Opinion of Advocate General Jacobs delivered on 16 January 1997

Dimossia Epicheirissi Ilektrismou (DEI) v Efthimios Evrenopoulos

Reference for a preliminary ruling: Dioikitiko Efeteio Athinon - Greece

Social policy - Men and women - Equal treatment - Applicability of Article 119 of the EC Treaty or Directive 79/7/EEC - Insurance scheme of a State electricity company - Survivors' pensions - Protocol No 2 annexed to the Treaty on European Union - Meaning of 'legal proceedings'

Case C-147/95

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Opinion of the Advocate-General

1 The present case, which comes by way of a reference for a preliminary ruling from the Dioikitiko Efeteio Athinon (Administrative Court of Appeal, Athens), concerns a claim for a widower's pension made by Mr Evthimios Evrenopoulos against the Dimosia Epicheirisi Ilektrismou (Public Electricity Company, hereinafter `DEI'), the former employer of his deceased wife. Mr Evrenopoulos argues that he suffers from discrimination on grounds of sex in that he does not receive a widower's pension similar to that to which a widow in his position would be entitled. He further argues that such discrimination is contrary to Article 119 of the Treaty. The case therefore again raises the issue of the scope of Article 119 in relation to occupational pension rights.

2 Article 119, which embodies the principle that men and women should receive equal pay for equal work, defines `pay' as `the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which the worker receives, directly or indirectly, in respect of his employment from his employer'.

3 In 1976, in Defrenne v Sabena, (1) the Court held that the principle could be relied on before national courts. In 1990, the Court held in Barber (2) that contracted-out occupational pension schemes fell within the scope of Article 119, so that differences in pensionable age were prohibited. Finally in 1994 in Beune, (3) considered more fully below, the Court had to consider whether Article 119 applied to a statutory pension scheme for civil servants which in certain respects resembled a private sector occupational pension scheme.

The national rules

4 DEI is described in the order for reference as a State body sui generis, having legal personality and being for most purposes, including in its capacity as employer, a private-law body. Its staff are insured under Law No 4491/1966 on the insurance of the staff of the Dimosia Epicheirisi Ilektrismou (hereinafter `the Law'). (4) In accordance with that Law DEI undertakes and operates the social insurance of its staff; in that capacity, it is governed by public law. The operation of the staff social insurance scheme is entrusted to a special department set up by decision of the Administrative Board of DEI, published in the Government Gazette. Article 1 of the Law calls that unit the `Insurance Department'. All persons connected to DEI by an employment relationship, or on a salaried assignment basis, together with the members of their family, are mandatorily and as of right subject to the insurance scheme (Article 2 of the Law). The insurance scheme covers pensions, health and welfare assistance (Article 3). The Law also established an 11-member Insurance Board, which inter alia (i) certifies the periods credited to those insured; (ii) makes decisions on the award of the benefits provided for under the Law; and (iii) makes proposals to the DEI Administrative Board for the adoption of any measures necessary to improve the conditions under which the insurance protection set up by the Law is provided to the staff of DEI (Article 4). The resources available to DEI for the insurance scheme consist of contributions from those insured and from pensioners. Those resources `accrue to DEI, which undertakes to cover the costs and general obligations of the insurance scheme set up by the present law' (Article 7). The level of pension is calculated on the basis of the remuneration in the final year of service and is directly related to the period of service: the requisite period of insurance for the award of a pension corresponds to the period of service in DEI (Article 8). However, the Greek Government states in its written observations that periods of insurance accomplished elsewhere in the public sector (for example, employment by the State or by legal persons governed by public law and periods of military service) are also taken into account.

5 In issue in the present proceedings is Article 9(1)(a) of the Law. It provides that:

`in the event of the death of the pensioner or person insured ... the widow and, in the case of a female insured person, a widower who is without means and totally unfit for work and who was maintained by the deceased for the entire five years preceding her death are entitled to a pension'.

The main proceedings

6 Mr Evrenopoulos, a lawyer in the public service, applied in a letter dated 23 January 1989 to the Director of DEI Staff Insurance for a widower's pension on the death of his wife, who was a DEI pensioner. That claim passed through various procedural stages, which I must describe in some detail so as to explain (and to be able to answer) one of the questions referred to this Court.

