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Judgment of the Court of 8 November 1983. - Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland. - Failure of a State to fulfil its obligations - Equal treatment for men and women. - Case 165/82.

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Keywords

1 . SOCIAL POLICY - MALE AND FEMALE WORKERS - ACCESS TO EMPLOYMENT AND WORKING CONDITIONS - EQUALITY OF TREATMENT - DIRECTIVE 76/207 - SCOPE - NON-BINDING COLLECTIVE AGREEMENTS - INCLUSION

(COUNCIL DIRECTIVE 76/207 , ART . 4 (B))

2.SOCIAL POLICY - MALE AND FEMALE WORKERS - ACCESS TO EMPLOYMENT AND WORKING CONDITIONS - EQUALITY OF TREATMENT - DIRECTIVE 76/207 - POWER OF MEMBER STATES TO EXCLUDE CERTAIN OCCUPATIONAL ACTIVITIES - EMPLOYMENT IN PRIVATE HOUSEHOLDS AND SMALL UNDERTAKINGS - GENERAL EXCLUSION - NOT PERMISSIBLE

(COUNCIL DIRECTIVE 76/207 , ART . 2 (2))

3.SOCIAL POLICY - MALE AND FEMALE WORKERS - ACCESS TO EMPLOYMENT AND WORKING

CONDITIONS - EQUALITY OF TREATMENT - DIRECTIVE 76/207 - POWER OF MEMBER STATES TO EXCLUDE CERTAIN OCCUPATIONAL ACTIVITIES - OCCUPATION OF MIDWIFE - EXCLUSION PERMISSIBLE

(COUNCIL DIRECTIVE 76/207 , ART . 2 (2) AND ART . 9 (2))

Summary

1 . DIRECTIVE 76/207 COVERS ALL COLLECTIVE AGREEMENTS WITHOUT DISTINCTION AS THE NATURE OF THE LEGAL EFFECTS WHICH THEY DO OR DO NOT PRODUCE . THE REASON FOR THAT GENERALITY LIES IN THE FACT THAT , EVEN IF THEY ARE NOT LEGALLY BINDING AS BETWEEN THE PARTIES WHO SIGN THEM OR WITH REGARD TO THE EMPLOYMENT RELATIONSHIPS WHICH THEY GOVERN , COLLECTIVE AGREEMENTS NEVERTHELESS HAVE IMPORTANT DE FACTO CONSEQUENCES FOR THE EMPLOYMENT RELATIONSHIPS TO WHICH THEY REFER , PARTICULARLY IN SO FAR AS THEY DETERMINE THE RIGHTS OF THE WORKERS AND , IN THE INTERESTS OF INDUSTRIAL HARMONY , GIVE UNDERTAKINGS SOME INDICATION OF THE CONDITIONS WHICH EMPLOYMENT RELATIONSHIPS MUST SATISFY OR NEED NOT SATISFY . THE NEED TO ENSURE THAT THE DIRECTIVE IS COMPLETELY EFFECTIVE THEREFORE REQUIRES THAT ANY CLAUSES IN SUCH AGREEMENTS WHICH ARE INCOMPATIBLE WITH THE OBLIGATIONS IMPOSED BY THE DIRECTIVE UPON THE MEMBER STATES MAY BE RENDERED INOPERATIVE , ELIMINATED OR AMENDED BY APPROPRIATE MEANS .

