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61984J0222

Judgment of the Court of 15 May 1986. - Marguerite Johnston v Chief Constable of the Royal Ulster Constabulary. - Reference for a preliminary ruling: Industrial Tribunal, Belfast (Northern Ireland) - United Kingdom. - Equal treatment for men and women - Armed member of a police reserve force. - Case 222/84.

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Keywords

1 . COMMUNITY LAW - INTERPRETATION - TAKING INTO CONSIDERATION THE EUROPEAN CONVENTION ON HUMAN RIGHTS

2 . SOCIAL POLICY - MALE AND FEMALE WORKERS - ACCESS TO EMPLOYMENT AND WORKING CONDITIONS - EQUAL TREATMENT - EXCEPTIONS - SUBJECT TO EFFECTIVE JUDICIAL CONTROL - ARTICLE 6 OF DIRECTIVE 76/207 - EFFECT ON RELATIONS BETWEEN THE STATE AND INDIVIDUALS

(COUNCIL DIRECTIVE 76/207 , ART . 6)

3 . SOCIAL POLICY - MALE AND FEMALE WORKERS - ACCESS TO EMPLOYMENT AND WORKING CONDITIONS - EQUAL TREATMENT - REQUIREMENTS OF PUBLIC SAFETY - EXAMINATION IN THE CONTEXT OF DIRECTIVE 76/207

(COUNCIL DIRECTIVE 76/207)

4 . SOCIAL POLICY - MALE AND FEMALE WORKERS - ACCESS TO EMPLOYMENT AND WORKING CONDITIONS - EQUAL TREATMENT - EXCEPTIONS - OCCUPATIONS FOR WHICH THE SEX OF THE WORKER CONSTITUTES A DETERMINING FACTOR - ARMED POLICE OFFICERS - TAKING INTO CONSIDERATION THE REQUIREMENTS OF PUBLIC SAFETY IN AN INTERNAL SITUATION CHARACTERIZED BY FREQUENT ASSASSINATIONS - PERMISSIBLE - CONTROL BY THE NATIONAL COURTS

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

5 . SOCIAL POLICY - MALE AND FEMALE WORKERS - ACCESS TO EMPLOYMENT AND WORKING CONDITIONS - EQUAL TREATMENT - EXCEPTIONS - PROTECTION OF WOMEN - RISKS OF BEING AN ARMED POLICE OFFICER - EXCLUSION

(COUNCIL DIRECTIVE 76/207 , ART . 2 (3))

6 . MEASURES ADOPTED BY THE INSTITUTIONS - DIRECTIVES - IMPLEMENTATION BY THE MEMBER STATES - NEED TO ENSURE THAT DIRECTIVES ARE EFFECTIVE - OBLIGATIONS OF NATIONAL COURTS

(EEC TREATY , ART . 5 AND THIRD PARAGRAPH OF ART . 189)

7 . SOCIAL POLICY - MALE AND FEMALE WORKERS - ACCESS TO EMPLOYMENT AND WORKING CONDITIONS - EQUAL TREATMENT - DIRECTIVE 76/207 , ARTICLE 2 (1) COMBINED WITH ARTICLES 3 (1) AND 4 - EFFECT ON THE RELATIONS BETWEEN THE STATE AND INDIVIDUALS - STATE EMPLOYER

(COUNCIL DIRECTIVE 76/207 , ARTS 2 (1) AND (2) , 3 (1) AND 4)

Summary

1 . AS THE EUROPEAN PARLIAMENT , COUNCIL AND COMMISSION RECOGNIZED IN THEIR JOINT DECLARATION OF 5 APRIL 1977 AND AS THE COURT HAS RECOGNIZED IN ITS DECISIONS , THE PRINCIPLES ON WHICH THE EUROPEAN CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IS BASED MUST BE TAKEN INTO CONSIDERATION IN COMMUNITY LAW .

