Judgment of the Court of 16 May 2000

Shirley Preston and Othes v Wolverhampton Healthcare NHS Trust and Others and Dorothy Fletcher and Others v Midland Bank plc

Reference for a preliminary ruling: House of Lords - United Kingdom

Social policy - Men and women - Equal pay - Membership of an occupational pension scheme - Part-time workers - Exclusion - National procedural rules - Principle of effectiveness - Principle of equivalence

Case C-78/98

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In Case C-78/98,

REFERENCE to the Court under Article 177 of the EC Treaty (now Article 234 EC) by the House of Lords, United Kingdom, for a preliminary ruling in the proceedings pending before that court between

Shirley Preston and Others

and

Wolverhampton Healthcare NHS Trust and Others

and between

Dorothy Fletcher and Others

and

Midland Bank plc,

on the interpretation of Article 119 of the EC Treaty (Articles 117 to 120 of the EC Treaty have been replaced by Articles 136 EC to 143 EC),

THE COURT,

composed of: G.C. Rodríguez Iglesias, President, J.C. Moitinho de Almeida, D.A.O. Edward and R. Schintgen (Presidents of Chambers), P.J.G. Kapteyn (Rapporteur), J.-P. Puissochet, G. Hirsch, P. Jann and H. Ragnemalm, Judges,

Advocate General: P. Léger,

Registrar: L. Hewlett, Administrator,

after considering the written observations submitted on behalf of:

- Mrs Preston and Others and Mrs Fletcher and Others, by D. Pannick QC, J. Cavanagh and J. McNeill, Barristers, instructed by B. McKenna, Solicitor,

- Wolverhampton Healthcare NHS Trust and Others, by C. Booth QC, T. Kerr and C. Lewis, Barristers, instructed by Sharpe Pritchard, Solicitors,

- Southern Electric plc and Others, by P. Elias QC and J. Coppel, Barrister, instructed by H. Lewis, Solicitor,

- Midland Bank plc, by P. Elias and J. Coppel, instructed by T. Flanagan, Solicitor,

- Sutton College and Others, by M. Tether, Barrister, instructed by Norton Rose, Solicitors,

- the United Kingdom Government, by S. Ridley, of the Treasury Solicitor's Department, acting as Agent, and N. Paines QC,

- the Commission of the European Communities, by C. Docksey, Legal Adviser, M. Wolfcarius, of its Legal Service, and N. Yerrell, a national civil servant seconded to that service, acting as Agents,

having regard to the report for the Hearing,

after hearing the oral observations of Mrs Preston and Others and Mrs Fletcher and Others, represented by D. Pannick, J. Cavanagh and J. McNeill; of Wolverhampton Healthcare NHS Trust and Others, represented by C. Booth and C. Lewis; of Southern Electric plc and Others, Midland Bank plc and Sutton College and Others, represented by P. Elias, J. Coppel and M. Tether; of the United Kingdom Government, represented by J.E. Collins, Assistant Treasury Solicitor, acting as agent, and by N. Paines and R. Hill, Barrister; of the Irish Government, represented by A. O'Caoimh SC and E. Barrington BL; and of the Commission, represented by C. Docksey, M. Wolfcarius and N. Yerrell, at the hearing on 20 April 1999,

after hearing the Opinion of the Advocate General at the sitting on 14 September 1999,

gives the following

Judgment

Grounds

1 By order of 5 February 1998, received at the Court on 23 March 1998, the House of Lords referred to the Court for a preliminary ruling under Article 177 of the EC Treaty (now Article 234 EC) three questions on the interpretation of Article 119 of the EC Treaty (Articles 117 to 120 of the EC Treaty have been replaced by Articles 136 EC to 143 EC).

2 Those questions were raised in proceedings brought by Mrs Preston and Others against Wolverhampton Healthcare NHS Trust and Others and by Mrs Fletcher and Others against Midland Bank plc.