2. WHILST ARTICLE 2 (2) OF DIRECTIVE 76/207 ALLOWS MEMBER STATES TO EXCLUDE FROM THE FIELD OF APPLICATION OF THE DIRECTIVE THOSE OCCUPATIONAL ACTIVITIES FOR WHICH , BY REASON OF THEIR NATURE OR THE CONTEXT IN WHICH THEY ARE CARRIED OUT , THE SEX OF THE WORKER CONSTITUTES A DETERMINING FACTOR , THE FACT THAT A LAW OF A MEMBER STATE EXCLUDES FROM THE PROHIBITION OF DISCRIMINATION BETWEEN SEXES ALL KINDS OF EMPLOYMENT IN PRIVATE HOUSEHOLDS OR IN SMALL UNDERTAKINGS WITH NOT MORE THAN FIVE EMPLOYEES NEVERTHELESS GOES BEYOND THE OBJECTIVE WHICH MAY BE LAWFULLY PURSUED WITHIN THE FRAMEWORK OF THE PROVISION IN QUESTION , BY REASON OF THE GENERALITY OF THE EXCLUSION .

3. AS REGARDS ACCESS TO THE OCCUPATION OF MIDWIFE AND TO THE TRAINING RELATING THERETO , THE MEMBER STATES ARE UNDER AN OBLIGATION TO IMPLEMENT THE PRINCIPLE OF EQUALITY OF TREATMENT LAID DOWN BY DIRECTIVE 76/207 . IT MUST HOWEVER BE RECOGNIZED THAT AT THE PRESENT TIME PERSONAL SENSITIVITIES MAY PLAY AN IMPORTANT ROLE IN RELATIONS BETWEEN MIDWIFE AND PATIENT . IN THOSE CIRCUMSTANCES , BY FAILING AT THE PRESENT TIME FULLY TO APPLY THE PRINCIPLE LAID DOWN IN THE DIRECTIVE , A MEMBER STATE HAS NOT EXCEEDED THE LIMITS OF THE

POWER GRANTED TO THE MEMBER STATES BY ARTICLES 9 (2) AND 2 (2) OF THE DIRECTIVE .

Parties

IN CASE 165/82

COMMISSION OF THE EUROPEAN COMMUNITIES , REPRESENTED BY JOHN FORMAN , A MEMBER OF ITS LEGAL DEPARTMENT , ACTING AS AGENT , HAVING AN ADDRESS FOR SERVICE IN LUXEMBOURG AT THE OFFICE OF ORESTE MONTALTO , A MEMBER OF ITS LEGAL DEPARTMENT , JEAN MONNET BUILDING , KIRCHBERG ,

APPLICANT ,

V

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND , REPRESENTED BY J . D . HOWES , TREASURY SOLICITOR ' S DEPARTMENT , ASSISTED BY I . GLICK , WITH AN ADDRESS FOR SERVICE IN LUXEMBOURG AT THE EMBASSY OF THE UNITED KINGDOM ,

DEFENDANT ,

Subject of the case

APPLICATION FOR A DECLARATION THAT THE UNITED KINGDOM HAS FAILED TO FULFIL ITS OBLIGATIONS UNDER THE EEC TREATY BY FAILING TO ENACT WITHIN THE PRESCRIBED PERIOD THE PROVISIONS NEEDED IN ORDER TO COMPLY WITH 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 (OFFICIAL JOURNAL , L 39 , P . 40),

Grounds

1 BY APPLICATION LODGED AT THE COURT REGISTRY ON 3 JUNE 1982 THE COMMISSION OF THE EUROPEAN COMMUNITIES BROUGHT AN ACTION BEFORE THE COURT UNDER ARTICLE 169 OF THE EEC TREATY FOR A DECLARATION THAT BY FAILING TO ENACT WITHIN THE PRESCRIBED PERIOD THE PROVISIONS NEEDED IN ORDER TO COMPLY WITH

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 (OFFICIAL JOURNAL 1976 , L 39 , P . 40) , THE UNITED KINGDOM HAS FAILED TO FULFIL ITS OBLIGATIONS UNDER THE TREATY .

