



UPDATE OF SUPPLEMENT No. 12
to 31 January 1985

COMMUNITY LAW AND WOMEN



STUDY BY

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Brussels, 1985 (First quarter)

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I N T R O D U C T I O N

Since the publication of Supplement No 12 to "Women of Europe - Community Law and Women", there have been a number of changes. Some Member States have adopted new legislation in order to comply with the Council Directives. Consequently, the Commission has closed certain infringement proceedings and initiated others.

New cases concerning the principle of equal treatment for men and women workers have been brought before the European Court of Justice, which has handed down a number of judgments on cases presented in Supplement No 12 when they were still before the Court.

Some of the measures in the Community action programme which became the subject of proposals for legal instruments were described in Supplement No 12; in this area, too, progress has been achieved in regard to equal opportunities.

Consequently, it seemed advisable to publish a new version of Supplement No 12, updated to 31 January 1985.

The updating closely follows the presentation of the Supplement "Community Law and Women". Only the numbers of paragraphs in need of updating are given, without reference to chapter titles. The amendments can only be read with reference to "Community Law and Women".

PARAGRAPHS UPDATED TO 31 JANUARY 1985

(Paragraphs preceded by an asterisk are new and do not refer to paragraphs in the publication "Community Law and Women", Supplement No 12 to "Women of Europe").

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3.1

France

- Law 83/635 of 13 July 1983 amending the Labour Code and the Penal Code as regards equality of men and women at work.

Luxembourg

- Law of 20 May 1983 amending the conditions governing award of the head of household allowance.

United Kingdom

- Statutory Instrument No 1794/83, Statutory Instrument No 1807/83, (Equal Pay Amendment Regulations of 7 December 1983): entered into force on 1 January 1984.

Greece

- Law 1414/84, which entered into force on 2 February 1984, concerns the application of the principle of equal treatment for men and women in employment relations. Article 4 guarantees equal pay for equal work.

3.2.6

The Royal Decree of 10 September 1981 made it possible for the Commission to close infringement proceedings.

3.3.1

Any employer who employs men and women for the same job is obliged to pay them the same wages for the same work, if he is not already obliged to do so by a collective agreement (Law of 4 February 1976).

Infringement proceedings initiated by the Commission:

The Law of 4 February 1976 refers only to the "same work" (infringement of Article 1).

Notice served on 30 March 1979.

Reasoned opinion sent on 25 October 1982.

Denmark replied that the words "samme arbejde" implied more than the words "same work" and that they included "work of equal value".

The Commission referred the matter to the Court of Justice on 18 July 1983 (Case 143/83)

The Court's judgment was delivered on 30 January 1985.

3.5.1

Law 83.635 of 13 July 1983 on occupational equality between men and women also covers remuneration and gives the following definition of work of equal value:

- "occupations are considered as being of equal value if the persons employed are required to have comparable qualifications as attested by certificates and diplomas or occupational experience, to have equivalent skills, experience and responsibilities, and to be subject to similar physical and mental demands".

3.5.2

See under 5.5.11 (Burden of proof).

3.8.4

Judgment of the Court of Justice delivered on 9 June 1982
(Case 58/81)

The Law of 20 May 1983 amending the conditions governing the award of the head of household allowance led the Commission to close proceedings on 18 July 1984.

3.10.1 (Third paragraph)

Following the judgment of the Court, Statutory Instruments No 1794/83 and 1807/83 entered into force on 1 January 1984 (Equal Pay Amendment Regulation of 7 December 1983).

The Commission closed the case on 18 July 1984.

3.11.2

The matter was referred to the Court of Justice on 18 July 1983 (Case 143/83).

The judgment was delivered on 30 January 1985.

3.11.5

A law of 20 May 1983 has amended the conditions governing the award of head of household allowance and enabled the Commission to close the case on 18 July 1984.

3.11.6

Notice served on 3 April 1979, reasoned opinion on 19 May 1980.
Case closed on 10 December 1980, after the entry into force of
the law of 2 July 1980 extending equal pay and equal treatment
to the public service.

3.11.7

Notice served on 3 April 1979
Reasoned opinion on 19 May 1980.
Case referred to the Court of Justice on 18 March 1981.

Judgment delivered on 6 July 1982

Statutory Instrument No 1794/83 came into effect on 1 January 1984
amending the Equal Pay Act in accordance with the Commission's
wishes (Equal Pay Amendment Regulation of 7 December 1983).

Case closed on 18 July 1984.

4.2

(c) The concept of indirect discrimination was confirmed by
the Court; see Cases 61/77 (ECR 78, pp. 450-452), Case 20/71
(ECR 72, page 345) and Case 32/71 (ECR 72, p. 363).

For the last two judgments, see page 109 of Supplement No 12.

The Court considers that indirect discrimination on grounds of
sex arises where equal treatment is formally applied but results
in material inequalities on account of the criterion used.
This mainly occurs where women are discriminated against; to
establish indirect discrimination it is not necessary that all
women should be placed at a disadvantage by the criterion used.
The effect of apparent equal treatment at work is analysed; the
question of determining whether discrimination is intentional
is not entered into.

5.1.1

Decree of July 1981 (leave to bring up a child) and the Decree
of 29 June 1983 (access to vocational training at a school).

5.1.2

Law No 117 of 28 March 1984.

5.1.4

Decree 82.866 of 15 October 1982, Law 83.635 of 13 July 1983 and Law 84/16 of 1 January 1984.

5.2.8

With respect to the case brought before the Court of Justice (Case 164/82), the Commission withdrew the action after the adoption by Belgium on 29 June 1983 of a Royal Decree regarding equal treatment with respect to access to training at school.

5.2.12

The government published a booklet explaining the opportunities for recourse: "Equal treatment for men and women: a law that concerns you".

5.2.15

The government published a booklet entitled "How to formulate a vacancy notice".

*5.2.16

A Royal Decree of July 1981 put an end to discrimination with regard to parental leave.

5.3.1

The case was removed from the register after Parliament adopted the amendment recommended by the Commission (Law No 117 of 28 March 1984).

5.4.1

The latter was referred to the Court of Justice on 9 November 1983.
(Case No 248/83).

5.4.8

With respect to claims for damages in the case of failure to conclude a contract of employment with a person on grounds of sex, German law requires the employer to pay damages only where breach of trust has occurred. The Commission has initiated infringement proceedings by serving notice on 23 December 1983.

On this same question, see the Judgment of the Court of Justice of 10 April 1984, on Colson v North-Rhine Westphalia (Case 14/83) set out in Chapter 11.10.1.

The government has published a booklet including explanations on possibilities of recourse (Information Bulletin, "Treffpunkt").

5.5 Implementation of Directive 76/207 by France

5.5.1

On 13 July 1983 the National Assembly adopted Law 83/635 amending the Labour Code (Chapter 4, Title III, Book I; Title III of Book III). Law 83/635 embodies the principle of equal treatment in general, but does not apply to the public sector.