Legal background

3 In the United Kingdom, the principle of equal pay has been implemented by the Equal Pay Act 1970 (the EPA). The EPA was enacted on 29 May 1970 and entered into force on 29 December 1975.

4 The EPA introduced a statutory right for employees to enjoy conditions of employment at least as favourable as those enjoyed by members of the opposite sex doing the same work, work regarded as equivalent or work of equal value.

5 Section 1(1) of the EPA provides that every contract under which a woman is employed in the United Kingdom is to be deemed to include an equality clause.

6 Under section 2(4), any claim in respect of the operation of an equality clause must, if it is not to be time-barred, be brought within a period of six months following the cessation of employment.

7 Section 2(5) of the EPA provides that, in proceedings in respect of failure to comply with an equality clause, a woman shall not be entitled to be awarded any payment by way of arrears of remuneration or damages in respect of a time earlier than two years before the date on which the proceedings were instituted.

8 In 1976, section 2(5) of the EPA was amended by regulation 12(1) of the Occupational Pension Schemes (Equal Access to Membership) Regulations 1976 (the Occupational Pension Regulations). Since that amendment, the retroactive effect of two years under section 2(5) of the EPA also applies to actions to secure equal treatment regarding entitlement to membership of an occupational pension scheme.

9 The main proceedings concern several contracted out pension schemes which, at various times in the past, did not allow part-time workers to become members. They are in particular the National Health Service (NHS) Pension Scheme, the Teachers' Superannuation Scheme, the Local Government Superannuation Scheme, the Electricity Supply (Staff) Superannuation Pension Scheme, the Electricity Supply Pension Scheme, the Midland Bank Pension Scheme and the Midland Bank Key-Time Pension Scheme. The details of these schemes are briefly as follows.

10 The NHS Pension Scheme is contained in Statutory Instruments adopted by the Secretary of State for Health, who also administers the scheme. Until 1 April 1991, part-time workers who worked for less than one-half of the hours which would constitute whole-time employment did not qualify for membership of the NHS Pension Scheme. Since that date, all NHS employees have been permitted to join the NHS scheme, irrespective of the number of hours worked. Existing part-time workers who were not already members of the scheme were able to elect to become members.

11 Until 1 May 1995, part-time teachers did not have a right of access to the Teachers' Superannuation Scheme if their remuneration was calculated on an hourly basis or if they were already receiving a teachers' pension. However, they were entitled to join the scheme if they were paid a pro rata proportion of a full-time worker's salary. Since 1 May 1995, hourly-paid workers are no longer excluded.

12 Until 1 April 1986, employees working less than 30 hours a week were excluded from the Local Government Superannuation Scheme. Since that date, membership has been available to part-time workers who work for at least 15 hours a week and 35 weeks a year. On 1 January 1993, the requirement of a minimum of 15 hours was removed. As from 1 May 1995, the second condition was also removed, so that, since then, part-time workers have been entitled to join the Local Government Superannuation Scheme.

13 Until 1 October 1980, employees working less than 34.5 hours were excluded from the Electricity Supply (Staff) Superannuation Pension Scheme. Since that date, membership has been open to part-time employees working at least 20 hours a week. As from 1 April 1988, the requirement of a minimum number of hours' work for access to membership was removed, so that, since that date, part-time workers may join the pension scheme regardless of how many hours they work.

14 Until 1 January 1989, part-time workers were excluded from the Midland Bank Pension Scheme. From that date, Midland Bank plc set up an additional pension scheme, the Midland Bank Key-Time Pension Scheme, for the benefit of part-time employees who worked for more than 14 hours a week. From 1 September 1992, access to that scheme was extended to all part-time employees, irrespective of their hours. On 1 January 1994, the two pension schemes merged. However, periods of employment completed before 1 January 1989 are not taken into account in calculating part-time workers' pensions. Furthermore, in order to qualify for a pension under the scheme, a worker must have completed at least two years' pensionable service.

