

JUDGMENT OF THE COURT (First Chamber)

21 July 2005 \*

In Case C-207/04,

REFERENCE for a preliminary ruling under Article 234 EC from the Commissione tributaria provinciale di Novara (Italy), made by decision of 26 April 2004, received at the Court on 10 May 2004, in the proceedings

**Paolo Vergani**

v

**Agenzia delle Entrate, Ufficio di Arona,**

THE COURT (First Chamber),

composed of P. Jann, President of the Chamber, N. Colneric (Rapporteur), K. Schiemann, E. Juhász and E. Levits, Judges,

\* Language of the case: Italian.

Advocate General: D. Ruiz-Jarabo Colomer,  
Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 14 April 2005,

after considering the observations submitted on behalf of:

- Mr Vergani, by S. Monguzzi and P. Fasano, avvocati,
- the Italian Government, by I.M. Braguglia, acting as Agent, and G. De Bellis, avvocato dello Stato,
- the Commission of the European Communities, by A. Aresu and N. Yerrell, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 12 May 2005,

gives the following

### **Judgment**

- 1 This reference for a preliminary ruling concerns the interpretation of Article 141 EC and Council Directive 76/207/EEC of 9 February 1976 on the implementation of the

principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (OJ 1976 L 39, p. 40).

- 2 The reference was made in proceedings between Mr Vergani and the Agenzia delle Entrate, Ufficio di Arona ('the tax authorities') concerning the taxation, determined by reference to the worker's age, of a payment made on voluntary redundancy.

## Legal framework

### *Community legislation*

- 3 Article 141(1) and (2) EC provides:

'1. Each Member State shall ensure that the principle of equal pay for male and female workers for equal work or work of equal value is applied.

2. For the purpose of this article, "pay" means 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.

...'

4 The purpose of Directive 76/207, as is clear from Article 1(1) thereof, is to put into effect in the Member States the principle of equal treatment for men and women as regards access to employment, including promotion, and to vocational training and as regards working conditions and, on the conditions referred to in paragraph 2, social security.

5 Article 2(1) of the directive provides:

‘For the purposes of the following provisions, the principle of equal treatment shall mean that there shall be no discrimination whatsoever on grounds of sex either directly or indirectly by reference in particular to marital or family status.’

6 Article 5 of the directive provides:

‘1. Application of the principle of equal treatment with regard to working conditions, including the conditions governing dismissal, means that men and women shall be guaranteed the same conditions without discrimination on grounds of sex.

2. To this end, Member States shall take the measures necessary to ensure that:

(a) any laws, regulations and administrative provisions contrary to the principle of equal treatment shall be abolished;

...’

7 Article 3(1) 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 (OJ 1979 L 6, p. 24) provides:

“This Directive shall apply to:

(a) statutory schemes which provide protection against the following risks:

— sickness,

— invalidity,

— old age,

— accidents at work and occupational diseases,

— unemployment;

(b) social assistance, in so far as it is intended to supplement or replace the schemes referred to in (a).’

- 8 Article 4(1) of Directive 79/7 provides that the principle of equal treatment means that there is to be no discrimination whatsoever on ground of sex either directly, or indirectly by reference in particular to marital or family status.
  
- 9 Article 7(1)(a) of Directive 79/7 provides that the directive is without prejudice to the right of Member States to exclude from its scope the determination of pensionable age for the purposes of granting old-age and retirement pensions and the possible consequences thereof for other benefits.

#### National legislation

- 10 The Italian rules on pensionable age are set out in Article 9 of Law No 218 of 4 April 1952 on the reform of compulsory insurance pensions for invalidity, old age and survivors (*Official Gazette of the Italian Republic* (GURI) No 89 of 15 April 1952, Ordinary Supplement). In accordance with that provision, male workers reach retirement age at 60 years of age and female workers at 55 years of age, provided in both cases that they have paid the requisite contributions for the requisite amount of time.
  
- 11 Special provisions are laid down in respect of employees of undertakings declared to be in crisis by the Comitato interministeriale per il coordinamento della politica industriale (Inter-departmental committee for the coordination of industrial policy). Law No 155 of 23 April 1981 (GURI No 114 of 27 April 1981, Ordinary Supplement) entitles such employees to take early retirement at the age of 55 years in the case of men and 50 years in the case of women.