2 . THE PRINCIPLE OF EFFECTIVE JUDICIAL CONTROL LAID DOWN IN ARTICLE 6 OF COUNCIL DIRECTIVE 76/207 , A PRINCIPLE WHICH UNDERLIES THE CONSTITUTIONAL

TRADITIONS COMMON TO THE MEMBER STATES AND WHICH IS LAID DOWN IN ARTICLES 6 AND 13 OF THE EUROPEAN CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS , DOES NOT ALLOW A CERTIFICATE ISSUED BY A NATIONAL AUTHORITY STATING THAT THE CONDITIONS FOR DEROGATING FROM THE PRINCIPLE OF EQUAL TREATMENT FOR MEN AND WOMEN FOR THE PURPOSES OF PROTECTING PUBLIC SAFETY ARE SATISFIED TO BE TREATED AS CONCLUSIVE EVIDENCE SO AS TO EXCLUDE THE EXERCISE OF ANY POWER OF REVIEW BY THE COURTS . THE PROVISION CONTAINED IN ARTICLE 6 TO THE EFFECT THAT ALL PERSONS WHO CONSIDER THEMSELVES WRONGED BY DISCRIMINATION BETWEEN MEN AND WOMEN MUST HAVE AN EFFECTIVE JUDICIAL REMEDY MAY BE RELIED UPON BY INDIVIDUALS AS AGAINST A MEMBER STATE WHICH HAS NOT ENSURED THAT IT IS FULLY IMPLEMENTED IN ITS INTERNAL LEGAL ORDER .

3 . IT IS NOT PERMISSIBLE TO READ INTO THE TREATY , REGARDLESS OF THE SPECIFIC CASES ENVISAGED BY CERTAIN OF ITS PROVISIONS , A GENERAL PROVISIO COVERING ANY MEASURE TAKEN BY A MEMBER STATE FOR REASONS OF PUBLIC SAFETY . RECOGNITION OF SUCH A GENERAL PROVISIO MIGHT IMPAIR THE BINDING NATURE OF COMMUNITY LAW AND ITS UNIFORM APPLICATION . IT FOLLOWS THAT ACTS OF SEX DISCRIMINATION DONE FOR REASONS RELATED TO THE PROTECTION OF PUBLIC SAFETY MUST BE EXAMINED IN THE LIGHT OF THE DEROGATIONS FROM THE PRINCIPLE OF EQUAL TREATMENT OF MEN AND WOMEN .

4 . SINCE ARTICLE 2 (2) OF DIRECTIVE 76/207 AUTHORIZES DEROGATIONS FROM THE RIGHT TO EQUAL TREATMENT AS REGARDS ACCESS TO EMPLOYMENT AND WORKING CONDITIONS , IT MUST BE INTERPRETED STRICTLY AND APPLIED IN ACCORDANCE WITH THE PRINCIPLE OF PROPORTIONALITY . IN DECIDING WHETHER , BY REASON OF THE CONTEXT IN WHICH THE ACTIVITIES OF A POLICE OFFICER ARE CARRIED OUT , THE SEX OF THE OFFICER CONSTITUTES A DETERMINING FACTOR FOR THAT OCCUPATIONAL ACTIVITY , IT IS NOT EXCLUDED THAT A MEMBER STATE MAY TAKE INTO CONSIDERATION , SUBJECT TO CONTROL BY THE NATIONAL COURTS , REQUIREMENTS OF PUBLIC SAFETY IN ORDER TO RESTRICT GENERAL POLICING DUTIES , IN AN INTERNAL SITUATION CHARACTERIZED BY FREQUENT ASSASSINATIONS , TO MEN EQUIPPED WITH FIRE-ARMS .

5 . SINCE ARTICLE 2 (3) OF DIRECTIVE 76/207 AUTHORIZES DEROGATIONS FROM THE RIGHT TO EQUAL TREATMENT AS REGARDS ACCESS TO EMPLOYMENT AND WORKING CONDITIONS , IT MUST BE INTERPRETED STRICTLY . THE PROTECTION OF WOMEN WHICH IT ENVISAGES DOES NOT INCLUDE PROTECTION AGAINST THE RISKS AND DANGERS , SUCH AS THOSE TO WHICH ANY ARMED POLICE OFFICER IS EXPOSED WHEN PERFORMING HIS DUTIES IN A GIVEN SITUATION , THAT DO NOT SPECIFICALLY AFFECT WOMEN AS SUCH .

6 . IN ALL CASES IN WHICH A DIRECTIVE HAS BEEN PROPERLY IMPLEMENTED ITS EFFECTS REACH INDIVIDUALS THROUGH THE IMPLEMENTING MEASURES ADOPTED BY THE MEMBER STATES CONCERNED .