Facts and main proceedings

15 On 28 September 1994 the Court gave judgment in Case C-57/93 Vroege v NCIV Instituut voor Volkshuisvesting and Stichting Pensioenfonds [1994] ECR I-4541 and Case C-128/93 Fisscher v Voorhuis Hengelo and Stichting Bedrijfspensionenfonds voor de Detailhandel [1994] ECR I-4583. In those judgments, the

Court held that the right to join an occupational pension scheme fell within the scope of Article 119 of the Treaty (Vroege, paragraph 18, and Fisscher, paragraph 15). It also held that the exclusion of part-time workers from access to such schemes constituted indirect discrimination contrary to Article 119 of the Treaty if the exclusion affected a much greater number of women than men unless the employer showed that it might be explained by objectively justified factors unrelated to any discrimination on grounds of sex (Vroege, paragraph 17).

16 The Court also held that the limitation of the effects in time of the judgment in Case C-262/88 Barber v Guardian Royal Exchange Group [1990] ECR I-1889 did not apply to the right to join an occupational pension scheme (Vroege, paragraph 32, and Fisscher, paragraph 28). The Court further held that the direct effect of Article 119 of the Treaty could be relied on in order retroactively to claim equal treatment in relation to the right to join an occupational pension scheme and might be so relied on as from 8 April 1976, the date of the judgment in Case 43/75 Defrenne v SABENA [1976] ECR 455, in which the Court held for the first time that Article 119 has direct effect.

17 Following the Vroege and Fisscher judgments, some 60 000 part-time workers in the United Kingdom in both the public and the private sectors commenced proceedings before industrial tribunals. Relying on Article 119 of the Treaty, they claimed that they had been unlawfully excluded from membership of the various occupational pension schemes of the kind described in paragraphs 10 to 14 of this judgment. The defendants in those cases are their employers or, in some cases, former employers.

18 Between 1986 and 1995, the pension schemes at issue were amended so as to ensure that part-time workers were entitled to join them. In particular, the Occupational Pension Schemes (Equal Access to Membership) (Amendment) Regulations 1995 prohibited, as from 31 May 1995, all direct or indirect discrimination on grounds of sex regarding membership of any occupational pension scheme.

19 In their actions, the claimants seek recognition of their entitlement to retroactive membership of the relevant pension schemes for the periods of part-time employment completed by them before the foregoing amendments, some of those periods extending further back than 8 April 1976.

20 According to the order for reference, 22 claims brought by women working in both the public and private sectors have been selected as test cases with a view to disposing of certain preliminary issues of law before the facts are considered.

21 In a first series of cases, the pension scheme concerned had been amended more than two years prior to the originating application to the Industrial Tribunal. The claimants' future part-time work will indeed be taken into account for retirement purposes. However, by virtue of regulation 12 of the Occupational Pension Regulations, they will not be entitled to claim pension rights based on their part-time service more than two years prior to the institution by them of proceedings before the Industrial Tribunal.

22 In a second series of cases, the claimants had ceased their employment with their employer more than six months before bringing proceedings in the Industrial Tribunal and, under section 2(4) of the EPA, they are therefore deprived of any right of action to secure recognition of their earlier part-time service for the purpose of calculating their pension rights.

23 Lastly, the distinguishing feature of a third series of cases is that the claimants worked regularly, but periodically or intermittently, for the same employer under successive legally separate contracts. According to the order for reference, such successive contracts may sometimes be covered by a framework contract (known as an umbrella contract), under which the parties are required to renew their various contracts of employment, thereby establishing a continuous employment relationship.

24 Where there is no umbrella contract, the period provided for in section 2(4) of the EPA starts to run from the end of each contract of employment and not from the end of the employment relationship between the worker and the establishment concerned. As a result, a worker can secure recognition of periods of part-time employment for pension entitlement purposes only if he commences proceedings within the six months following the end of each contract covering the relevant employment.