Law 84/16 of 11 January 1984 establishes the principle of equality in the public sector.

However, Law 83/635 does not incorporate the definition of the principle of equal treatment set out in the Directive nor does it make specific reference to indirect discrimination.

5.5.2

The Preamble to the Constitution guarantees equal rights for men and women in all areas. The instruments in force do not prohibit discrimination based on family or marital status with the exception of the Law of 11 July 1975 amending the Labour Code in respect of women's employment, and which refers to discrimination in access to employment and in cases of dismissal on the grounds of "family situation". The 1983 Law also refers to discrimination based on sex or family situation.

5.5.3

The 1983 law affirms the principle of equality at work with respect to recruitment, renewal of contract, promotion and training; however it does not apply to the public service.

5.5.4

Law 83/635 prohibits sex-based discrimination with regard to remuneration, training, job classification, promotion and transfer.

5.5.5

Law 83/635 provides that the inclusion of a clause reserving the benefit of any measure to one or more workers on the basis of sex in a collective agreement or employment contract will render it void.

De facto discrimination with respect to recruitment, dismissal and other forms of discrimination are prohibited.

5.5.8

In the public sector, the Law of 10 July 1975, provides for derogations where warranted by the nature of the job or the conditions in which it is carried out. It does not stipulate that such derogations are permissible only in cases where the sex of the worker constitutes "a determining factor" as stated in Article 2.2 of the Directive.

The Commission initiated infringement proceedings against France (formal notice: 30 July 1980 and reasoned opinion 12 May 1981) on the grounds that Law 75/599 authorized derogations in the public sector with respect to recruitment and different conditions of access for men and women. There was no procedure for the periodic review of exclusions.

With the adoption of Law 82/380 on 7 May 1982 the infringement proceedings were closed. The law specifies that no distinction is to be made between men and women, but in the case of certain sections listed by decree of the Council of State after consulting the Higher Council for the public service, separate recruitment procedures for men and women may be adopted if the sex of the worker constitutes a "determining factor in performing the duties carried out by employees in these sections".

New infringements proceedings were initiated by the Commission by formal notice on 24 August 1982, for the Commission does not consider that the Directive has been implemented (separate recruitment procedures).

Law No 84/16 of 11 January 1984 incorporating statutory provisions with regard to the public service made it possible to close the infringement proceedings. On examination, however, it proved to contain derogations from the principle of equality in respect of certain sections, listed by decree of the Council of State, after consulting the Higher Council for the public service, separate recruitment procedures for men and women may be adopted if the sex of the worker constitutes a determining factor in performing the duties carried out by employees in these sections.

In short, the present situation is practically identical to the earlier situation, except that the list of sections will be shorter than in the past. Accordingly, a further infringement procedure is to be expected.

5.5.10

Under Law 83/635, temporary measures may be adopted to establish equal opportunities for women. Law No 79.569 had already eliminated age restrictions as regards access to employment in the public service for certain categories of women.

5.5.11

In certain cases the burden of proof lies with the employer. A worker who has brought an action and is dismissed is entitled to reinstatement. Trade unions may institute civil proceedings before any court to defend the interests of an occupational sector and are also entitled to institute proceedings in respect of an individual worker if he or she has no objection.

5.5.13

Vacancy notices and job announcements must be drawn up "without regard to the sex or family situation of the candidate unless the sex of the person concerned is a determining factor". A circular of 21 April 1983 requires notices of competition for the public service to refer to the masculine and feminine form of job titles, and where it is impossible to find a suitable term, to add the words "men and women" after the title.

5.5.14

Access to employment of pregnant women: employers may not seek information in this connection. Women are not required to declare their condition. A ban on the dismissal of pregnant women is a general principle of the law and penalties for infringement are imposed under criminal law.

5.5.15

A report concerning the situation and general conditions of employment and training for men and women must be presented each year by the head of the firm to the works council. This report, having been amended, if necessary, in line with the opinion of the works council, must be forwarded to the labour inspectorate.

5.5.16

Law 83/635 sets up a National Council for equal treatment of men and women at work under the Ministry responsible for women's rights, labour employment and vocational training. The task of the Council is to participate in the definition, implementation and application of a policy of equal treatment for men and women at work.

5.6.5

Infringement proceedings: the Commission sent a reasoned opinion on 15 March 1984.

5.7.3

The Court delivered its judgment on 26 October 1983; it ruled in favour of the Italian legislation (see 12.4).

5.8.1

Examination of this law by the Commission revealed that its scope of application with regard to persons was not clearly specified and it also lacked a clear definition of working conditions. Finally, Article 2 allows restrictions on access which run counter to the Directive.

The Commission sent a formal notice on 5 July 1983 and a reasoned opinion on 18 April 1984.

5.9.5

Infringement proceedings: a reasoned opinion was sent on 29 May 1983. Grounds: under the legislation public and private employers are entitled to derogate from the principle of equal treatment under a general clause which

- (a) provides that certain occupations and, where applicable, the training courses leading thereto, may be excluded from the field of application of the Directive (as provided by the Directive) including promotion and working conditions, which is contrary to the Directive;
- (b) does not list the occupations excluded from the field of application of the Directive.

*5.9.12

A draft law has been tabled amending the Labour Law of 1919 with a view to repealing the ban on nightwork.

5.10.4

Case 165/82: the Court delivered a judgment on 8 November 1983 in favour of the Commission (see 12.6).

5.10.6

The infringement proceedings (formal notice on 1 July 1982 and reasoned opinion on 10 May 1984) have been suspended.

- As regards Case 165/82, the Court delivered a judgment on 8 November 1983 (see 12.6).

5.11.1

As regards point (1), the Commission withdrew the action when Belgium adopted the Royal Decree of 29 June 1983.

As regards point (2), a Royal Decree put an end to discrimination in this area.

5.11.2

Case 149/83 was withdrawn from the register when Parliament adopted the amendment recommended by the Commission (Law No 117 of 28 March 1984).

5.11.3

After sending a reasoned opinion on 29 September 1982, the Commission referred the matter to the Court of Justice on 9 November 1983 (Case 248/83).

The Commission also initiated new infringement proceedings (former Case 119/83). Formal notice was served on 23 December 1983 on the grounds that following failure to conclude an employment contract with a person on grounds of sex, German law requires the employer to pay damages only if breach of trust has occurred, thus limiting the possibilities for claiming greater damages. (See the judgment of the Court of 10 April 1984, Case 14/83, set out in Chapter 11.10.1).

5.11.4

2. The Commission found that Law 82/380 did not comply with the Directive (derogations with regard to recruitment). Formal notice was served on 24 August 1982.
- *3. Following the adoption of Law 84/16 of 11 January 1984 the infringement proceedings were closed. The new law is being examined.