7 The letter remained unanswered at first, and on 12 June 1989 Mr Evrenopoulos brought an action before the Dioikitiko Protodikeio Athinon (Administrative Court of First Instance, Athens) against the implied rejection of his claim. That action appears to have been brought within the prescribed time-limit. By a decision of 21 September 1989, adopted whilst the action was still pending, the Director of DEI Staff Insurance refused Mr Evrenopoulos' application on the ground that he did not meet the conditions laid down in Article 9(1)(a) of the Law for the award of a pension to a widower.

8 By judgment No 8361/90 of 26 November 1990 the Dioikitiko Protodikeio Athinon rejected Mr Evrenopoulos' action on the ground that he had not first lodged an objection against the decision of 21 September 1989 with the DEI Staff Insurance Board. However, because the Director had not informed him of the possibility of lodging such an objection, the court granted Mr Evrenopoulos a three-month period, from the date of notification of the judgment, to fulfil that requirement. Mr Evrenopoulos then lodged an objection with the DEI Insurance Board, on 4 February 1991; that objection was rejected by decision of 12 March 1991 on the same grounds as those contained in the decision of the Director. By an application of 2 May 1991 Mr Evrenopoulos successfully challenged the decision of the Insurance Board before the Dioikitiko Protodikeio Athinon. The Dioikitiko Protodikeio Athinon decided that Mr Evrenopoulos was entitled to a widower's pension by virtue of the principle of equal treatment of sexes laid down by Articles 4 and 116 of the Greek Constitution and by Community law.

9 On 12 June 1992 DEI appealed against that decision to the Dioikitiko Efeteio Athinon, the referring court. It argues inter alia that the decision under appeal wrongly accepted that Article 9(1)(a) of the Law was contrary to Community law: it seeks to rely inter alia on a derogation under Article 7(1)(c) of Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security. (5)

10 Upon hearing those arguments the Dioikitiko Efeteio Athinon decided to refer the case to this Court. It seeks a reply to the following questions:

`1. Is the DEI insurance scheme as described in paragraph 2 above an occupational or a statutory scheme?

2. Does Article 119 of the EEC Treaty or Directive 79/7 apply to the scheme, in particular to the survivor's benefits for which it provides?

3. Is Article 9(1)(a) described above of Law No 4491/1966 contrary to Article 119 of the EEC Treaty?

4. Is its maintenance in force permitted by any other Community provision?

5. Does Article 119 of the EEC Treaty apply to the case in point in the light of Protocol No 2 to the Treaty and the fact that the respondent brought his original action before 17 May 1990, that is to say on 12 June 1989, but that action was, however, dismissed by Decision No 8361/1990 of the Administrative Court of First Instance, Athens, because no objection had been lodged (quasi-judicial action) against the decision of the Director of Staff Insurance, and in the judgment a time-limit of three months was allowed for lodging such an objection?

6. If the answer to Questions 3 and 5 is in the affirmative, is a widower who does not receive a pension and other survivor's benefits on the basis of that provision (Article 9(1)(a) of Law No 4491/1966) entitled to a pension and survivor's benefits under the same conditions as those laid down for widows?'

11 Written observations were submitted by DEI and by Mr Evrenopoulos, as well as by Greece, the United Kingdom and the Commission, all of whom were also represented at the hearing.

The first and second questions

12 The first and second questions seek to establish whether a pension scheme providing survivor's benefits, such as that operated by DEI, is covered by Article 119 of the Treaty, or whether it comes within the scope of Directive 79/7/EEC. (6)

13 The answer to those questions seems straightforward on the basis of the existing case-law, in particular the Court's judgment in Beune. (7) In that case the Court was faced with a similar question, relating to the statutory pension scheme for Dutch civil servants. The Court, following my Opinion, examined the importance of various criteria for determining whether the benefits in issue had to be considered as `pay' in the sense of Article 119 of the Treaty. (8) The Court established that criteria such as (i) the statutory nature of the scheme; (ii) whether or not it results from an agreement between employers and employees; (iii) the supplementary nature of the pension benefits; (iv) the arrangements for funding and managing the scheme; (v) whether the scheme is reserved for a specific occupational group, are not in themselves decisive for determining whether the scheme is covered by Article 119. As the Court held: (9)

`Indeed, it follows from all that has been said above that the only possible decisive criterion is whether the pension is paid to the worker by reason of the employment relationship between him and his former employer, that is to say the criterion of employment based on the wording of Article 119 itself.'