25 In the main proceedings, the claimants maintain that section 2(4) of the EPA and regulation 12 of the Occupational Pension Regulations are incompatible with Community law. First, those provisions render it virtually impossible or excessively difficult to exercise the rights conferred on them by Article 119 of the Treaty (principle of effectiveness). Second, those procedural requirements are less favourable than those applicable to similar actions of a domestic nature and, in particular, actions based on the Sex Discrimination Act 1975 or the Race Relations Act 1976 (principle of equivalence).

26 In its decision of 4 December 1995, the Industrial Tribunal, Birmingham, held, essentially, that the procedures laid down by the provisions at issue conformed with the principle of effectiveness in that they did not render excessively difficult or virtually impossible the exercise of rights conferred on the claimants by Community law.

27 That decision was confirmed by the Employment Appeal Tribunal. In its judgment of 24 June 1996, it held, furthermore, that the procedural provisions at issue satisfied the requirements of the principle of equivalence, in that they were not any less favourable than those applicable to similar actions of a domestic nature. Section 2(4) of the EPA and regulation 12 of the Occupational Pension Regulations applied without distinction to actions alleging infringement of Article 119 of the Treaty and to actions alleging breach of the principles laid down by the EPA.

28 The judgment of the Employment Appeal Tribunal was in turn upheld by judgment of the Court of Appeal of 13 February 1997.

The questions referred to the Court

29 The House of Lords, before which the case came at last instance, considered itself bound to refer the case to the Court of Justice because it raised issues which had to be resolved before it gave judgment as regards, in particular, the compatibility of the EPA, as amended, with Article 119 of the Treaty.

30 Accordingly, the House of Lords stayed proceedings pending a preliminary ruling from the Court of Justice on the following questions:

Where:

(a) a claimant has been excluded from membership of an occupational pension scheme by reason of being a part-time worker; and

(b) consequently, has not accrued pension benefits referable to service with her employer, which benefits become payable upon reaching pensionable age; and

(c) the claimant alleges that such treatment is indirect sex discrimination contrary to Article 119 of the EC Treaty,

the following three questions arise:

1. Is

(a) a national procedural rule which requires that a claim for membership of an occupational pension scheme (from which the right to pension benefits flows) which is brought in the Industrial Tribunal be brought within six months of the end of the employment to which the claim relates;

(b) a national procedural rule which provides that a claimant's pensionable service is to be calculated only by reference to service after a date falling no earlier than two years prior to the date of her claim (irrespective of whether the date on which pension benefits become payable is before or after the date of the claim)

compatible with the principle of EC law that national procedural rules for breach of Community law must not make it excessively difficult or impossible in practice for the claimant to exercise her rights under Article 119?

2. In circumstances where:

(a) rights under Article 119 fall, as a matter of domestic law, to be enforced through the medium of a statute which was enacted in 1970, prior to the United Kingdom's accession to the European Community, and came into effect on 29 December 1975, and which, prior to 8 April 1976, already conferred a right to equal pay and equality of other contractual provisions;

(b) the domestic statute contains the procedural rules referred to in question 1 above;

(c) other statutes prohibiting discrimination in the employment field, and the domestic law of contract provide for different time-limits;

(1) Does the implementation of Article 119 through that domestic statute constitute compliance with the principle of EC law that national procedural rules for a breach of Community law must be no less favourable than those which apply to similar claims of a domestic nature?

(2) If not, what are the relevant criteria for determining whether another right of action in domestic law is a domestic action similar to the right under Article 119?

(3) If a national court identifies any such similar claim in accordance with any criteria identified under (2) above, what, if any, are the relevant criteria under Community law for determining whether the procedural rules governing the similar claim or claims are more favourable than the procedural rules which govern the enforcement of the right under Article 119?