THE MEMBER STATES ' OBLIGATION TO ACHIEVE THE RESULT ENVISAGED BY A DIRECTIVE AND THEIR DUTY UNDER ARTICLE 5 OF THE TREATY TO TAKE ALL APPROPRIATE MEASURES , WHETHER GENERAL OR PARTICULAR , TO ENSURE THE FULFILMENT OF THAT OBLIGATION , IS BINDING ON ALL THE AUTHORITIES OF THE MEMBER STATES INCLUDING , FOR MATTERS WITHIN THEIR JURISDICTION , THE COURTS . IT FOLLOWS THAT , IN APPLYING NATIONAL LAW , AND IN PARTICULAR THE PROVISIONS OF NATIONAL LEGISLATION SPECIFICALLY INTRODUCED IN ORDER TO IMPLEMENT A DIRECTIVE , NATIONAL COURTS ARE REQUIRED TO INTERPRET THEIR NATIONAL LAW IN THE LIGHT OF THE WORDING AND THE PURPOSE OF THE DIRECTIVE IN ORDER TO ACHIEVE THE RESULT REFERRED TO IN THE THIRD PARAGRAPH OF ARTICLE 189 OF THE EEC TREATY .

7 . INDIVIDUALS MAY CLAIM THE APPLICATION , AS AGAINST A STATE AUTHORITY CHARGED WITH THE MAINTENANCE OF PUBLIC ORDER AND SAFETY ACTING IN ITS CAPACITY OF EMPLOYER , OF THE PRINCIPLE OF EQUAL TREATMENT FOR MEN AND WOMEN LAID DOWN IN ARTICLE 2 (1) OF DIRECTIVE 76/207 TO THE MATTERS REFERRED TO IN ARTICLES 3 (1) AND 4 CONCERNING THE CONDITIONS FOR ACCESS TO POSTS AND TO VOCATIONAL TRAINING AND ADVANCED VOCATIONAL TRAINING IN ORDER TO HAVE A DEROGATION FROM THAT PRINCIPLE CONTAINED IN NATIONAL LEGISLATION SET ASIDE IN SO FAR AS IT EXCEEDS THE LIMITS OF THE EXCEPTIONS PERMITTED BY ARTICLE 2 (2) .

Parties

CHIEF CONSTABLE OF THE ROYAL ULSTER CONSTABULARY

ON THE INTERPRETATION OF COUNCIL DIRECTIVE NO 76/207/EEC OF 9 FEBRUARY 1976 ON THE IMPLEMENTATION OF THE PRINCIPLE OF EQUAL TREATMENT FOR MEN AND WOMEN (OFFICIAL JOURNAL 1976 , L 39 , P . 40) AND OF ARTICLE 224 OF THE EEC TREATY ,

THE COURT

COMPOSED OF : LORD MACKENZIE STUART , PRESIDENT , T . KOOPMANS , U . EVERLING , K . BAHLMANN AND R . JOLIET , PRESIDENTS OF CHAMBER , O . DUE , Y . GALMOT , C . KAKOURIS AND T . F . O ' HIGGINS , JUDGES ,

ADVOCATE GENERAL : M . DARMON

Subject of the case

REGISTRAR : P . HEIM

Grounds

WHILST ARTICLE 53 (2) PROVIDES THAT

' A CERTIFICATE SIGNED BY OR ON BEHALF OF THE SECRETARY OF STATE AND CERTIFYING THAT AN ACT SPECIFIED IN THE CERTIFICATE WAS DONE FOR A PURPOSE MENTIONED IN PARAGRAPH (1) SHALL BE CONCLUSIVE EVIDENCE THAT IT WAS DONE FOR THAT PURPOSE ' .

4 IN THE UNITED KINGDOM POLICE OFFICERS DO NOT AS A GENERAL RULE CARRY FIRE-ARMS IN THE PERFORMANCE OF THEIR DUTIES EXCEPT FOR SPECIAL OPERATIONS AND NO DISTINCTION IS MADE IN THIS REGARD BETWEEN MEN AND WOMEN . BECAUSE OF THE HIGH NUMBER OF POLICE OFFICERS ASSASSINATED IN NORTHERN IRELAND OVER A NUMBER OF YEARS , THE CHIEF CONSTABLE OF THE RUC CONSIDERED THAT HE COULD NOT MAINTAIN THAT PRACTICE . HE DECIDED THAT , IN THE RUC AND THE RUC RESERVE , MEN SHOULD CARRY FIRE-ARMS IN THE REGULAR COURSE OF THEIR DUTIES BUT THAT WOMEN WOULD NOT BE EQUIPPED WITH THEM AND WOULD NOT RECEIVE TRAINING IN THE HANDLING AND USE OF FIRE-ARMS .