14 The Court did add that even that criterion cannot be regarded as sufficient, because pensions paid by statutory social security schemes may reflect pay in respect of previous employment. (10) It concluded, however, that: (11)

`considerations of social policy, of State organization, or of ethics or even budgetary preoccupations which influenced, or may have influenced, the establishment by the national legislature of a scheme such as the scheme at issue cannot prevail if the pension concerns only a particular category of workers, if it is directly related to the period of service and if its amount is calculated by reference to the civil servant's last salary. The pension paid by the public employer is therefore entirely comparable to that paid by a private employer to his former employees.'

15 I similarly concluded in my Opinion in Beune that the truly decisive factor is simply the fact that the employee's entitlement to the pension arises out of the employment relationship and can be regarded as part of his remuneration, albeit deferred. (12)

16 I have no doubt, on the basis of the referring court's description of the DEI scheme, that the DEI staff's entitlement to a pension under the scheme arises out of their employment relationship, and that the benefits are therefore covered by Article 119 of the Treaty. The scheme, including its pension benefits, is reserved to DEI's staff and members of their families. The pension therefore concerns only a particular category of workers. It is moreover directly related to the period of service, and its amount is calculated by reference to the employee's last salary. The pension is financed by contributions from the employees and from the pensioners, and by the employer. It is therefore clear that the pension has to be regarded as deferred pay.

17 It is of no relevance that the benefits in issue in the present proceedings are widowers' benefits. Entitlement to such benefits also arises out of the employment relationship, not between the widower and his employer, but between the widower's deceased wife and her former employer. In Coloroll (13) the Court accepted that the direct effect of Article 119 could be relied upon by both employees and their dependants.

18 DEI and the Greek Government none the less take the view that the benefits are not covered by Article 119. In support of that view they refer to various other criteria, and in particular to: (i) the statutory nature of the benefits; (ii) the fact that their amounts are not determined by agreement or by the employer unilaterally; (iii) the fact that they do not complement a general pension scheme in the nature of social security; (iv) the funding of the scheme. However, those criteria were examined by the Court in Beune and rejected. Indeed the present case demonstrates the merits of the Court's approach in Beune: if one lost sight of the basic criterion of the employment relationship it would be extremely difficult, as it would have been in Beune, to determine on the basis of the various criteria referred to whether or not the benefits in issue were pay.

19 In any event, a number of the specific arguments advanced in the present case are unconvincing. DEI and the Greek Government emphasize that the level of pension benefits is not based on any agreement between DEI and its employees, but is determined directly by the Law. That may be true, but since the benefits are calculated on the basis of contributions to the scheme in the final year of service there is a clear correlation with wage negotiation in general: the contributions are fixed as a percentage of the employees' remuneration and one would assume that the employees are aware of the effect a change in wages may have on future pension benefits.

20 Similarly, I cannot accept the argument that, in so far as the scheme is funded by the employees' own contributions, it is not funded by the employer and is not part of the employees' remuneration. Since the employees' contribution is fixed as a percentage of their remuneration, it is a function of that remuneration, and, as a result, indirectly forms part of it. Where a DEI employee obtains a pay rise, that will be reflected in his contributions to the pension scheme, and if he is in his last year of service it will affect the level of his pension.

21 I do not consider it necessary to examine all the other arguments which have been raised on this issue since, as was pointed out on behalf of the United Kingdom at the hearing, they amount to an attempt to reopen the debate which was concluded in the Beune case, a case which was examined in the course of a series of cases on the application of Article 119 to occupational pensions, and which was decided by the full Court after a very thorough analysis of the issues. In my view to reopen that debate is unnecessary and would reintroduce legal uncertainty.

22 I therefore conclude that a pension scheme including survivor's benefits, such as the one operated by DEI, must be regarded as falling within Article 119 of the Treaty.

The third, fourth and sixth questions

23 By these questions the referring court essentially asks whether, if the scheme is covered by Article 119, the difference in treatment between widows and widowers of deceased former employees is compatible with that provision and, if it is not, whether a widower is entitled to a pension and survivor's benefits under the same conditions as those laid down for widows.

24 The answers to those questions are clear. As regards the third question, it is settled case-law since the judgment in Defrenne v Sabena that all forms of direct discrimination, including in particular those `which have their origin in legislative provisions ... and which may be detected on the basis of a purely legal analysis of the situation', (14) are prohibited. The difference in treatment between widows and widowers laid down in Article 9(1)(a) of the Law is a textbook example of such a direct discrimination.

25 It is further obvious, in response to the fourth question, that no other Community provision could justify the maintenance in force of the disputed rule. The Treaty does not provide for any derogations from Article 119 which could have such an effect, and it goes without saying that Community legislation - including Article 7(1)(c) of Directive 79/7 - cannot, as a matter of principle, provide for any such derogations.