3. In circumstance where:

(a) an employee has served under a number of separate contracts of employment for the same employer covering defined periods of time and with intervals between the periods covered by the contracts of employment;

(b) after the completion of any contract, there is no obligation on either party to enter into further such contracts: and

(c) she initiates a claim within six months of the completion of a later contract or contracts but fails to initiate a claim within six months of any earlier contract or contracts;

Is a national procedural rule which has the effect of requiring a claim for membership of an occupational pension scheme from which the right to pension benefits flows to be brought within six months of the end of any contract or contracts of employment to which the claim relates and which, therefore, prevents service under any earlier contract or contracts from being treated as pensionable service, compatible with:

(1) the right to equal pay for equal work in Article 119 of the EC Treaty; and

(2) the principle of EC law that national procedural rules for breach of Community law must not make it excessively difficult or impossible in practice for the claimant to exercise her rights under Article 119?

Preliminary observations

31 First, it should be borne in mind that, according to settled case-law, in the absence of relevant Community rules, it is for the national legal order of each Member State to designate the competent courts and to lay down the procedural rules for proceedings designed to ensure the protection of the rights which individuals acquire through the direct effect of Community law, provided that such rules are not less favourable than those governing similar domestic actions (principle of equivalence) and are not framed in such a way as to render

impossible in practice the exercise of rights conferred by Community law (principle of effectiveness) (see, to that effect, Case 33/76 Rewe [1976] ECR 1989, paragraphs 5 and 6, Case 45/76 Comet [1976] ECR 2043, paragraph 13, Fisscher cited above, paragraph 39, Case C-410/92 Johnson [1994] ECR I-5483, paragraph 21, and Case C-246/96 Magorrian and Cunningham v Eastern Health and Social Services Board [1997] ECR I-7153, paragraph 37).

The first question

32 The first question concerns the scope of the principle of effectiveness and comprises two parts. In the first part, the House of Lords asks, essentially, whether Community law precludes a national procedural rule under which a claim for membership of an occupational pension scheme (from which the right to pension benefits flows) must, if it is not to be time-barred, be lodged within a period of six months following the end of the employment to which the claim relates.

33 As regards the compatibility of a time requirement, such as that contained in section 2(4) of the EPA, with the Community-law principle of effectiveness, it is settled case-law, and has been since Rewe, cited above (paragraph 5), that the setting of reasonable limitation periods for bringing proceedings satisfies that requirement in principle, inasmuch as it constitutes an application of the fundamental principle of legal certainty (Case C-261/95 Palmisani v Istituto Nazionale della Previdenza Sociale [1997] ECR I-4025, paragraph 28).

34 Contrary to the contention of the claimants in the main proceedings, the imposition of a limitation period of six months, as laid down in section 2(4) of the EPA, even if, by definition, expiry of that period entails total or partial dismissal of their actions, cannot be regarded as constituting an obstacle to obtaining the payment of sums to which, albeit not yet payable, the claimants are entitled under Article 119 of the Treaty. Such a limitation period does not render impossible or excessively difficult the exercise of rights conferred by the Community legal order and is not therefore liable to strike at the very essence of those rights.

35 The answer to the first part of the first question must therefore be that Community law does not preclude a national procedural rule which requires that a claim for membership of an occupational pension scheme (from which the right to pension benefits flows) must, if it is not to be time-barred, be brought within six months of the end of the employment to which the claim relates, provided, however, that that limitation period is not less favourable for actions based on Community law than for those based on domestic law.

36 By the second part of its first question, the national court seeks essentially to ascertain whether Community law precludes a national procedural rule which provides that a claimant's pensionable service is to be calculated only by reference to service after a date falling no earlier than two years prior to the date of her claim.

37 It must first be borne in mind that the object of such a claim is not to obtain, with retroactive effect, arrears of benefits under the occupational pension scheme but is to secure recognition of the right to retroactive membership of that scheme for the purpose of evaluating the benefits to be paid in the future.

38 Second, if her claim is successful, a claimant could not claim more favourable treatment, particularly in financial terms, than she would have had if she had been duly accepted as a member (Fisscher, cited above, paragraph 36).

39 Consequently, the fact that a worker can claim retroactively to join an occupational pension scheme does not allow him to avoid paying the contributions relating to the period of membership concerned (Fisscher, cited above, paragraph 37).