5 IN THOSE CIRCUMSTANCES , THE CHIEF CONSTABLE DECIDED IN 1980 THAT THE NUMBER OF WOMEN IN THE RUC WAS SUFFICIENT FOR THE PARTICULAR TASKS GENERALLY ASSIGNED TO WOMEN OFFICERS . HE TOOK THE VIEW THAT GENERAL POLICE DUTIES , FREQUENTLY INVOLVING OPERATIONS REQUIRING THE CARRYING OF FIRE-ARMS , SHOULD NO LONGER BE ASSIGNED TO WOMEN AND DECIDED NOT TO OFFER OR RENEW ANY MORE CONTRACTS FOR WOMEN IN THE RUC FULL-TIME RESERVE EXCEPT WHERE THEY HAD TO PERFORM DUTIES ASSIGNED ONLY TO WOMEN OFFICERS . SINCE THAT DECISION , NO WOMAN IN THE RUC FULL-TIME RESERVE HAS BEEN OFFERED A CONTRACT OR HAD HER CONTRACT RENEWED , SAVE IN ONE CASE .

6 ACCORDING TO THE DECISION MAKING THE REFERENCE FOR A PRELIMINARY RULING , MRS JOHNSTON HAD BEEN A MEMBER OF THE RUC FULL-TIME RESERVE FROM 1974 TO 1980 . SHE HAD EFFICIENTLY PERFORMED THE GENERAL DUTIES OF A UNIFORMED POLICE OFFICER , SUCH AS ACTING AS STATION-DUTY OFFICER , TAKING PART IN MOBILE PATROLS , DRIVING THE PATROL VEHICLE AND ASSISTING IN SEARCHING PERSONS BROUGHT TO THE POLICE STATION . SHE WAS NOT ARMED WHEN CARRYING OUT THOSE DUTIES AND WAS ORDINARILY ACCOMPANIED IN DUTIES OUTSIDE THE POLICE STATION BY AN ARMED MALE OFFICER OF THE RUC FULL-TIME RESERVE . IN 1980 THE CHIEF CONSTABLE REFUSED TO RENEW HER CONTRACT BECAUSE OF HIS NEW POLICY , MENTIONED ABOVE , WITH REGARD TO FEMALE MEMBERS OF THE RUC FULL-TIME

RESERVE .

7 MRS JOHNSTON LODGED AN APPLICATION WITH THE INDUSTRIAL TRIBUNAL CHALLENGING THE DECISION , TAKEN PURSUANT TO THAT NEW POLICY , TO REFUSE TO RENEW HER CONTRACT AND TO GIVE HER TRAINING IN THE HANDLING OF FIRE-ARMS . SHE CONTENDED THAT SHE HAD SUFFERED UNLAWFUL DISCRIMINATION PROHIBITED BY THE SEX DISCRIMINATION ORDER .

8 IN THE PROCEEDINGS BEFORE THE INDUSTRIAL TRIBUNAL THE CHIEF CONSTABLE PRODUCED A CERTIFICATE ISSUED BY THE SECRETARY OF STATE IN WHICH THAT MINISTER OF THE UNITED KINGDOM GOVERNMENT CERTIFIED IN ACCORDANCE WITH ARTICLE 53 OF THE SEX DISCRIMINATION ORDER , CITED ABOVE , THAT ' THE ACT CONSISTING OF THE REFUSAL OF THE ROYAL ULSTER CONSTABULARY TO OFFER FURTHER FULL-TIME EMPLOYMENT TO MRS MARGUERITE I . JOHNSTON IN THE ROYAL ULSTER CONSTABULARY RESERVE WAS DONE FOR THE PURPOSE OF (A) SAFEGUARDING NATIONAL SECURITY ; AND (B) PROTECTING PUBLIC SAFETY AND PUBLIC ORDER ' .