5.11.5

2. A reasoned opinion was sent on 15 March 1984.

5.11.65

The Court delivered judgment on 26 October 1983 (see Chapter 12.4).

5.11.7

After examining the new law the Commission initiated new infringement procedures. Formal notice was served on 5 July 1983 and a reasoned opinion sent on 18 April 1984.

Grounds: the scope of application with regard to persons was not clearly specified and no clear definition of working conditions was given. Article 2 allows restrictions on access contrary to the Directive.

5.11.8

2. A reasoned opinion was sent on 20 May 1983.

5.11.9

1. As regards Case 165/82, the Court delivered a judgment on 8 November 1983 (see Chapter 12.6).
2. With respect to the second infringement proceeding, a reasoned opinion was sent on 10 May 1984. The proceedings were suspended.

5.12

1. The complaint concerning recruitment of a teacher by the British Ministry of Defence was filed, since the regulation had been amended.
3. Formal notice was served on 5 July 1983 (see Chapter 6.5.1).
4. This complaint has been filed.
5. A complaint was lodged regarding the refusal by the British Ministry of Education to award to a student in receipt of a grant and the mother of one child, a supplementary allowance for a dependant on the grounds that she had not been married before beginning her studies.
6. A complaint was lodged by the Dutch Equal Opportunities Council on 20 June 1984. Under the new social security arrangements introduced on 1 January 1983 the concept of the "breadwinner" has taken the place of the former concept of "head of household". A problem has arisen regarding the interpretation of Directive 79/7/EEC relating to indirect discrimination in the case of an increase in respect of a dependent spouse. The Commission believes that this retrograde step would be justified only in cases where the measure would guarantee a minimum income. (See Chapter 6.5.8).
7. The French CFDT trade union has lodged a complaint with the Commission regarding discrimination in access to employment in the public service. It is expected that the Commission will initiate new infringement proceedings (see Chapter 5.5.8).
8. The complaint lodged by the Italian body "Il Tribunale 8 Marzo" has not been followed up by the Commission. According to this body, the law of 25 March 1983 on recruitment by name which enables employment offices to recruit 50% of workers by this method is likely to have a negative impact on the recruitment of women (previously, employment offices were required to recruit applicants in numerical order). After examination the Commission did not proceed with this complaint.

(On this same subject, please refer to Written Questions Nos 2290/82 and 2357/83 by Mrs Cinciari Rodano).

6.5

In its interim report on the application of the Directive (COM(83)793 final), the Commission emphasized the need to observe the deadline (22 December 1984) by which Member States should have made the necessary amendments to their legislation.

6.5.1

On the basis of a complaint lodged by the Comité de Liaison des Femmes the Commission decided to service formal notice on Belgium. The Royal Decree of 24 December 1980 which introduced the notion of cohabitation for purposes of establishing the amount of unemployment benefit constitutes more severe indirect discrimination than previously permitted. In the Commission's view, adoption by the Council of this Directive implies an acceptance by the Member States of an obligation not to adopt at national level, during the period granted to the Member States for incorporating the Directive into national law, any legislative measure which would give rise to new instances of discrimination or worsen those already existing.

Member of the Commission Mr Richard assured the European Parliament that "retrograde steps would not be allowed".

The Court of Justice also concluded that, in the context of transitional provisions regarding the obligation imposed on Member States by Community law, on no account should a Member State, during the transitional period, adopt measures that would aggravate the situation in respect of the said obligation. (Case 77/82, Anastasia Peskeloglou v Bundesanstalt für Arbeit, 23 March 1983.)

6.5.5

The Federal Republic of Germany reports that under the Economic Recovery Law designed to promote employment and reduce the Federal budget, adopted on 20 January 1982, contributions payable to the Statutory Pension Scheme for Men and Women have been harmonized at a standard rate with effect from 1 January 1983.

6.5.8

A complaint was lodged with the Commission concerning the new social security scheme, under which the concept of "head of household" has been replaced by that of "breadwinner", which constitutes a form of indirect discrimination against married women workers (Law of 1 January 1983). A problem of interpretation of the Directive arises regarding the notion of indirect discrimination in the case of increases in respect of dependent spouses. The Commission is at present examining this question. A retrograde step would be justified only if this measure guaranteed a minimum income.

6.5.11

In its interim report (COM(83)793 final) the Commission concedes that the question of indirect discrimination, reference to marital or family status, the concept of "head of household" and the problem of increases for dependent spouses are complex problems.

As far as the Commission is concerned, indirect discrimination should be interpreted as referring to hidden discrimination which in practice affects workers of one sex only as a result of marital or family status being taken into account in determining the rights covered by the field of application of the Directives.

The Court of Justice provided part of the answer in the context of case 96/80 (see chapter 11.7.1, page 98, of supplement No 12).

In the report, the Commission emphasizes that reference to marital or family status (including cohabitation) is not in itself prohibited by the Directives (see Article 4 of Directive 79/7/EEC which concerns "increases due in respect of a spouse and for dependents"). What is prohibited is that such references should give rise to discrimination. In this context the Commission has considered whether a problem of indirect discrimination arises in connection with the concept of head of household and increases for dependent spouses.

The concept of head of household has practically disappeared in civil law but still appears, however, in certain social security provisions. Related concepts also exist which imply that one spouse is subordinate to or financially dependent on the other. The Commission feels that this principle is incompatible with the concept of equal treatment.

This is one of the reasons why Directive 79/7/EEC makes no reference to the concept of head of household; it refers to spouses and dependents and authorizes, under long-term benefit schemes only, derogations with regard to the derived entitlement of a dependent spouse.

The interim report also draws attention to the conflicting opinions as to whether by making a distinction between "spouse" and "dependent", Article 4 prohibits increases in respect of a dependent spouse.

The intention in practice is certainly not to prohibit such increases, but to allow either husband or wife to claim them where the spouse is dependent. In practice, however, the beneficiary is in most cases a man. The Commission considers that these increases can be justified only in the case of social benefits guaranteeing a minimum income.

7.1

Since the accession of Greece, Community law has become part of that country's national law. Greece should have taken the necessary measures to implement Directives 75/117/EEC and 76/207/EEC on 1 January 1981. It may be held that the time-limit was implicitly extended; but the principle of equality between men and women was established by Article 4(1) of the 1975 Constitution. The Civil Code has recently been amended in accordance with the principle of equal treatment for men and women by Law 1329 of 15 February 1983 relating to the application of the constitutional principle of equality between men and women and its introductory law, commercial legislation, the code of civil procedure and the partial modernization of provisions of the Civil Code concerning family law.

7.2

On 6 December 1984 the Commission sent to the Council a report on the implementation of the principle of equal pay for men and women in Greece
(COM(84)667 of 4 December 1984)

The Greek Government has drawn up a draft law transposing the detail of Directive 75/117 and Directive 76/207 into national law. This draft led to Law No 1414/84 of 30 January 1984 concerning the application of the principle of equality between men and women in employment relationships, which entered into force on 2 February 1984.