40 In Magorrian and Cunningham, cited above, the Court held that the principle of effectiveness precluded the application of a procedural rule which was essentially identical to the one at issue in these proceedings. The Court held, in paragraph 41 of that judgment, that a procedural rule whereby, in proceedings concerning access to membership of occupational pension schemes, the right to be admitted to a scheme may have effect from a date no earlier than two years before the institution of proceedings would deprive the persons concerned of the additional benefits under the scheme to which they were entitled to be affiliated, since those benefits could be calculated only by reference to a starting date falling two years prior to commencement of proceedings by them.

41 In that connection, the Court held that, unlike the rules which, in the interests of legal certainty, merely limited the retroactive scope of a claim for certain benefits and did not therefore strike at the very essence of the rights conferred by the Community legal order, a procedural rule such as that at issue in the main proceedings was such as to render any action by individuals relying on Community law impossible in practice (Magorrian and Cunningham, cited above, paragraph 44).

42 Community law therefore precludes the application to a claim for recognition of entitlement to join an occupational pension scheme of a national rule under which such entitlement, in the event of a successful claim, is limited to a period which starts to run from a point in time two years prior to commencement of proceedings in connection with the claim (Magorrian and Cunningham, paragraph 47).

43 Even though the procedural rule at issue does not totally deprive the claimants of access to membership, the fact nevertheless remains that, just as in Magorrian and Cunningham, a procedural rule like regulation 12 of the Occupational Pension Regulations prevents the entire record of service completed by those concerned before the two years preceding the date on which they commenced their proceedings from being taken into account for the purposes of calculating the benefits which would be payable even after the date of the claim.

44 That conclusion is reinforced by the fact that, in Magorrian and Cunningham, the persons concerned sought recognition of their right to retroactive membership of a pension scheme with a view to receiving additional benefits whereas, in this case, the aim of the proceedings is to obtain basic retirement pensions.

45 The answer to the second part of the first question must therefore be that Community law precludes a national procedural rule which provides that a claimant's pensionable service is to be calculated only by reference to service after a date falling no earlier than two years prior to the date of claim.

The second question

46 By its second question, the House of Lords seeks essentially to ascertain what criteria are to be used to determine whether procedural rules such as those introduced by section 2(4) of the EPA and by regulation 12 of the Occupational Pension Regulations, which apply to proceedings instituted by the claimants in the main proceedings on the basis of Article 119 of the Treaty, are less favourable than other procedural rules applicable to similar proceedings of a domestic nature.

47 In the light of the answer given to the second part of the first question, it is unnecessary to examine the scope of the principle of equivalence in relation to regulation 12 of the Occupational Pension Regulations.

48 By the first part of its second question, the House of Lords asks whether, in order to ensure compliance with the principle of equivalence, it may hold that an action alleging infringement of provisions of a law such as the EPA constitutes a domestic action similar to one alleging infringement of Article 119 of the Treaty.

49 In order to verify whether the principle of equivalence has been complied with in the present case, it is for the national court, which alone has direct knowledge of the procedural rules governing actions in the field of domestic law, to verify whether the procedural rules intended to ensure that the rights derived by individuals from Community law are safeguarded under domestic law comply with that principle and to consider both the purpose and the essential characteristics of allegedly similar domestic actions (see Case C-326/96 Levez [1998] ECR I-7835, paragraphs 39 and 43).

50 However, with a view to the appraisal to be carried out by the national court, the Court may provide guidance for the interpretation of Community law.

51 It must be borne in mind that the Court held, in paragraph 46 of Levez, a judgment delivered after the House of Lords sought a ruling in this case, that the EPA was the domestic legislation which gave effect to the Community principle of non-discrimination on grounds of sex in relation to pay, pursuant to Article 119 of the Treaty and Council Directive 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 (OJ 1975 L 45, p. 19). In paragraph 47 of the same judgment, the Court stated that the fact that the same procedural rules applied to two comparable claims, one relying on a right conferred by Community law, the other on a right acquired under domestic law, was not enough to ensure compliance with the principle of equivalence, since one and the same form of action was involved.