9 MRS JOHNSTON REFERRED TO DIRECTIVE NO 76/207 . THE PURPOSE OF THAT DIRECTIVE , ACCORDING TO ARTICLE 1 THEREOF , IS TO PUT INTO EFFECT 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 . ACCORDING TO ARTICLE 2 (1) , THE PRINCIPLE OF EQUAL TREATMENT MEANS THAT THERE SHALL BE NO DISCRIMINATION WHATSOEVER ON GROUNDS OF SEX , SUBJECT , HOWEVER , TO THE EXCEPTIONS ALLOWED BY ARTICLE 2 (2) AND (3) . FOR THE PURPOSES OF THE APPLICATION OF THAT PRINCIPLE IN DIFFERENT SPHERES , ARTICLES 3 TO 5 REQUIRE THE MEMBER STATES IN PARTICULAR TO ABOLISH ANY LAWS , REGULATIONS OR ADMINISTRATIVE PROVISIONS CONTRARY TO THE PRINCIPLE OF EQUAL TREATMENT AND TO REVISE LAWS , REGULATIONS AND ADMINISTRATIVE PROVISIONS WHERE THE CONCERN FOR PROTECTION WHICH ORIGINALLY INSPIRED THEM IS NO LONGER WELL FOUNDED . ARTICLE 6 PROVIDES THAT ALL PERSONS WHO CONSIDER THEMSELVES WRONGED BY DISCRIMINATION MUST BE ABLE TO PURSUE THEIR CLAIMS BY JUDICIAL PROCESS .

10 IN ORDER TO BE ABLE TO RULE ON THAT DISPUTE , THE INDUSTRIAL TRIBUNAL REFERRED THE FOLLOWING QUESTIONS TO THE COURT FOR A PRELIMINARY RULING :

(1) ON THE PROPER CONSTRUCTION OF COUNCIL DIRECTIVE NO 76/207 AND IN THE CIRCUMSTANCES OF THIS CASE , CAN A MEMBER STATE EXCLUDE FROM THE DIRECTIVE ' S FIELD OF APPLICATION ACTS OF SEX DISCRIMINATION AS REGARDS ACCESS TO EMPLOYMENT DONE FOR THE PURPOSE OF SAFEGUARDING NATIONAL SECURITY OR OF PROTECTING PUBLIC SAFETY OR PUBLIC ORDER?

(2) ON THE PROPER CONSTRUCTION OF THE DIRECTIVE AND IN THE CIRCUMSTANCES OF THIS CASE , IS FULL-TIME EMPLOYMENT AS AN ARMED MEMBER OF A POLICE RESERVE FORCE , OR TRAINING IN THE HANDLING AND USE OF FIRE-ARMS FOR SUCH EMPLOYMENT , CAPABLE OF CONSTITUTING ONE OF 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 , WITHIN THE MEANING OF ARTICLE 2 (2) ?

(3) WHAT ARE THE PRINCIPLES AND CRITERIA BY WHICH MEMBER STATES SHOULD DETERMINE WHETHER ' THE SEX OF A WORKER CONSTITUTES A DETERMINING FACTOR ' WITHIN THE MEANING OF ARTICLE 2 (2) IN RELATION TO (A) ' THE OCCUPATIONAL ACTIVITIES ' OF AN ARMED MEMBER OF SUCH A FORCE AND (B) ' THE TRAINING LEADING THERETO ' , WHETHER BY REASON OF THEIR NATURE OR BY REASON OF THE CONTEXT IN WHICH THEY ARE CARRIED OUT ?

(4) IS A POLICY APPLIED BY A CHIEF CONSTABLE OF POLICE , CHARGED WITH A STATUTORY RESPONSIBILITY FOR THE DIRECTION AND CONTROL OF A POLICE FORCE , THAT WOMEN MEMBERS OF THAT FORCE SHOULD NOT CARRY FIRE-ARMS CAPABLE , IN THE CIRCUMSTANCES OF THIS CASE , OF CONSTITUTING A ' PROVISION CONCERNING THE PROTECTION OF WOMEN ' , WITHIN THE MEANING OF ARTICLE 2 (3) , OR AN ' ADMINISTRATIVE PROVISION ' INSPIRED BY ' CONCERN FOR PROTECTION ' WITHIN THE MEANING OF ARTICLE 3 (2) (C) OF THE DIRECTIVE ?