2 THE COMMISSION CHARGES THE UNITED KINGDOM WITH ONLY PARTIALLY IMPLEMENTING THE DIRECTIVE IN SO FAR IT HAS FAILED TO AMEND AND SUPPLEMENT THE SEX DISCRIMINATION ACT 1975 (HEREINAFTER REFERRED TO AS ' ' THE 1975 ACT ' ') WHICH , ALTHOUGH ABOLISHING DISCRIMINATION IN CERTAIN AREAS OF EMPLOYMENT , ALLOWS IT TO CONTINUE IN OTHER AREAS IN WHICH BY VIRTUE OF THE DIRECTIVE DISCRIMINATION MUST BE ABOLISHED BY 12 AUGUST 1978 AT THE LATEST .

3 THE COMMISSION ' S COMPLAINTS RELATE TO THE FOLLOWING POINTS :

(A) NEITHER THE 1975 ACT NOR ANY OTHER PROVISION OF THE LEGISLATION IN FORCE IN THE UNITED KINGDOM PROVIDES THAT PROVISIONS CONTRARY TO THE PRINCIPLE OF EQUAL TREATMENT CONTAINED IN COLLECTIVE AGREEMENTS , RULES OF UNDERTAKINGS AND RULES GOVERNING INDEPENDENT OCCUPATIONS AND PROFESSIONS ARE TO BE , OR MAY BE DECLARED , VOID OR MAY BE AMENDED .

(B) CONTRARY TO THE PROVISIONS OF THE DIRECTIVE , SECTION 6 (3) OF THE 1975 ACT PROVIDES THAT THE PROHIBITION OF DISCRIMINATION DOES NOT APPLY TO EMPLOYMENT IN A PRIVATE HOUSEHOLD OR WHERE THE NUMBER OF PERSONS EMPLOYED BY AN EMPLOYER DOES NOT EXCEED FIVE (DISREGARDING PERSONS EMPLOYED IN A PRIVATE HOUSEHOLD) .

(C) FINALLY , BY VIRTUE OF SECTION 20 OF THE 1975 ACT THE PROHIBITION OF DISCRIMINATION BASED ON SEX DOES NOT APPLY TO THE EMPLOYMENT , PROMOTION AND TRAINING OF MIDWIVES .

THE FIRST COMPLAINT

4 THE GOVERNMENT OF THE UNITED KINGDOM CONSIDERS THAT THIS COMPLAINT IS UNFOUNDED . BY VIRTUE OF SECTION 18 OF THE TRADE UNION AND LABOUR RELATIONS ACT 1974 , ANY COLLECTIVE AGREEMENTS MADE BEFORE 1 DECEMBER 1971 OR AFTER THE ENTRY INTO FORCE OF THAT ACT ARE TO BE PRESUMED NOT TO HAVE BEEN INTENDED BY THE PARTIES TO BE LEGALLY ENFORCEABLE UNLESS THEY ARE IN WRITING AND CONTAIN A PROVISION IN WHICH THE PARTIES EXPRESS THEIR INTENTION THAT THE AGREEMENTS ARE TO BE LEGALLY ENFORCEABLE . IN FACT , COLLECTIVE AGREEMENTS ARE NOT NORMALLY LEGALLY BINDING . THE UNITED KINGDOM GOVERNMENT IS NOT AWARE OF THERE BEING ANY LEGALLY BINDING COLLECTIVE AGREEMENTS AT PRESENT IN FORCE IN

THE UNITED KINGDOM .

5 EVEN IF COLLECTIVE AGREEMENTS CONTAINING PROVISIONS CONTRARY TO THE PRINCIPLE OF EQUALITY OF TREATMENT DO EXIST , THOSE PROVISIONS , IN SO FAR AS THEY ARE NOT CAPABLE OF AMENDMENT UNDER SECTION 3 OF THE EQUAL PAY ACT 1970 , WOULD BE RENDERED VOID BY SECTION 77 OF THE 1975 ACT .

