PROVISIONS OF THE TREATY ARE FORMALLY ADDRESSED TO THE MEMBER STATES DOES NOT PREVENT RIGHTS FROM BEING CONFERRED AT THE SAME TIME ON ANY INDIVIDUAL WHO HAS AN INTEREST IN THE PERFORMANCE OF THE DUTIES THUS LAID DOWN .

32 THE VERY WORDING OF ARTICLE 119 SHOWS THAT IT IMPOSES ON STATES A DUTY TO BRING ABOUT A SPECIFIC RESULT TO BE MANDATORILY ACHIEVED WITHIN A FIXED PERIOD .

33 THE EFFECTIVENESS OF THIS PROVISION CANNOT BE AFFECTED BY THE FACT THAT THE DUTY IMPOSED BY THE TREATY HAS NOT BEEN DISCHARGED BY CERTAIN MEMBER STATES AND THAT THE JOINT INSTITUTIONS HAVE NOT REACTED SUFFICIENTLY ENERGETICALLY AGAINST THIS FAILURE TO ACT .

34 TO ACCEPT THE CONTRARY VIEW WOULD BE TO RISK RAISING THE VIOLATION OF THE RIGHT TO THE STATUS OF A PRINCIPLE OF INTERPRETATION , A POSITION THE ADOPTION OF WHICH WOULD NOT BE CONSISTENT WITH THE TASK ASSIGNED TO THE COURT BY ARTICLE 164 OF THE TREATY .

35 FINALLY , IN ITS REFERENCE TO ' MEMBER STATES ' , ARTICLE 119 IS ALLUDING TO THOSE STATES IN THE EXERCISE OF ALL THOSE OF THEIR FUNCTIONS WHICH MAY USEFULLY CONTRIBUTE TO THE IMPLEMENTATION OF THE PRINCIPLE OF EQUAL PAY .

36 THUS , CONTRARY TO THE STATEMENTS MADE IN THE COURSE OF THE PROCEEDINGS THIS PROVISION IS FAR FROM MERELY REFERRING THE MATTER TO THE POWERS OF THE NATIONAL LEGISLATIVE AUTHORITIES .

37 THEREFORE , THE REFERENCE TO ' MEMBER STATES ' IN ARTICLE 119 CANNOT BE INTERPRETED AS EXCLUDING THE INTERVENTION OF THE COURTS IN DIRECT APPLICATION OF THE TREATY .

38 FURTHERMORE IT IS NOT POSSIBLE TO SUSTAIN ANY OBJECTION THAT THE APPLICATION BY NATIONAL COURTS OF THE PRINCIPLE OF EQUAL PAY WOULD AMOUNT TO MODIFYING INDEPENDENT AGREEMENTS CONCLUDED PRIVATELY OR IN THE SPHERE OF INDUSTRIAL RELATIONS SUCH AS INDIVIDUAL CONTRACTS AND COLLECTIVE LABOUR AGREEMENTS .

39 IN FACT , SINCE ARTICLE 119 IS MANDATORY IN NATURE , THE PROHIBITION ON DISCRIMINATION BETWEEN MEN AND WOMEN APPLIES NOT ONLY TO THE ACTION OF PUBLIC AUTHORITIES , BUT ALSO EXTENDS TO ALL AGREEMENTS WHICH ARE INTENDED TO REGULATE PAID LABOUR COLLECTIVELY , AS WELL AS TO CONTRACTS BETWEEN INDIVIDUALS .

40 THE REPLY TO THE FIRST QUESTION MUST THEREFORE BE THAT THE PRINCIPLE OF EQUAL PAY CONTAINED IN ARTICLE 119 MAY BE RELIED UPON BEFORE THE NATIONAL COURTS AND THAT THESE COURTS HAVE A DUTY TO ENSURE THE PROTECTION OF THE RIGHTS WHICH THIS PROVISION VESTS IN INDIVIDUALS , IN PARTICULAR AS REGARDS THOSE TYPES OF DISCRIMINATION ARISING DIRECTLY FROM LEGISLATIVE PROVISIONS OR COLLECTIVE LABOUR AGREEMENTS , AS WELL AS IN CASES IN WHICH MEN AND WOMEN RECEIVE UNEQUAL PAY FOR EQUAL WORK WHICH IS CARRIED OUT IN THE SAME ESTABLISHMENT OR SERVICE , WHETHER PRIVATE OR PUBLIC .