From a legal point of view this new law supplemented and improved as regards certain important points the legislation already in force in Greece before accession.

Particular mention might be made of the concept of remuneration, non-discrimination as regards occupational classification and the conditions for granting marriage and dependent child allowance, the abolition of discriminatory clauses in collective agreements, the provision of information for workers, etc.

7.3

Since 2 February 1984 equal treatment is based on Law 1414 concerning the application of the principle of equal treatment for men and women in employment relationships and other matters. Its scope is more limited than that of the Directive. The law specifies that the provisions apply to workers employed under private law and all those engaged in the liberal professions. They do not, therefore, apply to the self-employed and to public service workers. The law prohibits discriminatory job offers, and an employer may not refuse to recruit a woman on the grounds that she is pregnant.

Under Article 5, discrimination is prohibited with regard to working conditions and promotion.

Dismissal of a person who seeks to bring an action concerning the observance of equal treatment is prohibited. Articles 8 and 9 set up an Equal Opportunities Department in the Ministry of Labour, with an Equal Treatment Office in each Labour Inspectorate and an Equal Opportunities Unit attached to the National Labour Council of the Ministry of Labour.

Article 10 provides for positive action with respect to men and women and persons with special commitments (e.g. single persons bringing up one or more children).

Article 11 concerns the review of protective legislation.

Article 12 specifies that administrative penalties (fines) will be imposed on employers who fail to respect the law. In case of dispute the employer should approach an administrative tribunal.

Under the adoption of Law 1414, equal pay for men and women was based on Article 22(1)(2) of the Constitution, which states that all workers, regardless of sex or other distinctions, are entitled to equal pay for equal work. In addition, ILO Convention No 100/1951 has been ratified and implemented under Law 46/1975. The principle of equal pay for men and women has been applied in limited fashion by the courts so far. The Council of State Judgment No 4256/1979 and the Supreme Court of Appeal Judgment No 1465/1980 related to family allowances paid directly by the employer. The Higher Courts have decided that this allowance constitutes a component of remuneration, but responsibility for the household evolves on the husband, and the conditions of entitlement to this allowance is not the same for married women as for married men. It should be noted that since February 1983, Law 1329 has eliminated the title of 'head of household' hitherto attributed to the husband.

In judging the second case, the court of first instance had accepted the women workers' case, based on Convention 100, concerning the definition of remuneration. Although in Judgment No 4256/1979 the Council of State had refused to apply the principle of equal pay to family allowances, in Judgment No 520/1983 the Council of State applied the principle of equal pay on the basis of Article 22(1)(2). This case concerned the award of family allowances by the Public Power Corporation to male employees alone and to female employees only if their husbands did not work for the Public Power Corporation or in the public service sector. Until the adoption of Law 1414 the principle of equal treatment was based on Article 4(2) of the constitution, the scope of which is broader than that of the Directives.

In 1981 and 1982 two judgments extended the application of the principle of equal treatment in firms respectively to working conditions (Judgment No 819/81) and recruitment conditions (Judgment No 879/82).

Any discrimination based on sex should have been eliminated in all areas by 31 December 1982 under Article 116(1) of the 1975 Constitution, which established a transitional period for the elimination of provisions then in effect which were contrary to the principle of equality between men and women.

7.6 to 7.7

Law No 1288/82 relating to matters coming under the Ministry attached to the Prime Minister and the YENED set up an Equal Treatment Council as an advisory body.

8.1

On 5 January 1984 the Commission presented to the Council a progress report on the implementation of the new Community action programme (COM(83)781 final). This document contains a brief run-down of the most recent provisions and positive actions adopted in the Member States and of the Commission's own activities in the context of the action programme. In 1985 the Commission will prepare a more detailed report, with particular regard to measures taken by the Member States.

8.2

The network of independent experts was maintained in 1984 and will continue in 1985. The Commission's progress report lists new legislation in respect of bodies concerned with equal treatment and equal opportunities:

- In the Netherlands, the Emancipatieraad (Equal Opportunities Council), became in May 1981 the government's advisory body on policy and the government is now required to seek the Council's opinion in good time on all matters concerning equal treatment.
- In Italy a decree of 8 October 1982 set up, under the Ministry of Labour, a national committee on the application of the principle of equal treatment with the task of formulating proposals, suggesting measures and ways of means of abolishing discrimination and obstacles to the achievement of equality and expressing opinions on legal proceedings brought by women in this field.
- In France, the law of 13 July 1983 provides for the creation of a Council of Occupational Equality between men and women under the ministers responsible for women's rights, i.e. labour, employment and vocational training. The Council has the task of participating in the definition, implementation and application of the policy of occupational equality between men and women (Article L 330.2).
- In Ireland, an inter-departmental working party on women's affairs and family law reform was set up in 1983 to assist the Minister of State for women's affairs in identifying ways of eliminating existing discrimination and promoting positive measures.
- In Greece, Law No 1288/82 set up a Council on equality between the sexes which gives opinions and submits proposals to the Prime Minister; it is an independent department under the ministry attached to the Prime Minister's office.

8.3

This study has been completed and the advisory committee has delivered its opinion.

The Commission's progress report to the Council contains a brief summary of amendments that have been made or are planned in this area:

- Few amendments have been made to legislation, but in a number of countries the competent bodies have examined the possibility of revising some of these laws.

Thus, on 26 February 1982, the Irish Government gave notice that it would no longer apply ILO Convention No 89 with effect from 26 February 1983.

- In the Netherlands, a draft law was tabled with a view to amending the 1919 Labour Law by abrogating the ban on night work for women.

8.4

It is planned to issue a Directive in 1985 concerning discrimination in sectors not covered by Directive 79/7.

Regarding the concepts of head of household and indirect discrimination, see Chapter 6.5.11.

8.5.1

A proposal for a Directive was submitted to the Council of Ministers on 15 March 1984. Its purpose is to ensure the recognition of women (as paid workers or associates) and safeguard the rights of spouses operating a business (remuneration, own entitlement to social security, vocational training and professional representation).

It also provides for the protection of pregnancy and maternity through replacement services or a system of compensation (social security or other form of social protection).

This proposal is at present being discussed by the Council.

The memorandum on Income Taxation and equal treatment for men and women, presented by the Commission to the Council, was published on 14 December 1984 (COM(84)695 final).

*8.7.4

A proposal for a Directive was lodged with the Council on 22 November 1983. Parliament and the Economic and Social Committee have delivered their opinions. An amended proposal (COM(84)631 final of 9 November 1984) is at present under study within the Council.

The current proposal contains four sections which relate to general provisions, specific provisions for parental leave and leave for family reasons and implementing provisions.

Parental leave means entitlement to a leave of specific duration granted to employees, including staff in the public sector, on the occasion of the birth of a child, following but not necessarily immediately following maternity leave or on the arrival of the child within the home, for parents intending to adopt a child or at the time of adoption of the said child on condition that during the period of parental leave the recipient actually takes care of the child.