52 Since, following the accession of the United Kingdom to the Communities, the EPA constituted the legislation by means of which the United Kingdom discharged its obligations under Article 119 of the Treaty and, subsequently, under Directive 75/117, the Court concluded that the EPA could not provide an appropriate ground of comparison against which to measure compliance with the principle of equivalence (Levez, paragraph 48).

53 The answer to the first part of the second question must therefore be that an action alleging infringement of a statute such as the EPA does not constitute a domestic action similar to an action alleging infringement of Article 119 of the Treaty.

54 By the second part of its second question the House of Lords seeks to ascertain the Community-law criteria for identifying a similar action in domestic law.

55 The principle of equivalence requires that the rule at issue be applied without distinction, whether the infringement alleged is of Community law or national law, where the purpose and cause of action are similar (Levez, paragraph 41).

56 In order to determine whether the principle of equivalence has been complied with in the present case, the national court - which alone has direct knowledge of the procedural rules governing actions in the field of employment law - must consider both the purpose and the essential characteristics of allegedly similar domestic actions (Levez, paragraph 43).

57 In view of the foregoing, the answer to the second part of the second question must be that, in order to determine whether a right of action available under domestic law is a domestic action similar to proceedings to give effect to rights conferred by Article 119 of the Treaty, the national court must consider whether the actions concerned are similar as regards their purpose, cause of action and essential characteristics.

58 By the third part of its second question, the House of Lords seeks to ascertain what are the relevant criteria for determining whether the procedural rules governing any claim which it may have identified as being similar are more favourable than the procedural rules which govern the enforcement of rights conferred by Article 119 of the Treaty.

59 For the purposes of the appraisal to be undertaken by the national court, regard must be had to the relevant guidance as to the interpretation of Community law given in Levez.

60 Thus, in paragraph 51, the Court stated that the principle of equivalence would be infringed if a person relying on a right conferred by Community law were forced to incur additional costs and delay by comparison with a claimant whose action was based solely on domestic law.

61 More generally, it observed that whenever it fell to be determined whether a procedural provision of national law was less favourable than those governing similar domestic actions, the national court must take into account the role played by that provision in the procedure as a whole, as well as the operation and any special features of that procedure before the different national courts (Levez, paragraph 44).

62 It follows that the various aspects of the procedural rules cannot be examined in isolation but must be placed in their general context. Moreover, such an examination may not be carried out subjectively by reference to circumstances of fact but must involve an objective comparison, in the abstract, of the procedural rules at issue.

63 In view of the foregoing, the answer to the third part of the second question must be that, in order to decide whether procedural rules are equivalent, the national court must verify objectively, in the abstract, whether the rules at issue are similar taking into account the role played by those rules in the procedure as a whole, as well as the operation of that procedure and any special features of those rules.

The third question

64 By its third question, the House of Lords seeks essentially to ascertain whether Community law precludes a procedural rule which has the effect of requiring a claim for membership of an occupational pension scheme (from which the right to pension benefits flows) to be brought within six months after the end of any contract (or contracts) of employment to which the claim relates.

65 This question relates to a number of actions before the national court which are distinguished by the fact that the claimants work regularly, but periodically or intermittently, for the same employer, under successive legally separate contracts. According to the order for reference, in the absence of an umbrella contract, the period prescribed in section 2(4) of the EPA starts to run at the end of each contract of employment and not at the end of the employment relationship between the worker and the establishment concerned. It follows that workers are unable to secure recognition of periods of part-time work for the purpose of calculating their pension rights unless they have instituted proceedings within six months after the end of each contract under which the work concerned was performed.