26 The sixth question (whether Article 119 requires that the widower should receive benefits under the same conditions as those laid down for widows) appears to be asked because DEI has contended that, if the contested provision is discriminatory, then in Greek law it is unconstitutional and invalid as regards widows as well as widowers. That is not however the position in Community law. In Coloroll, where the issue was debated at some length, the Court pointed out that, once discrimination is found to exist and so long as measures for bringing about equal treatment have not been adopted, `the only proper way of complying with Article 119 is to grant to the persons in the disadvantaged class the same advantages as those enjoyed by the persons in the favoured

class'. (15) It will be remembered that that case was concerned not only with the rights of employees, but also with survivor's pensions.

27 I therefore conclude that the appropriate reply to the third, fourth and sixth questions is that:

(i) a difference in treatment between widows and widowers such as the one in issue in the main proceedings is incompatible with Article 119 of the Treaty;

(ii) its maintenance in force is not permitted by any other Community provision; and

(iii) so long as measures for bringing about equal treatment have not been adopted the only proper way of complying with Article 119 is to grant to widowers pensions and other survivor's benefits under the same conditions as those laid down for widows.

The fifth question

28 The fifth question raises a more difficult issue. It has its origin in the well-known temporal limitation imposed in the Barber judgment. In Barber the Court established for the first time that Article 119 of the Treaty covers pensions paid by contracted-out private occupational schemes, and exceptionally, for overriding reasons of legal certainty, it limited the effects in time of its judgment in the following terms: (16)

`It must therefore be held that the direct effect of Article 119 of the Treaty may not be relied upon in order to claim entitlement to a pension with effect from a date prior to that of this judgment [17 May 1990], except in the case of workers or those claiming under them who have before that date initiated legal proceedings or raised an equivalent claim under the applicable national law.'

29 The exact interpretation of that statement gave rise to considerable debate, and was clarified by the Court in Ten Oever. (17) It is now covered by Protocol No 2 to the EC Treaty, introduced by the Treaty on European Union, which provides as follows:

`For the purposes of Article 119 of this Treaty, benefits under occupational social security schemes shall not be considered as remuneration if and in so far as they are attributable to periods of employment prior to 17 May 1990, except in the case of workers or those claiming under them who have before that date initiated legal proceedings or introduced an equivalent claim under the applicable national law.'

30 In the present case it is the exception to the temporal limitation which is in issue. It is clear from Coloroll and Beune that, in principle, the Protocol applies to the type of benefits claimed by Mr Evrenopoulos. In Coloroll (18) the Court confirmed that the temporal limitation laid down in the Barber judgment applies to survivors' pensions; and in Beune the Court held that the Protocol applied to the civil servants' pension there in issue, which must be regarded as a benefit under an occupational scheme within the meaning of the Protocol: (19)

`Although governed by statute, that benefit protects the civil servant against the risk of old age and constitutes consideration received by the worker from the public employer in respect of his employment, similar to that paid by a private employer under an occupational scheme.'

The same is true, in my view, of a widower's pension such as the one in issue here.

31 At first sight, it may appear that the above point does not have to be decided because the Protocol could not in any event bar Mr Evrenopoulos' action. He made his initial claim well before 17 May 1990: his first letter dates from 23 January 1989 and he brought proceedings on 12 June 1989. However, his action before the courts did not have an entirely smooth passage, as explained above. (20)

32 Mr Evrenopoulos and the Commission contend that in the circumstances of the present case the exception for those who had initiated proceedings before 17 May 1990 applies.

33 Mr Evrenopoulos takes the view that the action he brought on 12 June 1989 was, at that moment, fully in accordance with the relevant procedural rules. In reply to a written question put by the Court he set out at considerable length his understanding of those rules. He explains that, since the Director of DEI Staff Insurance did not reply to his initial letter of 23 January 1989, he was compelled to institute legal proceedings within a certain time-limit, with which he complied. The Director then took a decision rejecting his claim, while the action was pending. That decision was treated as the subject of the initial proceedings, but the action was dismissed because Mr Evrenopoulos had not lodged an objection against the decision with the Staff Insurance Board. However, the Dioikitiko Protodikeio Athinon, applying case-law of the Symvoulio tis Epikrateias (Council of State), decided that the Director should have informed Mr Evrenopoulos of the possibility of lodging such an objection within the prescribed three-month period, and therefore granted Mr Evrenopoulos the opportunity of doing so within three months of the notification of the judgment. He took that opportunity, and brought a new action against the rejection of his objection on 2 May 1991.