Subject to these conditions, parental leave is granted:

- to the father and mother
- to the adoptive father and mother
- to the stepfather and stepmother
- to any person acting in place of the above in circumstances such as a serious illness or the death of the above.

Leave for family reasons is most frequently used to mean short periods of leave granted to male and female workers for pressing family reasons, such as the illness of a child (Article 1).

Article 2 lays down the fundamental aims of the proposal for a Directive, namely to establish the right of workers to parental leave and leave for family reasons under harmonized conditions, and to ensure that the principle of equal treatment is respected. The provision regarding equal treatment makes it necessary to draw a clear distinction between maternity leave and parental leave and entitles working fathers to the same rights as working mothers.

Article 3 establishes the scope: leave may be granted to all wage earners including part-time and full-time workers in the public and private sectors.

Article 4 contains the basic provisions regarding the aims and duration of parental leave. It is basically intended for families where both parents work or for single parent families, and the minimum duration is three months.

Like other rights deriving from employment, the right to this leave is personal and may not be transferred from the father to the mother or vice versa.

Article 5 specifies that parental leave shall be accorded as a continuous period of leave on either a full-time or part-time basis.

Article 6 provides for the possibility of a guaranteed income during the period of parental leave. The benefits should be sufficient to encourage parents to apply for parental leave in the interests of the child. It should be paid from public funds.

Section III concerns leave for family reasons: it provides for a minimum number of days leave per year and states that such leave should be regarded in the same way as paid holidays. The Member States will be required to comply with the Directive within four years.

*8.7.5

With the exception of the Netherlands, the United Kingdom and Ireland, the seven other Member States already have a system of parental leave which they apply either in the public sector alone or for the whole of the working population.

*8.8

Action 8: Protection of women during pregnancy and maternity

The aim is to eliminate discrimination as regards recruitment, improve and harmonize maternity leave provisions and improve the possibilities of paid leave for medical check-ups.

The Commission has undertaken a comparative study and will assess the financial implications of the measures already adopted by the Member States with a view to identifying the most appropriate protective provisions for maternity which should take full account of the social function of child-bearing and find better ways of transferring the financial responsibility to public funds rather than leaving it to employers.

A study has just been prepared and is at present being examined by the relevant Commission departments.

*8.9

Action 9: Development of positive action

The aim is to promote at national level framework legislation for positive action. The legal provisions on equal treatment are designed to afford rights to individuals; they are inadequate for the elimination of all forms of discrimination if at the same time parallel action is not undertaken either by governments or other bodies responsible for social policy, to counteract or compensate the effect of existing social structures on individual behaviour. These actions may take different forms ranging from information campaigns, through action which public authorities may take when awarding public contracts to policies for diversifying vocational training and measures aimed at eliminating the inequality which restricts women's opportunities.

A seminar, attended by policy makers and trades unions, was held in Athens in September 1983 to discuss the situation and the measures to be taken. At this seminar the role of the European Social Fund and the European Centre for the Development of Vocational Training was emphasized. Attention was drawn to the need for a Community instrument to promote positive action. It was generally underlined that in times of crisis, greater efforts needed to be made and that the first objective at the present time was to change attitudes not only on the part of men, governments and employers but of women themselves who should be informed of their rights and the procedures for enforcing them.

On 24 April 1984, therefore, the Commission presented to the Council a draft recommendation on the promotion of positive action for women. The aim of the promotion is to promote at national level the establishment of a legal and political framework to foster the development of measures to promote equal opportunities for women (COM(84)234). The recommendation proposed that the Member States adopt and promote appropriate positive action measures designed to:

- (a) eliminate or counteract the prejudicial effects on women in employment or seeking employment arising from existing social attitudes, behaviour and structures based on perceived division of roles in society between men and women;
- (b) encourage the participation of women in all occupations and sectors of working life where they are at present under-represented, and at all levels of responsibility.

The draft has become a Council Recommendation of 13 December 1984 on the promotion of positive action on behalf of women (OJ L 331 of 19.12.1984). This is an important step towards equal opportunities.

The Member States have already adopted a number of measures, some of which are set out in the Commission's progress report on the implementation of the Community Action Programme (COM(83)781). All countries have set up many training and apprenticeship programmes aimed at broadening occupational choices. For example, measures concerning the regional placement offices in Denmark, or the training of vocational guidance counsellors in the Federal Republic and in the United Kingdom contribute to the desegregation of the labour market.

*8.10

Action 10: Integration into working life (in particular with respect to new technologies)

The aim is to diversify occupational choices and promote competence within the new technologies, with particular reference to guidance and initial and continuing training. Attention should be called to the role of the ESF and the CEDEFOP in this regard. In addition, the Commission has supported specific action (for example, a unit offering an introductory course in microprocessing was set up in Paris) and seminars to prepare girls for these branches; a study has been made in regard to the opportunities and dangers of the electronic office in regard to women's employment.

An experimental network of equal opportunities advisors was recently set up to foster integrated national programmes on education and training, with particular emphasis on new technologies.

*8.11

Action 11: Vocational choices

The aim is to diversify real vocational choices for girls and inform them, their families and their schools.

The Commission has set up an experimental network of equal opportunities advisers (see Chapter 8.10).

*8.12

Action 12: Desegregation of employment

The aim is to promote desegregation in employment at all levels and in all sectors.

The public sector was the first to be chosen; the Commission undertook a comparative analysis of desegregation in the public service in certain Member States.

The cooperative sector was also closely examined by the Commission, which carried out a study on measures for women in this field and provided support, including financial backing, for the creation of a number of cooperatives involving the employment of women; in 1983 in Lesbos (agricultural and tourism cooperative), in Dublin (printing), in London (new technologies) and in Wales (aid for setting up businesses). New projects will be examined in the future.

The Commission developed its action in the banking sector. A seminar was held in 1982 after which action was taken by several banks with Commission support.

*8.13

Action 13: Analysis of trends in female employment

The aim is to assess progress made towards equal treatment in employment, conditions of employment and towards achieving desegregation.

A group of experts was set up to establish common indicators for a system of monitoring women's employment trends and the impact of national policies in this sector.

*8.14

Action 14: Application of the principle of equal treatment to women immigrants

The Commission is currently analysing instances of discrimination in legislation and administrative practices.

At the same time, CEDEFOP is evaluating vocational and language training measures implemented in the Member States and will organize a seminar in the near future.

*8.15

Action 15: Sharing of occupational, family and social responsibilities

The aim is to enable men and women to live parallel and complementary professional, family and social lives.

The Commission has organized a study on women's position in decision-making bodies which will serve as a basis for the proposals for Community guidelines it plans to submit. It has also had a study carried out on public facilities and services (child-minding).