(5) IF THE ANSWER TO QUESTION 4 IS AFFIRMATIVE , WHAT ARE THE PRINCIPLES AND CRITERIA BY WHICH MEMBER STATES SHOULD DETERMINE WHETHER THE ' CONCERN FOR PROTECTION ' IS ' WELL FOUNDED ' , WITHIN THE MEANING OF ARTICLE 3 (2) (C) ?

(6) IS THE APPLICANT ENTITLED TO RELY UPON THE PRINCIPLE OF EQUAL TREATMENT CONTAINED IN THE RELEVANT PROVISIONS OF THE DIRECTIVE BEFORE THE NATIONAL COURTS AND TRIBUNALS OF MEMBER STATES IN THE CIRCUMSTANCES OF THE PRESENT CASE ?

(7) IF THE ANSWER TO QUESTION 6 IS AFFIRMATIVE :

(A) DOES ARTICLE 224 OF THE EEC TREATY , ON ITS PROPER CONSTRUCTION , PERMIT MEMBER STATES WHEN CONFRONTED WITH SERIOUS INTERNAL DISTURBANCES AFFECTING THE MAINTENANCE OF LAW AND ORDER TO DEROGATE FROM ANY OBLIGATIONS WHICH WOULD OTHERWISE BE IMPOSED ON THEM OR ON EMPLOYERS WITHIN THEIR JURISDICTION BY THE DIRECTIVE ?

(B) IF SO , IS IT OPEN TO AN INDIVIDUAL TO RELY UPON THE FACT THAT A MEMBER

STATE DID NOT CONSULT WITH OTHER MEMBER STATES FOR THE PURPOSE OF PREVENTING THE FIRST MEMBER STATE FROM RELYING ON ARTICLE 224 OF THE EEC TREATY?

11 TO ENABLE ANSWERS TO BE GIVEN WHICH WILL BE OF ASSISTANCE IN RESOLVING THE DISPUTE IN THE MAIN PROCEEDINGS , IT IS NECESSARY TO EXPLAIN THE SITUATION IN WHICH THE INDUSTRIAL TRIBUNAL IS REQUIRED TO ADJUDICATE . AS IS CLEAR FROM THE DECISION BY WHICH THE CASE WAS REFERRED TO THE COURT , THE CHIEF CONSTABLE ACKNOWLEDGED BEFORE THE INDUSTRIAL TRIBUNAL THAT , OF ALL THE PROVISIONS IN THE SEX DISCRIMINATION ORDER , ONLY ARTICLE 53 COULD JUSTIFY HIS POSITION . MRS JOHNSTON , FOR HER PART , CONCEDED THAT THE CERTIFICATE ISSUED BY THE SECRETARY OF STATE WOULD DEPRIVE HER OF ANY REMEDY IF NATIONAL LAW WAS APPLIED ON ITS OWN ; SHE RELIED ON THE PROVISIONS OF THE DIRECTIVE IN ORDER TO HAVE THE EFFECTS OF ARTICLE 53 OF THE SEX DISCRIMINATION ORDER SET ASIDE .