- 12 Article 17(4a) of Decree No 917 of the President of the Republic of 22 December 1986 (GURI No 302 of 31 December 1986, Ordinary Supplement), as amended by Legislative Decree No 314 of 2 September 1997 (GURI No 219 of 19 September 1997, Ordinary Supplement; 'Decree No 917/86'), provides:

'In the case of sums paid in relation to cessation of the employment relationship in order to encourage workers who have passed the age of 50 years in the case of women and 55 years in the case of men to take voluntary redundancy, as provided for in Article 16(1)(a), the tax shall apply at a rate equal to one half of the rate applied for the taxation of severance pay and the other allowances and sums mentioned in Article 16(1)(a).'

- 13 After the time of the facts in the present case, Article 17 of Decree No 917/86 became Article 19 as a result of amendments made by Legislative Decree No 344 of 12 December 2003 (GURI No 291 of 16 December 2003, Ordinary Supplement).

### **The main action and the question referred to the Court**

- 14 According to the decision making the reference, Mr Vergani brought an action before the Commissione tributaria provinciale di Novara (Provincial Tax Court, Novara) against the notice by which the tax authorities refused to refund him amounts he had paid as personal income tax (imposta sul reddito delle persone fisiche, 'IRPEF').

- 15 Mr Vergani maintained before the national court that application of the rate of taxation in respect of IRPEF, in accordance with the tax rules laid down in Article 17 (4a) of Decree No 917/86, entailed unjustified unequal treatment. He proposed that the case be referred to the Court for a preliminary ruling.
- 16 The national court observes that the case before it does not concern the social security scheme in relation to old-age and retirement pensions, since Mr Vergani has not reached the end of his working life as a result of reaching retirement age or by reason of the contributions he has paid.
- 17 In the light of the Community provisions in force, there are no grounds, according to the national court, such as to justify the unequal treatment provided for in Article 17(4a) of Decree No 917/86.
- 18 Thus, it is apparent from the decision making the reference that the main action concerns the taxation of a severance payment made, on the occasion of his voluntary redundancy, to a man who was at least 50 years of age but who had not reached the age of 55.
- 19 In those circumstances the Commissione tributaria provinciale di Novara decided to stay the proceedings and refer the following question to the Court for a preliminary ruling:

'Does Article 17(4a) of [Decree No 917/86] infringe, conflict with or in any event create conditions of unequal treatment as between men and women prohibited by Article 141 [EC] and Directive 76/207 ... in so far as, in like circumstances, it grants the advantage of taxation of voluntary redundancy incentives and of sums paid in



connection with the cessation of employment relationships at a rate reduced to one half (50%) for workers who have passed the age of 50 years in the case of women and the age of 55 years in the case of men?’

### **The question referred to the Court**

20 By its question, the national court seeks to ascertain in essence whether Article 141 EC and Directive 76/207 are to be interpreted as precluding a provision such as that at issue in the main proceedings, which grants to workers who have passed the age of 50 years in the case of women and the age of 55 years in the case of men, as a voluntary redundancy incentive, an advantage consisting in taxation at a rate reduced by half, of sums paid on cessation of the employment relationship.

#### *Scope of Article 141 EC and Directive 76/207 respectively*

21 As a preliminary point, it is necessary to ascertain whether the grant of a tax concession determined by reference to a worker’s age, which relates to the taxation of a payment on voluntary redundancy, such as the concession at issue in the main proceedings, is covered by Article 141 EC or Directive 76/207.

22 The concept of pay, referred to in Article 141 EC, comprises, according to settled case-law, any 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 (see, inter alia, Case C-262/88 *Barber* [1990] ECR I-1889, paragraph 12, and Case C-167/97 *Seymour-Smith and Perez* [1999] ECR I-623, paragraph 23).