6 THE CONSEQUENCES OF ANY PROVISION IN THE INTERNAL RULES OF AN UNDERTAKING OR IN THE RULES GOVERNING AN INDEPENDENT OCCUPATION OR PROFESSION WHICH IS CONTRARY TO THE PROHIBITION OF DISCRIMINATION WOULD SIMILARLY BE RENDERED VOID BY THE SAME PROVISION . THIS WOULD APPLY TO ANY CONTRACT BETWEEN MEMBERS OF A PROFESSION OR OCCUPATION OR BETWEEN THEM AND AN UNDERTAKING OR ANY OCCUPATIONAL OR PROFESSIONAL BODY WITH LEGAL PERSONALITY . IF ANY DISCRIMINATION IN EMPLOYMENT WERE TO RESULT FROM THE EXISTENCE OF SUCH A DISCRIMINATORY PROVISION IN THE INTERNAL RULES OF AN UNDERTAKING OR OF AN OCCUPATIONAL OR PROFESSIONAL BODY , THAT DRISCRIMINATION WOULD BE CAUGHT BY SECTION 6 OF THE 1975 ACT . MOREOVER , IF FOR EXAMPLE AN UNDERTAKING WHOSE BUSINESS WAS TO FIND EMPLOYMENT FOR WORKERS OFFERED WORK , BY VIRTUE OF ITS INTERNAL RULES , ONLY TO PERSONS OF ONE SEX , TO THE EXCLUSION OF PERSONS OF THE OTHER SEX , THAT WOULD BE PROHIBITED BY SECTION 15 OF THE 1975 ACT .

7 FINALLY , IF A PROVISION CONTRARY TO THE PRINCIPLE OF EQUAL TREATMENT RELATED TO AUTHORIZATION OR QUALIFICATION FOR A PARTICULAR PROFESSION OR OCCUPATION , IT WOULD BE DEALT WITH BY SECTION 13 (1) OF THE 1975 ACT WHICH , IN SUBSTANCE , MAKES IT UNLAWFUL FOR AN AUTHORITY OR BODY WHICH CAN CONFER AN AUTHORIZATION OR QUALIFICATION ' ' TO DISCRIMINATE AGAINST A WOMAN ' ' .

8 THESE ARGUMENTS ARE NOT SUFFICIENT TO NULLIFY THE COMPLAINTS MADE BY THE COMMISSION . WHILST IT MAY BE ADMITTED THAT THE UNITED KINGDOM LEGISLATION SATISFIES THE OBLIGATIONS IMPOSED BY THE DIRECTIVE AS REGARDS ANY COLLECTIVE AGREEMENTS WHICH HAVE LEGALLY BINDING EFFECTS , IN SO FAR AS THEY ARE COVERED BY SECTION 77 OF THE 1975 ACT , IT IS TO BE NOTED ON THE OTHER HAND THAT THE UNITED KINGDOM LEGISLATION CONTAINS NO CORRESPONDING PROVISION REGARDING EITHER NON-BINDING COLLECTIVE AGREEMENTS - WHICH THE UNITED KINGDOM GOVERNMENT DECLARES TO BE THE ONLY KIND IN EXISTENCE - OR THE INTERNAL RULES OF UNDERTAKINGS OR THE RULES GOVERNING INDEPENDENT OCCUPATIONS OR PROFESSIONS .

9 THE UNITED KINGDOM ' S ARGUMENT TO THE EFFECT THAT THE NON-BINDING CHARACTER OF COLLECTIVE AGREEMENTS REMOVES THEM FROM THE FIELD OF APPLICATION OF THAT DIRECTIVE CANNOT BE ACCEPTED , EVEN IF ACCOUNT IS TAKEN OF THE UNITED KINGDOM ' S OBSERVATION THAT INDIVIDUAL CONTRACTS OF EMPLOYMENT

ENTERED INTO WITHIN THE FRAMEWORK OF A COLLECTIVE AGREEMENT ARE RENDERED VOID BY SECTION 77 OF THE 1975 ACT .