66 In its written observations, the Commission maintains that the application of a procedural rule of that kind to actions brought by such workers is incompatible with the principle of effectiveness in two respects. First, that procedural rule compels workers wishing to have their periods of part-time employment recognised for the purpose of calculating their pension rights to bring a continuous series of actions in respect of each contract under which they have performed the work concerned. Second, such a rule precludes inclusion of all past service of the workers concerned in the calculation of their retirement benefits even where such service formed part of a continuous employment relationship. Any such workers who brought their first legal actions within the six months following the end of their last contract of employment would be deprived of the possibility of having service under their previous contracts recognised.

67 As pointed out in paragraph 33 of this judgment, the Court has held that the setting of reasonable limitation periods is compatible with Community law inasmuch as the fundamental principle of legal certainty is thereby applied. Such limitation periods cannot therefore be regarded as capable of rendering virtually impossible or excessively difficult the exercise of rights conferred by Community law.

68 Whilst it is true that legal certainty also requires that it be possible to fix precisely the starting point of a limitation period, the fact nevertheless remains that, in the case of successive short-term contracts of the kind referred to in the third question, setting the starting point of the limitation period at the end of each contract renders the exercise of the right conferred by Article 119 of the Treaty excessively difficult.

69 Where, however, there is a stable relationship resulting from a succession of short-term contracts concluded at regular intervals in respect of the same employment to which the same pension scheme applies, it is possible to fix a precise starting point for the limitation period.

70 There is no reason why that starting point should not be fixed as the date on which the sequence of such contracts has been interrupted through the absence of one or more of the features that characterise a stable employment relationship of that kind, either because the periodicity of such contracts has been broken or because the new contract does not relate to the same employment as that to which the same pension scheme applies.

71 A requirement, in such circumstances, that a claim concerning membership of an occupational pension scheme be submitted within the six months following the end of each contract of employment to which the claim relates cannot therefore be justified on grounds of legal certainty.

72 The answer to the third question must therefore be that Community law precludes a procedural rule which has the effect of requiring a claim for membership of an occupational pension scheme (from which the right to pension benefits flows) to be brought within six months of the end of each contract of employment to which the claim relates where there has been a stable employment relationship resulting from a succession of short-term contracts concluded at regular intervals in respect of the same employment to which the same pension scheme applies.

Decision on costs

Costs

73 The costs incurred by the United Kingdom and Irish Governments and the Commission, 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.

Operative part

On those grounds,

THE COURT,

in answer to the questions referred to it by the House of Lords by order of 5 February 1998, hereby rules:

1. Community law does not preclude a national procedural rule which requires that a claim for membership of an occupational pension scheme (from which the right to pension benefits flows) must, if it is not to be time-barred, be brought within six months of the end of the employment to which the claim relates, provided, however, that that limitation period is not less favourable for actions based on Community law than for those based on domestic law.

2. Community law precludes a national procedural rule which provides that a claimant's pensionable service is to be calculated only by reference to service after a date falling no earlier than two years prior to the date of claim.

3. An action alleging infringement of a statute such as the Equal Pay Act 1970 does not constitute a domestic action similar to an action alleging infringement of Article 119 of the EC Treaty (Articles 117 to 120 of the EC Treaty have been replaced by Articles 136 EC to 143 EC).

4. In order to determine whether a right of action available under domestic law is a domestic action similar to proceedings to give effect to rights conferred by Article 119 of the Treaty, the national court must consider whether the actions concerned are similar as regards their purpose, cause of action and essential characteristics.

5. In order to decide whether procedural rules are equivalent, the national court must verify objectively, in the abstract, whether the rules at issue are similar taking into account the role played by those rules in the procedure as a whole, as well as the operation of that procedure and any special features of those rules.

6. Community law precludes a procedural rule which has the effect of requiring a claim for membership of an occupational pension scheme (from which the right to pension benefits flows) to be brought within six months of the end of each contract of employment to which the claim relates where there has been a stable employment relationship resulting from a succession of short-term contracts concluded at regular intervals in respect of the same employment to which the same pension scheme applies.