*8.16

Action 16: Development of public attitudes

The aim is to make the public at large and those directly concerned aware of the positive aspects of a change in attitude. There is strong opposition to equal treatment for women. Stereotyped attitudes and discriminatory behaviour persist and tend to intensify in the current economic crisis. Accordingly, the new values and the positive changes they bring about should be reaffirmed, particularly via the mass media.

The Commission is intensifying its information campaigns, directed in particular towards women's groups and associations, the press and the media in general.

A study is under way on the image of women in television (e.g. on news programmes, in debates, etc.). At the same time, a study on the position of women in television (posts held by women in this sector) has been initiated. Both studies have been undertaken with a view to preparing a seminar to increase the awareness of television officials leading to positive measures to improve the position of women and eliminate stereotyped images.

*8.17

Action 2: Legal redress in respect of equal treatment

The aim is to improve the possibilities of legal redress that are at present underused (including reversing the burden of proof).

Workers, and especially women workers, make little use of the possibilities for redress provided for in national legislation. This is partly accounted for by the rigid procedures and the difficulty of bringing together proof of discrimination apart from the fear of dismissal. However, in those countries where specific advisory and assistance bodies have been set up or where more flexible means of redress have been introduced women workers have become more aware of their rights. This particularly applies in the United Kingdom where the Equal Opportunities Commission has helped to increase the number of cases brought before the courts.

Reversal of the burden of proof (making proof the responsibility of the employer or whoever has been responsible for discrimination) is provided for in Belgium in certain cases, and in the Federal Republic, Ireland and the United Kingdom.

The Commission has had a comparative study drawn up on legal redress in the Member States

*8.18

The Commission has presented several proposals to the Council which will contribute to the promotion of equal opportunities without being specifically for women. They include the draft recommendation on the reduction and reorganization of working time (COM(83)543 final), the communication on youth employment (COM(83)211 final), the amended proposal for a directive on part-time work (COM(82)830 final) and the communication on the development of own initiatives (COM(83)662 final). In addition, the Council Resolutions on vocational training and the new technologies (OJ C 166, 25 June 1983) include commitments to take positive action on behalf of women.

Lastly, the recent Commission communication to the Standing Committee on Employment on women's unemployment comprises specific measures coming within the area of the promotion of equal opportunities and action to combat unemployment (COM(83)653 final).

*9.3

In its opinion of 19 February 1983, the European Parliament Committee of Enquiry into the situation of women in Europe stated that the concept of indirect discrimination should be more clearly defined (in its view the list in Article 5 is not adequate).

Furthermore, the Committee feels that Article 6 is not definitive since the list contained therein is not exhaustive. The Committee of Enquiry also has reservations concerning Article 9 and recommends that the Directives should make a provision prohibiting any retrograde step (any deterioration in the situation existing at the time of signature).

The Economic and Social Committee has also given its opinion.

11.1

The Court has recently handed down the following judgments:

- 10 April 1984, in Case 14/83 (Von Colson & Kamann v Land North-Rhine Westphalia), (see 11.10.1)
- 10 April 1984, in Case 79/83 (D. Hartz v Deutsche Tradex GmbH) (see 11.10.3)
- 12 July 1984, in Case 184/83 (U. Hofmann v Berner Ersatzkasse), (see 11.10.4)
- W.G.M. Liefding and Others v Directie van het Akademisch Ziekenhuis bij de Universiteit van Amsterdam, 18 September 1984 (see 11.10.2).

CASES PENDING

- Miss M.H. Marshall v Southampton and South West Hampshire Area Health Authority (Teaching), (Case 152/84) (see 11.11.1)
- Joan Roberts v Tate & Lyle Industries Ltd., (Case 151/84) (see 11.11.2)
- Bilka-Kaufhaus GmbH v Karin Weber von Hartz, (Case 170/84) (see 11.11.3).

11.7.2

In the recitals, the Court states that "the ban on discrimination is no more than the expression of the general principle of equality underlying the fundamental principles of Community law; according to this principle comparable situations must not be treated differently, unless a differentiation is objectively justified". Consequently, the author of the measure from which the discriminatory result derives must supply proof that his action was motivated by reasons that could be objectively justified without any intention to discriminate.

11.10.1

Judgment was handed down on 10 April 1984 (Case 14/83, similar to case 79/83, see below 11.10.3).

The Court replied that in the event of discrimination based on sex in respect of access to employment, the Directive did not provide for a penalty if the employer failed to conclude an employment contract with the victim of discrimination. Although the Directive made it plain that the Member States were free to select the penalties to be imposed in cases of discrimination, it implied that if a Member State chose to impose a penalty in the form of damages for an offence against the principle of non-discrimination, the penalty should have sufficient deterrent effect.

11.10.2

In its judgment of 18 September 1984, the Court ruled that a social security scheme under which:

1. the contributions are calculated on the basis of the employee's salary but are subject to a ceiling;
2. a husband and wife are treated as one person, the contributions being calculated on the basis of their combined salaries, subject once again to the upper limit;
3. the State is bound to pay, on behalf of its employee, the contribution owed by him, and
4. where husband and wife are both civil servants, the authority employing the husband is primarily responsible for paying the contributions and the authority employing the wife is required to pay the contributions only in so far as the upper limit is not reached by the contributions paid on behalf of the husband,

is incompatible with the principle of equal pay for men and women for equal work in so far as the result in differences between the gross salary of a female civil servant whose husband is also a civil servant and the gross salary of a male civil servant directly effect the calculation of other pay-related benefits such as severance pay, unemployment benefit, family allowances and loan facilities.

11.10.3

Judgment of 10 April 1984. D. Harz v Deutsche Tradax GmbH,
Case 79/83

Miss Harz, a Commercial Engineer, had applied for a post advertised by Deutsche Tradax GmbH.

The firm informed her that the post in question was restricted to male candidates. Miss Harz brought an action before the Arbeitsgericht (Labour Court) in Hamburg, to compel the firm to take her on and in addition to pay compensation (DM 12 000) on the grounds that it had infringed Articles 2 and 3 of Directive 76/207/EEC.

According to the Labour Court, the principle of equal treatment as regards access to employment can be implemented by imposing penalties such as requiring the employer to conclude a contract of employment or granting the person discriminated against the right to compensation, the amount of which is sufficiently high to constitute a genuine economic sanction. The Law (Article 611(2) of the BGB (Civil Code)) provides for compensation for breach of faith of DM 2.31.

The Labour Court asked the Court of Justice for a preliminary ruling on a number of questions relating to any right of a person to a contract of employment with an employer who refuses to take them on and to the payment of compensation.

The Court ruled that:

- the Directive does not require the employer who is the author of the discrimination to conclude a contract of employment with the candidate discriminated against,
- the Directive implies that if a Member State chooses to sanction the discrimination on grounds of sex regarding access to employment by the award of compensation, then in order to ensure that it has a deterrent effect that compensation must be adequate.