- 23 The advantage at issue before the national court, namely a tax concession, is not paid by the employer. Such an advantage is therefore not covered by Article 141 EC.
- 24 The judgments of the Court which Mr Vergani cites in support of the opposite proposition (Case 12/81 *Garland* [1982] ECR 359, paragraph 4; *Barber*, paragraph 10; and Case C-33/89 *Kowalska* [1990] ECR I-2591, paragraph 7) are not at variance with that finding, since they concerned consideration which the worker received in respect of his employment from his employer.
- 25 As to whether the grant of a tax concession determined by reference to a worker's age, which relates to the taxation of a payment on voluntary redundancy such as that at issue in the main proceedings, falls within the scope of Directive 76/207, it must be borne in mind that, under Article 5(1) of the directive, application of the principle of equal treatment with regard to working conditions, including the conditions governing dismissal, means that men and women are to be guaranteed the same conditions without discrimination on grounds of sex.
- 26 Read in the light of Article 5(2)(a) of Directive 76/207, by virtue of which Member States must take the measures necessary to ensure that any laws, regulations and administrative provisions contrary to the principle of equal treatment are abolished, Article 5(1) of the directive must be taken to mean that it also covers the conditions governing dismissal which obtain in those States.
- 27 In the context of Directive 76/207, the term 'dismissal' must be widely construed so as to include termination of the employment relationship between an employee and his employer, even as part of a voluntary redundancy scheme (see, to that effect, Case 19/81 *Burton* [1982] ECR 555, paragraph 9).

28 When referring to Article 17(4a) of Decree No 917/86, the national court explained that the tax advantage at issue before it was granted 'in order to encourage workers who have passed the age of 50 years in the case of women and 55 years in the case of men to take voluntary redundancy'.

29 It follows from all the foregoing that a tax rule determined by reference to a worker's age, such as that at issue in the main proceedings, constitutes a condition governing dismissal within the meaning of Article 5(1) of Directive 76/207.

*Whether there is discrimination*

30 In accordance with Article 5(1) of Directive 76/207, the same conditions governing dismissal must apply to men and women without discrimination on grounds of sex.

31 A difference in treatment resulting from the taxation, at a rate reduced by half, of sums paid on the cessation of the employment relationship, which applies to workers who have passed the age of 50 years in the case of women and 55 years in the case of men, constitutes unequal treatment on grounds of the workers' sex.

32 Having regard to the observations submitted by the Italian Government and by the Commission of the European Communities, the Court must consider whether such a difference in treatment is covered by the derogation provided for in Article 7(1)(a)

of Directive 79/7, by virtue of which the directive is without prejudice to the right of Member States to exclude from its scope the determination of pensionable age for the purposes of granting old-age and retirement pensions and the possible consequences thereof for other benefits.

- 33 It is clear from settled case-law that, given the fundamental importance of the principle of equal treatment, the exception to the prohibition of discrimination on grounds of sex, provided for in Article 7(1)(a) of Directive 79/7, must be interpreted strictly (see, in particular, Case 152/84 *Marshall* [1986] ECR 723, paragraph 36, and Case C-328/91 *Thomas and Others* [1993] ECR I-1247, paragraph 8). That provision can apply only to the determination of pensionable age for the purposes of granting old-age and retirement pensions and to the consequences thereof for other social security benefits (Case 151/84 *Roberts* [1986] ECR 703, paragraph 35; also to that effect, Case C-303/02 *Haackert* [2004] ECR I-2195, paragraph 30). That exception to the prohibition of discrimination on grounds of sex is therefore not applicable in the case of a tax concession such as that at issue in the main proceedings, which is not a social security benefit.
- 34 Given, first, that the difference in treatment provided for by the provision at issue in the main proceedings is directly on grounds of sex and, second, that Directive 76/207 contains no exception, applicable in the present case, to the principle of equal treatment, it must be concluded that that difference in treatment constitutes discrimination on grounds of sex.
- 35 It follows from all the foregoing that Directive 76/207 must be interpreted as precluding a provision such as that at issue in the main proceedings, which grants to workers who have passed the age of 50 years in the case of women and 55 years in the case of men, as a voluntary redundancy incentive, an advantage consisting in taxation at a rate reduced by half, of sums paid on cessation of the employment relationship.

## Costs

- 36 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (First Chamber) hereby rules:

**Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions must be interpreted as precluding a provision such as that at issue in the main proceedings, which grants to workers who have passed the age of 50 years in the case of women and 55 years in the case of men, as a voluntary redundancy incentive, an advantage consisting in taxation at a rate reduced by half, of sums paid on cessation of the employment relationship.**

[Signatures]