THE SECOND QUESTION (IMPLEMENTATION OF ARTICLE 119 AND POWERS OF THE COMMUNITY AND OF THE MEMBER STATES)

41 THE SECOND QUESTION ASKS WHETHER ARTICLE 119 HAS BECOME ' APPLICABLE IN THE INTERNAL LAW OF THE MEMBER STATES BY VIRTUE OF MEASURES ADOPTED BY THE

AUTHORITIES OF THE EUROPEAN ECONOMIC COMMUNITY ' , OR WHETHER THE NATIONAL LEGISLATURE MUST ' BE REGARDED AS ALONE COMPETENT IN THIS MATTER ' .

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THE TEMPORAL EFFECT OF THIS JUDGMENT

...

Decision on costs

...

Operative part

ON THOSE GROUNDS ,

THE COURT

IN ANSWER TO THE QUESTIONS REFERRED TO IT BY THE COUR DU TRAVAIL , BRUSSELS , BY JUDGMENT DATED 23 APRIL 1975 HEREBY RULES :

1 . THE PRINCIPLE THAT MEN AND WOMEN SHOULD RECEIVE EQUAL PAY , WHICH IS LAID DOWN BY ARTICLE 119 , MAY BE RELIED ON BEFORE THE NATIONAL COURTS . THESE COURTS HAVE A DUTY TO ENSURE THE PROTECTION OF THE RIGHTS WHICH THAT PROVISION VESTS IN INDIVIDUALS , IN PARTICULAR IN THE CASE OF THOSE FORMS OF DISCRIMINATION WHICH HAVE THEIR ORIGIN IN LEGISLATIVE PROVISIONS OR COLLECTIVE LABOUR AGREEMENTS , AS WELL AS WHERE MEN AND WOMEN RECEIVE UNEQUAL PAY FOR EQUAL WORK WHICH IS CARRIED OUT IN THE SAME ESTABLISHMENT OR SERVICE , WHETHER PRIVATE OR PUBLIC .

2 . THE APPLICATION OF ARTICLE 119 WAS TO HAVE BEEN FULLY SECURED BY THE ORIGINAL MEMBER STATES AS FROM 1 JANUARY 1962 , THE BEGINNING OF THE SECOND STAGE OF THE TRANSITIONAL PERIOD , AND BY THE NEW MEMBER STATES AS FROM 1 JANUARY 1973 , THE DATE OF ENTRY INTO FORCE OF THE ACCESSION TREATY . THE FIRST OF THESE TIME-LIMITS WAS NOT MODIFIED BY THE RESOLUTION OF THE MEMBER STATES OF 30 DECEMBER 1961 .

3 . COUNCIL DIRECTIVE NO 75/117 DOES NOT PREJUDICE THE DIRECT EFFECT OF ARTICLE 119 AND THE PERIOD FIXED BY THAT DIRECTIVE FOR COMPLIANCE THEREWITH DOES NOT AFFECT THE TIME-LIMITS LAID DOWN BY ARTICLE 119 OF THE EEC TREATY AND THE ACCESSION TREATY .

4 . EVEN IN THE AREAS IN WHICH ARTICLE 119 HAS NO DIRECT EFFECT , THAT PROVISION CANNOT BE INTERPRETED AS RESERVING TO THE NATIONAL LEGISLATURE EXCLUSIVE POWER TO IMPLEMENT THE PRINCIPLE OF EQUAL PAY SINCE , TO THE EXTENT TO WHICH SUCH IMPLEMENTATION IS NECESSARY , IT MAY BE ACHIEVED BY A COMBINATION OF COMMUNITY AND NATIONAL PROVISIONS .

5 . EXCEPT AS REGARDS THOSE WORKERS WHO HAVE ALREADY BROUGHT LEGAL PROCEEDINGS OR MADE AN EQUIVALENT CLAIM , THE DIRECT EFFECT OF ARTICLE 119 CANNOT BE RELIED ON IN ORDER TO SUPPORT CLAIMS CONCERNING PAY PERIODS PRIOR TO THE DATE OF THIS JUDGMENT .