*11.10.4

Judgment of 12 July 1984 in Case 184/83, Ulrich Hofmann v.
Barmer Ersatzkasse

Mr Hofmann is the father of an illegitimate child whom he has recognized. He was granted unpaid leave by his employer from the end of the statutory protective period of eight weeks granted to the mother until the child reached the age of six months, while the mother continued to work. He asked the Barmer Ersatzkasse for an allowance for the duration of the maternity leave in accordance with the social protection laws covering the mother, a request which was refused on the grounds that only mothers were entitled to maternity leave. According to the Sozialgericht (Social Court), the authors of the legislation had deliberately refrained from introducing parental leave. Mr Hofmann maintained before the Court that the object of introducing maternity leave was not in fact to protect the mother's health but to allow her to care for the child.

The Sozialgericht asked the Court whether the fact that at the end of the eighth week of convalescence, paid leave is granted only to working mothers, constitutes an infringement of Articles 1, 2 and 5 of Directive 76/207/EEC.

The Commission supported Mr Hofmann's position: if national law is to protect women in the case of pregnancy and maternity leave also serve the interest of the child, the objectives should be achieved by means which preferably are non-discriminatory, e.g. granting leave to the father. The Commission pointed out that in several Member States legislation is tending towards granting parental leave or leave for bringing up a child. It has expressed its intention of bringing actions against Member States which continue to apply measures similar to the maternity leave arrangements laid down under German law.

The Court held the view that the Directive is not intended to cover questions relating to family organization or to change the couple's arrangements for sharing responsibilities and that maternity leave comes within the scope of Article 2(3) of the Directive ("this Directive shall be without prejudice to provisions concerning the protection of women, particularly as regards maternity"). Such leave may, then, be restricted to the mother to the exclusion of any other person.

* 11.11 Cases pending

* 11.11.1

Miss Marshall v. Southampton and South West Hampshire Area Health Authority (Teaching), (Case 152/84).

Miss Marshall was born in 1918. From 1966, she worked for the authority in question which, in March 1980, dismissed her on the grounds that she had passed the normal retirement age applicable to women (the authority has a general policy, implicit in the contract of employment, that female employees retire at 60 and males at 65). Miss Marshall had therefore been granted a two year derogation from this principle. She suffered a financial loss as a result of her dismissal. Under UK legislation, the State pension is granted from the age of 65 for men and 60 for women, and payment of the pension is suspended if the employee continues to work.

The appellant maintains that her dismissal was an act of discrimination on grounds of sex prohibited by the Sex Discrimination Act 1975 and Directive 76/207/EEC. The Industrial Tribunal hearing the case ruled that the application could not be brought under the Sex Discrimination Act, (Section 6(4) of this Act allows discrimination on grounds of sex where it arises from a provision on retirement). The Court of Appeal in London, referred the following questions to the Court of Justice:

- (1) Whether the respondent authorities' dismissal of the appellant after she had passed her sixtieth birthday pursuant to policy and on the grounds only that she was a woman who had passed the normal retirement age applicable to women, was an act of discrimination prohibited by Directive 76/207/EEC?
- (2) If the answer to 1 is in the affirmative, whether or not the said Directive can be relied upon by the appellant in the circumstances of the present case notwithstanding the inconsistency (if any) between the Directive and Section 6(4) of the Sex Discrimination Act of 1975?

* 11.11.2

Joan Roberts v. Tate & Lyle Industries Limited, Case 151/84.

Joan Roberts was employed by this firm for 25 years and was 53 when she was dismissed.

The normal age for granting a pension from the occupational pension fund is 65 for men and 60 for women, although it is possible for male employees made redundant to draw a pension 10 years prior to their normal retirement age and female employees made redundant to draw a pension 5 years prior to their normal retirement age. Mrs Roberts maintains that such treatment is discriminatory and incompatible with the Sex Discrimination Act 1975 and with Community law.

The industrial tribunal held that Section 6(4) of the Sex Discrimination Act allowed discrimination in the case of retirement age.

The Court of Appeal in London, has asked the Court for a preliminary ruling on the following questions:

- (1) Whether or not the respondents discriminated against the appellant contrary to the Equal Treatment Directive by arranging for male employees who were made redundant to receive a pension from the occupational pension fund ten years prior to their normal retirement age of 65, but arranging for female employees who were made redundant to receive a pension only five years prior to their normal retirement age of 60, thereby arranging for both men and women to receive an immediate pension at the age of 55.
- (2) If so, whether or not the principle of equal treatment can be relied upon by the appellant in the circumstances of the present case in national courts and tribunals, notwithstanding the inconsistency (if any) between the Directive and Section 6(4) of the Sex Discrimination Act 1975?

*11.11.3

Bilka-Kaufhaus GmbH v. Karin Weber von Hartz, case 170/84.

The Bundesarbeitsgericht (Federal Labour Court) - third senate - has asked the Court for a preliminary ruling on the following questions:

- (1) May there be an infringement of Article 119 of the EEC Treaty in the form of "indirect discrimination" where a department store which employs predominantly women excludes part-time employees from benefits under its occupational pension scheme, although such exclusion affects disproportionately more women than men.
- (2) If the first question is answered in the affirmative:
 - (a) Can the undertaking justify that disadvantage on the ground that its objective is to employ as few part-time workers as possible even though in the department store sector there are no reasons of commercial expediency which call for the pursuit of such a staff policy?
 - (b) Is the undertaking under an obligation to construct its pension scheme in such a way that appropriate account is taken of the special difficulties experienced by employees with family commitments in fulfilling the requirements for an occupational pension?

Reference should be made to:

- the Court's judgment in case 80/70 (see page 91): the second paragraph of Article 119 extends the concept of pay to any other consideration, whether in cash or in kind, whether immediate or future, provided that the worker receives it, albeit indirectly, in respect of his employment from his employer.
- Case 69/80 (see page 96), where the Court ruled that a contribution to a pension scheme paid by an employer on behalf of the employees by means of an addition to the gross salary, constituted pay within the meaning of Article 119(2) of the EEC Treaty;
- Case 96/80 (see page 98), as regards the existence of indirect discrimination in the case of a difference in pay between full time and part-time workers.

Reference should also be made to the proposal for a Directive on the implementation of the principal of equal treatment for men and women under occupational social security schemes (see chapter 9.1, page 85).

12.1 Table of judgments handed down and cases pending

- | | |
|------------|---|
| 26.10.1983 | (Commission of the European Communities v. Italy) Case 163/82. |
| 8.11.1983 | (Commission of the European Communities v. United Kingdom of Great Britain and Northern Ireland) Case 165/82. |
| 30.1.1983 | (Commission of the European Communities v. Denmark) Case 143/83. |

Cases removed from the register:

Commission of the European Communities v. Denmark
(Case 149/83);

Commission of the European Communities v. Belgium
(Case 164/82).