10 ARTICLE 4 (B) OF DIRECTIVE 76/207 PROVIDES THAT THE APPLICATION OF THE PRINCIPLE OF EQUAL TREATMENT IN THE AREAS TO WHICH IT RELATES MEANS THAT MEMBER STATES MUST TAKE THE NECESSARY MEASURES TO ENSURE THAT :

. . .

' ' (B) ANY PROVISIONS CONTRARY TO THE PRINCIPLE OF EQUAL TREATMENT WHICH ARE INCLUDED IN COLLECTIVE AGREEMENTS , INDIVIDUAL CONTRACTS OF EMPLOYMENT , INTERNAL RULES OF UNDERTAKINGS OR IN RULES GOVERNING THE INDEPENDENT OCCUPATIONS AND PROFESSIONS SHALL BE , OR MAY BE DECLARED , NULL AND VOID OR MAY BE AMENDED . ' '

11 THE DIRECTIVE THUS COVERS ALL COLLECTIVE AGREEMENTS WITHOUT DISTINCTION AS TO THE NATURE OF THE LEGAL EFFECTS WHICH THEY DO OR DO NOT PRODUCE . THE REASON FOR THAT GENERALITY LIES IN THE FACT THAT , EVEN IF THEY ARE NOT LEGALLY BINDING AS BETWEEN THE PARTIES WHO SIGN THEM OR WITH REGARD TO THE EMPLOYMENT RELATIONSHIPS WHICH THEY GOVERN , COLLECTIVE AGREEMENTS NEVERTHELESS HAVE IMPORTANT DE FACTO CONSEQUENCES FOR THE EMPLOYMENT RELATIONSHIPS TO WHICH THEY REFER , PARTICULARLY IN SO FAR AS THEY DETERMINE THE RIGHTS OF THE WORKERS AND , IN THE INTERESTS OF INDUSTRIAL HARMONY , GIVE UNDERTAKINGS SATISFY OR NEED NOT SATISFY . THE NEED TO ENSURE THAT THE DIRECTIVE IS COMPLETELY EFFECTIVE THEREFORE REQUIRES THAT ANY CLAUSES IN SUCH AGREEMENTS WHICH ARE INCOMPATIBLE WITH THE OBLIGATIONS IMPOSED BY THE DIRECTIVE UPON THE MEMBER STATES MAY BE RENDERED INOPERATIVE , ELIMINATED OR AMENDED BY APPROPRIATE MEANS .

THE SECOND COMPLAINT

12 ACCORDING TO THE UNITED KINGDOM , THE EXCLUSIONS FROM THE PROHIBITION OF DISCRIMINATION PROVIDED FOR IN SECTION 6 (3) OF THE 1975 ACT IN THE CASE OF EMPLOYMENT IN A PRIVATE HOUSEHOLD OR IN UNDERTAKINGS WHERE THE NUMBER OF PERSONS EMPLOYED DOES NOT EXCEED FIVE ARE JUSTIFIED BY THE EXCEPTION PROVIDED FOR IN ARTICLE 2 (2) OF THE DIRECTIVE ITSELF , ACCORDING TO WHICH :

' ' THIS DIRECTIVE SHALL BE WITHOUT PREJUDICE TO THE RIGHT OF MEMBER STATES TO EXCLUDE FROM ITS FIELD OF APPLICATION THOSE OCCUPATIONAL ACTIVITIES AND , WHERE APPROPRIATE , THE TRAINING LEADING THERETO , FOR WHICH , BY REASON OF THEIR NATURE OR THE CONTEXT IN WHICH THEY ARE CARRIED OUT , THE SEX OF THE WORKER CONSTITUTES A DETERMINING FACTOR . ' '

13 IT MUST BE RECOGNIZED THAT THE PROVISION OF THE 1975 ACT IN QUESTION IS INTENDED , IN SO FAR AS IT REFERS TO EMPLOYMENT IN A PRIVATE HOUSEHOLD , TO RECONCILE THE PRINCIPLE OF EQUALITY OF TREATMENT WITH THE PRINCIPLE OF RESPECT FOR PRIVATE LIFE , WHICH IS ALSO FUNDAMENTAL . RECONCILIATION OF THAT KIND IS ONE OF THE FACTORS WHICH MUST BE TAKEN INTO CONSIDERATION IN DETERMINING THE SCOPE OF THE EXCEPTION PROVIDED FOR IN ARTICLE 2 (2) OF THE DIRECTIVE .