34 Mr Evrenopoulos contends in essence that his first action was not inadmissible under Greek law and that the need to introduce the second action arose solely because DEI took, out of time, an explicit decision to reject his complaint. In his submission neither that decision, nor the introduction of the second action, undid the effects of the first action. Mr Evrenopoulos concludes that, since the initial action was considered admissible, he should benefit from the `exception in favour of individuals who have taken action in good time in order to safeguard their rights'. (21)

35 The Commission's view is that the exception applies to all workers or those claiming under them who, in one way or another (through administrative or judicial channels), challenged the breach of Article 119 prior to 17 May 1990. In the present case it does not matter that the initial action was rejected for procedural reasons. Eventually Mr Evrenopoulos' challenge was successful, and that is sufficient.

36 DEI and the United Kingdom argue in their written observations that Mr Evrenopoulos does not benefit from the exception for those who have initiated proceedings before 17 May 1990. At the hearing that position was also taken on behalf of the Greek Government.

37 DEI takes the view that, because the action brought on 12 June 1989 was not in accordance with the relevant procedural rules under Greek law, Mr Evrenopoulos had not before 17 May 1990 `initiated legal proceedings or introduced an equivalent claim under the applicable national law'.

38 The United Kingdom similarly argued, in its written observations, that the exception does not apply where an action was dismissed because the proceedings had been commenced invalidly under national procedural law. A claimant who has not validly brought proceedings prior to 17 May 1990 - for example because he failed to comply with a time-limit for bringing the proceedings under national law - is in no different position from a claimant who failed to bring proceedings asserting the claim at all. It appears, however, that at the time when it submitted its written observations the United Kingdom was not aware of the exact course of events, which had not been fully explained in the order for reference on which the United Kingdom's written observations were based. At that time it appeared that Mr Evrenopoulos' original action had been dismissed because it had not been brought within the three months allowed in the decision of the Director of DEI Staff Insurance.

39 At the hearing the United Kingdom reversed its position in the light of information about the course of the proceedings which was provided by Mr Evrenopoulos in response to the Court's written question, and which I have summarized above. Counsel for the United Kingdom emphasizes that a person who had made a claim or commenced proceedings under national law before the date of the Barber judgment is not thereby entitled, if those proceedings are unsuccessful, subsequently to bring new proceedings after that date. The temporal limitation prevents claims brought after the date of the Barber judgment from having retrospective effect, and that must be so whether or not the claimant had previously brought unsuccessful proceedings. However, the United Kingdom takes the view that, if it is correct as a matter of Greek law that Mr Evrenopoulos has at all times adopted the correct form of proceeding, then the subsequent decisions of the Greek courts can all be properly regarded as stages in proceedings which were first commenced in 1989. On that analysis Mr Evrenopoulos would not be barred by the temporal limitation.

40 As a matter of principle it is clear, in my view, that a claim which was brought in a wholly irregular form before the date of the Barber judgment, so that a new claim had to be brought after the date of that judgment, cannot fall within the exception to the Barber limitation. Both the Barber judgment and the Protocol refer to the initiation of proceedings or the introduction of an equivalent claim `under the applicable national law'. It is clear that such claims must be made in accordance with the applicable procedural rules. Where Community law itself does not provide for a particular procedure, as in the present case, actions based on Community law are governed by the relevant rules in the national legal systems (subject to the requirement that such rules must not be less favourable than those relating to similar actions of a domestic nature and must not make it impossible or excessively difficult in practice to exercise the relevant Community rights). (22) The mere fact that Barber and the Protocol allow for the exception in issue cannot render an action admissible which is otherwise inadmissible under national law.

41 There remains the question how those principles should be applied in a case such as the present one. The answer seems to me to lie in whether there is a sequence of events such that the proceedings now before the national court form part of a sequence which originated in a claim duly made before 17 May 1990.

42 It will be recalled (23) that, although the national court of first instance dismissed Mr Evrenopoulos' first action, it allowed him a period of three months to lodge an objection with the DEI Staff Insurance Board, which he duly made, against the decision of the Director refusing his initial claim. In his second action he challenged the decision of the Insurance Board rejecting his objection. The decision of the national court of first instance is now the subject of an appeal before the national appellate court. That appeal will ultimately determine Mr Evrenopoulos' initial claim, introduced before the critical date of 17 May 1990. In other words the administrative decision in issue is the decision rejecting Mr Evrenopoulos' objection to the decision rejecting his initial claim. That is sufficient in my view to establish that the claim brought before 17 May 1990 is the subject of these proceedings.