Cases pending:

Commission of the European Communities v.
Federal Republic of Germany
(Case 248/83).

12.4

Judgment handed down on 26 October 1983

In the first place, the Commission maintained that Law No 903 regulates certain working conditions such as remuneration (Article 2), retirement age (Article 4) and the right to take leave of absence from work in the case of adoption (Article 6), but fails to cover all working conditions notwithstanding the much wider nature of the provisions contained in Article 5 of Directive 76/207/EEC.

The Italian Government replied that consideration of the provisions of the aforesaid law No 903 shows that discrimination based on sex is prohibited in relation to access to employment, vocational guidance, vocational training, advanced vocational training and retraining (Article 1), remuneration and job classification systems for determining remuneration (Article 2), assignment of grading, duties and career development (Article 3), retirement age (Article 4) and entitlement to leave in certain circumstances (Article 6). Article 15 of Law No 300 of 20 May 1970 was amended by Article 13 of Law No 903 so as to render void any agreement or measure based on sex, aimed at dismissing or adversely affecting a worker.

The Court ruled that the Commission had not shown that those specific provisions, combined with a general supplementing provision, have left some areas of the scope of the Directive unprovided for.

The Commission alleged in the second place that Law No 903 of 1977 gives a mother who adopts a child of less than six years of age at the time of adoption the right to compulsory leave and the corresponding financial allowance during the first three months after the child enters the adoptive family and the right to leave for a certain period (without according the adoptive father similar rights).

Article 7 of Law No 903 gives a working father the right to leave allowed by Article 7 of Law No 1204 of 1971, even if he is a father by adoption, in lieu of the working mother or where the care and custody of the children are given to the father. However the father does not have the right accorded the adoptive mother to maternity leave for the first three months following the actual entry of the child into the adoptive family.

The Court upheld the view of the Italian Government that this distinction is justified by the concern to assimilate as far as possible the conditions of entry of the child into the adoptive family to those of the arrival of a new-born child in the family. The difference in treatment cannot then be regarded as discrimination.

Thirdly the Commission maintained that the Italian Republic had failed to comply with Article 6 of the Directive.

In its view, Article 15 of Law No 903 restricts the legal remedies it provides for only to breaches of Articles 1 and 5 of that Law, by not giving a legal remedy to a worker who considers himself adversely affected by failure to comply with other provisions of the Directive. The Commission points out that Article 6 makes no distinction between access to employment (Article 3) access to training and promotion (Article 4) and working conditions (Article 5).

The Italian Government contends that workers who have been discriminated against may rely on Article 24 of the Constitution which states that "any person may bring proceedings to protect his rights and lawful interest". The restricted applicability of the judicial procedure laid down by Article 15 of Law No 903 is explained by the fact that the procedure is a special one which has been found to be necessary by reason of the special nature of discrimination as regards access to employment, training and promotion at work.

The procedure referred to in Article 15 is an emergency one. Article 700 of the Italian Code of Civil Procedure, which is a general rule of procedure, allows the measures required to avoid irremediable prejudice to be obtained urgently; that provision may be relied upon in all areas where the Directive applies and are not covered by Article 15 of Law No 903.

The Court ruled that the application had to be dismissed, since the Commission had not contested the explanations given by the government of the Italian Republic.

12.5

The Commission withdrew its action as Belgium had adopted a Royal Decree on 29 June 1983 on equal treatment as regards access to training in schools.

12.6

The Court handed down its judgment on 8 November 1983. The Court ruled that the United Kingdom had failed to fulfill its obligations by failing to adopt the measures needed to ensure that any provisions contrary to the principle of equal treatment contained in collective agreements or in the staff rules of undertakings or in the rules governing the independent professions or occupations are to be, or may be declared void, or may be amended, and by excluding from the application of that principle employment for the purposes of a private household and any case where the number of persons employed does not exceed five.

As regards the employment of midwives (access to occupation and training) the Court dismissed the Commission's complaint.

* 12.7

Judgment of 30 January 1985 in Case 143/83 (Commission of the European Communities v. the Kingdom of Denmark)

After determining that the wording of the Danish law set out the principle of equal pay in a more restricted form than that set out in the Directive and did not refer to "work of equal value", the Court found that since it had not adopted within the time limit described all the measures required to conform with Directive 75/117 of 10 February 1975, the Kingdom of Denmark had failed to comply with its obligations under the EEC Treaty.

13.1

On 20 March 1984 the Court delivered its judgment in Case 75/82 (Razzouk v. Commission of the European Communities).

As the action by Mr Beydoun (Case 177/82) had been brought within the time limit, it was dismissed.

13.2

As regards the definition of indirect discrimination applied by the Court in this case, cf Chapter 4.2(c).

13.6

The Court ruled in favour of Mr Razzouk; the provisions on which the Commission had based its refusal to grant the survivor's pension to widowers are illegal; they are incompatible with the principle of equal treatment of men and women. The Commission will henceforth have to pay the same pension to widowers and widows.

E R R A T A

(The figures refer to the pages and chapters of supplement No 12 of Women of Europe, "Community Law and Women").

| Page | Paragraph | |
|------|-----------|---|
| 9 | 3.1 | Belgium: Royal Decree of 10 September 1981. |
| 10 | 3.1 | France, Law of 22 December 1972. |
| 13 | 3.2.6 | Reasoned opinion of 19 May 1980. Mr Pfarr and Mr Bertelsman: Lohnungleichheit, Schriftenreihe des Bundesministers für Jugend, 1981; and Dr Molitor: Die Lage der Frau im Recht der Arbeit, Tenth International Congress, 10 August 1982. |
| 15 | 3.4.1 | 21.8.80. should read: 13.8.80. |
| 15 | 3.4.3 | 21.8.80. should read: 13.8.80. |
| 17 | 3.4.12 | Reasoned opinion of 29 September 1982. |
| 18 | 3.5.4 | Closed 5 December 1979. |
| 23 | 3.8.4 | Reasoned opinion on 19 May 1980. |
| 25 | 3.9.1 | Case closed on 10 December 1980. |
| 29 | 3.11.1 | Reasoned opinion of 19 May 1980. |
| 30 | 3.11.3 | Case closed on 10 December 1980. |
| 30 | 3.11.5 | Formal notice on 3 April 1979. Reasoned opinion on 19 May 1980. |
| 30 | 3.11.6 | Case closed on 10 December 1980. |
| 41 | 5.4.1 | Reasoned opinion on 29 September 1982. |
| 61 | 5.11.3 | Reasoned opinion on 29 September 1982. |
| 64 | 5.12.3 | Directive 79/7. |
| 64 | 5.12.4 | Action brought on 21 May 1981. |
| 78 | 8.1 | Revision of legislation. |
| 87 | 9.2 | Article 12. |
| 101 | 11.9.3 | Even if indirectly by the employer. |
| 104 | Title 12 | (Equal pay and treatment) |

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