14 WHILST IT IS UNDENIABLE THAT , FOR CERTAIN KINDS OF EMPLOYMENT IN PRIVATE HOUSEHOLDS , THAT CONSIDERATION MAY BE DECISIVE , THAT IS NOT THE CASE FOR ALL THE KINDS OF EMPLOYMENT IN QUESTION .

15 AS REGARDS SMALL UNDERTAKINGS WITH NOT MORE THAN FIVE EMPLOYEES , THE UNITED KINGDOM HAS NOT PUT FORWARD ANY ARGUMENT TO SHOW THAT IN ANY UNDERTAKING OF THAT SIZE THE SEX OF THE WORKER WOULD BE A DETERMINING FACTOR BY REASON OF THE NATURE OF HIS ACTIVITIES OR THE CONTEXT IN WHICH THEY ARE CARRIED OUT .

16 CONSEQUENTLY , BY REASON OF ITS GENERALITY , THE EXCLUSION PROVIDED FOR IN THE CONTESTED PROVISION OF THE 1975 ACT GOES BEYOND THE OBJECTIVE WHICH MAY BE LAWFULLY PURSUED WITHIN THE FRAMEWORK OF ARTICLE 2 (2) OF THE DIRECTIVE .

THE THIRD COMPLAINT

17 THE COMMISSION ' S THIRD COMPLAINT RELATES TO THE FACT THAT THE 1975 ACT ENSURES ACCESS TO THE OCCUPATION OF MIDWIFE AND TO TRAINING FOR THAT OCCUPATION ONLY WITHIN CERTAIN LIMITS . THIS IS SAID TO ENTAIL DISCRIMINATION BASED ON SEX .

18 THE UNITED KINGDOM ACKNOWLEDGES THE FACTS . BY VIRTUE OF PARAGRAPH (3) OF SCHEDULE 4 TO THE 1975 ACT , UNTIL A DAY TO BE SPECIFIED BY ORDER OF THE SECRETARY OF STATE , MEN ARE GRANTED ACCESS TO THE OCCUPATION IN QUESTION AND MAY BE TRAINED FOR THAT PURPOSE ONLY IN CERTAIN SPECIFIC PLACES . THIS SITUATION IS DUE TO THE FACT THAT IN THE UNITED KINGDOM THE OCCUPATION IN QUESTION IS NOT TRADITIONALLY ENGAGED IN BY MEN . IN A SPHERE IN WHICH RESPECT FOR THE PATIENT ' S SENSITIVITIES IS OF PARTICULAR IMPORTANCE , IT CONSIDERS THAT AT THE PRESENT TIME THAT LIMITATION IS IN CONFORMITY WITH ARTICLE 2 (2) OF THE DIRECTIVE . HOWEVER , IT ADDS THAT IT INTENDS TO PROCEED BY STAGES AND KEEP THE POSITION UNDER REVIEW , IN ACCORDANCE WITH THE OBLIGATIONS IMPOSED BY ARTICLE 9 (2) OF THE DIRECTIVE .

19 THAT PROVISION REQUIRES MEMBER STATES PERIODICALLY TO ASSESS THE

OCCUPATIONAL ACTIVITIES REFERRED TO IN ARTICLE 2 (2) IN ORDER TO DECIDE , IN THE LIGHT OF SOCIAL DEVELOPMENTS , WHETHER THERE IS JUSTIFICATION FOR MAINTAINING THE PERMITTED EXCLUSIONS . THEY ARE TO NOTIFY THE COMMISSION OF THE RESULTS OF THAT ASSESSMENT .