43 Moreover even if, as the Greek Government argues, there was an irregularity in the national proceedings, that cannot, as a matter of Community law, prejudice the outcome of a claim introduced before the critical date in a case where the national courts have themselves accepted that the irregularity can be remedied and are prepared to examine the substance of the initial claim.

44 In the present case there may be the additional factor that to hold that Mr Evrenopoulos could not benefit would have the effect of giving the pension scheme the benefit of its own irregular conduct, since it appears that the need for a second action arose from the failure of the Director to reply in writing in good time and his failure to notify Mr Evrenopoulos of the possibility of lodging an objection with the Insurance Board. Even in the absence of that factor, however, I consider that Mr Evrenopoulos' claim must succeed for the other reasons I have given.

45 That view is reinforced if, as I think is the right approach, the exception in favour of those who had already introduced a claim should not be narrowly construed. Rather, it is the temporal limitation introduced by the Barber judgment which, as a departure from the normal canons of interpretation, should be subject to strict construction. I do not think that a non-restrictive interpretation of the exception for those who have made their claims before the date of the judgment could undermine the objective of safeguarding legal certainty, which precludes `legal situations which have exhausted all their effects in the past from being called in question where that might upset retroactively the financial balance of many contracted-out schemes'. (24) Clearly, the number of persons who may benefit from that exception will in any event be few.

Conclusion

46 Accordingly, the questions referred by the Dioikitiko Efeteio Athinon should in my opinion be answered as follows:

(1) Benefits paid under a pension scheme such as the DEI insurance scheme, including the survivor's benefits for which it provides, fall within the scope of Article 119 of the Treaty.

(2) A provision in such a scheme whereby, in the case of a female insured person, a widower is entitled to a survivor's pension only if he is without means and totally unfit for work and was maintained by the deceased for the entire five years preceding her death, whereas no such restriction applies to the entitlement of the widow of a male insured person, is incompatible with Article 119 of the Treaty and is not permitted by any other provision of Community law.

(3) So long as measures for bringing about equal treatment have not been adopted, the widower is entitled to pension and other survivor's benefits under the same conditions as those laid down for widows.

(4) The direct effect of Article 119 may be relied upon, for the purpose of claiming equal treatment in the matter of survivor's pensions under an occupational pension scheme in relation to benefits payable in respect of periods before 17 May 1990, only by workers or those claiming under them who have, before that date, initiated legal proceedings or raised an equivalent claim under the applicable national law. Where a claim brought before that date is followed by legal proceedings which are discontinued and new proceedings are subsequently commenced, it is sufficient that what is in issue in the current proceedings is the determination of the original claim.

(1) - Case 43/75 [1976] ECR 455.

(2) - Case C-262/88 [1990] ECR I-1889.

(3) - Case C-7/93 [1994] ECR I-4471.

(4) - Official Journal of the Hellenic Republic A1.

(5) - OJ 1979 L 6, p. 24.

(6) - Cited in note 5.

(7) - Cited in note 3.

(8) - See paragraphs 22 and following, both of the judgment and of the Opinion.

(9) - At paragraph 43.

(10) - At paragraph 44.

(11) - At paragraph 45.

(12) - See paragraph 38 of my Opinion.

(13) - Case C-200/91 [1994] ECR I-4389.

(14) - Cited in note 1, paragraph 21 of the judgment.

(15) - Cited in note 13, paragraph 32 of the judgment.

(16) - Cited in note 2, paragraph 45 of the judgment.

(17) - Case C-109/91 [1993] ECR I-4879, paragraphs 15 to 20 of the judgment.

(18) - Cited in note 13, paragraphs 51 to 56 of the judgment.

(19) - Cited in note 3, paragraph 57 of the judgment.

(20) - See paragraphs 7 to 9 above.

(21) - Barber, cited in note 2, paragraph 44 of the judgment.

(22) - See Case 33/76 Rewe v Landwirtschaftskammer Saarland [1976] ECR 1989 and Case 45/76 Comet v Produktschap voor Siergewassen [1976] ECR 2043.

(23) - See paragraphs 7 to 9 above.

(24) - Barber, cited in note 2, paragraph 44.