20 IT IS UNDENIABLE THAT IN THE AREA IN QUESTION , AS THE UNITED KINGDOM ACKNOWLEDGES , THE MEMBER STATES ARE UNDER AN OBLIGATION TO IMPLEMENT THE PRINCIPLE OF EQUALITY OF TREATMENT . IT MUST HOWEVER BE RECOGNIZED THAT AT THE PRESENT TIME PERSONAL SENSITIVITIES MAY PLAY AN IMPORTANT ROLE IN RELATIONS BETWEEN MIDWIFE AND PATIENT . IN THOSE CIRCUMSTANCES , IT MAY BE STATED THAT BY FAILING FULLY TO APPLY THE PRINCIPLE LAID DOWN IN THE DIRECTIVE , THE UNITED KINGDOM HAS NOT EXCEEDED THE LIMITS OF THE POWER GRANTED TO THE MEMBER STATES BY ARTICLES 9 (2) AND 2 (2) OF THE DIRECTIVE . THE COMMISSION ' S COMPLAINT IN THAT REGARD CANNOT THEREFORE BE UPHeld .

21 IT IS APPARENT FROM ALL THE FOREGOING CONSIDERATIONS THAT BY FAILING TO ADOPT IN ACCORDANCE WITH DIRECTIVE 76/207 OF 9 FEBRUARY 1976 THE MEASURES NEEDED TO ENSURE THAT ANY PROVISIONS CONTRARY TO THE PRINCIPLE OF EQUALITY OF TREATMENT CONTAINED IN COLLECTIVE AGREEMENTS OR IN THE INTERNAL RULES OF UNDERTAKINGS OR IN THE RULES GOVERNING THE INDEPENDENT PROFESSIONS OR OCCUPATIONS ARE TO BE , OR MAY BE DECLARED , VOID OR 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 , THE UNITED KINGDOM HAS FAILED TO FULFIL ITS OBLIGATIONS UNDER THE TREATY .

22 IN ALL OTHER RESPECTS , THE APPLICATION IS DISMISSED .

Decision on costs

COSTS

23 UNDER ARTICLE 69 (2) OF THE RULES OF PROCEDURE , AN UNSUCCESSFUL PARTY IS TO BE ORDERED TO PAY THE COSTS IF THEY HAVE BEEN ASKED FOR IN THE SUCCESSFUL PARTY ' S PLEADINGS . HOWEVER , BY VIRTUE OF PARAGRAPH (3) OF THE SAME ARTICLE , THE COURT MAY ORDER EACH PARTY TO BEAR ITS OWN COSTS IF EITHER OF THE PARTIES IS UNSUCCESSFUL IN ONE OR MORE OF ITS SUBMISSIONS .

24 IT IS APPROPRIATE TO HAVE RECOURSE TO THAT PROVISION IN THIS CASE , SINCE THE COMMISSION HAS FAILED IN ONE OF ITS SUBMISSIONS .

Operative part

FOR THOSE REASONS

THE COURT

1 . DECLARES THAT BY FAILING TO ADOPT IN ACCORDANCE WITH DIRECTIVE 76/207 OF 9 FEBRUARY 1976 THE MEASURES NEEDED TO ENSURE THAT ANY PROVISIONS CONTRARY TO THE PRINCIPLE OF EQUALITY OF TREATMENT CONTAINED IN COLLECTIVE AGREEMENTS OR IN THE RULES OF UNDERTAKINGS OR IN THE RULES GOVERNING THE INDEPENDENT PROFESSIONS AND 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 , THE UNITED KINGDOM HAS FAILED TO FULFIL ITS OBLIGATIONS UNDER THE TREATY ;

2 . DISMISSES THE APPLICATION IN ALL OTHER RESPECTS ;

3 . ORDERS EACH OF THE PARTIES TO BEAR ITS OWN COSTS .