12 IT THEREFORE APPEARS THAT THE QUESTIONS RAISED BY THE INDUSTRIAL TRIBUNAL ARE INTENDED TO ASCERTAIN FIRST OF ALL WHETHER IT IS COMPATIBLE WITH COMMUNITY LAW AND DIRECTIVE NO 76/207 FOR A NATIONAL COURT OR TRIBUNAL TO BE PREVENTED BY A RULE SUCH AS THAT LAID DOWN IN ARTICLE 53 (2) OF THE SEX DISCRIMINATION ORDER FROM FULLY EXERCISING ITS POWERS OF JUDICIAL REVIEW (PART OF QUESTION 6). THE NEXT OBJECT OF THE QUESTIONS SUBMITTED BY THE INDUSTRIAL TRIBUNAL IS TO ENABLE IT TO DECIDE WHETHER AND UNDER WHAT CONDITIONS THE PROVISIONS OF THE DIRECTIVE , IN A SITUATION SUCH AS THAT WHICH EXISTS IN THE PRESENT CASE , ALLOW MEN AND WOMEN EMPLOYED WITH THE POLICE TO BE TREATED DIFFERENTLY ON GROUNDS OF THE PROTECTION OF PUBLIC SAFETY MENTIONED IN ARTICLE 53 (1) OF THE SEX DISCRIMINATION ORDER (QUESTIONS 1 TO 5). THE QUESTIONS SUBMITTED ARE ALSO INTENDED TO ENABLE THE INDUSTRIAL TRIBUNAL TO ASCERTAIN WHETHER OR NOT THE PROVISIONS OF THE DIRECTIVE MAY , IN AN APPROPRIATE CASE , BE RELIED UPON AS AGAINST A CONFLICTING RULE OF NATIONAL LAW (REMAINDER OF QUESTION 6). FINALLY , DEPENDING ON THE ANSWERS TO BE GIVEN TO THOSE QUESTIONS , THE QUESTION MIGHT ARISE WHETHER A MEMBER STATE MAY AVAIL ITSELF OF ARTICLE 224 OF THE EEC TREATY IN ORDER TO DEROGATE FROM OBLIGATIONS WHICH THE DIRECTIVE IMPOSES ON IT IN A CASE SUCH AS THIS (QUESTION 7).

THE RIGHT TO AN EFFECTIVE JUDICIAL REMEDY

13 IT IS THEREFORE NECESSARY TO EXAMINE IN THE FIRST PLACE THE PART OF THE SIXTH QUESTION WHICH RAISES THE POINT WHETHER COMMUNITY LAW , AND MORE PARTICULARLY DIRECTIVE NO 76/207 , REQUIRES THE MEMBER STATES TO ENSURE THAT THEIR NATIONAL COURTS AND TRIBUNALS EXERCISE EFFECTIVE CONTROL OVER COMPLIANCE WITH THE PROVISIONS OF THE DIRECTIVE AND WITH THE NATIONAL LEGISLATION INTENDED TO PUT IT INTO EFFECT .

14 IN MRS JOHNSTON ' S VIEW , A PROVISION SUCH AS ARTICLE 53 (2) OF THE SEX DISCRIMINATION ORDER IS CONTRARY TO ARTICLE 6 OF THE DIRECTIVE INASMUCH AS IT PREVENTS THE COMPETENT NATIONAL COURT OR TRIBUNAL FROM EXERCISING ANY JUDICIAL CONTROL .

15 THE UNITED KINGDOM OBSERVES THAT ARTICLE 6 OF THE DIRECTIVE DOES NOT REQUIRE THE MEMBER STATES TO SUBMIT TO JUDICIAL REVIEW EVERY QUESTION WHICH MAY ARISE IN THE APPLICATION OF THE DIRECTIVE , EVEN WHERE NATIONAL SECURITY AND PUBLIC SAFETY ARE INVOLVED . RULES OF EVIDENCE SUCH AS THE RULE LAID DOWN IN ARTICLE 53 (2) OF THE SEX DISCRIMINATION ORDER ARE QUITE COMMON IN NATIONAL PROCEDURAL LAW . THEIR JUSTIFICATION IS THAT MATTERS OF NATIONAL SECURITY AND PUBLIC SAFETY CAN BE SATISFACTORILY ASSESSED ONLY BY THE COMPETENT POLITICAL AUTHORITY , NAMELY THE MINISTER WHO ISSUES THE CERTIFICATE IN QUESTION .

16 THE COMMISSION TAKES THE VIEW THAT TO TREAT THE CERTIFICATE OF A MINISTER AS HAVING AN EFFECT SUCH AS THAT PROVIDED FOR IN ARTICLE 53 (2) OF THE SEX DISCRIMINATION ORDER IS TANTAMOUNT TO REFUSING ALL JUDICIAL CONTROL OR REVIEW AND IS THEREFORE CONTRARY TO A FUNDAMENTAL PRINCIPLE OF COMMUNITY LAW AND TO ARTICLE 6 OF THE DIRECTIVE .

17 AS FAR AS THIS ISSUE IS CONCERNED , IT MUST BE BORNE IN MIND FIRST OF ALL THAT ARTICLE 6 OF THE DIRECTIVE REQUIRES MEMBER STATES TO INTRODUCE INTO THEIR INTERNAL LEGAL SYSTEMS SUCH MEASURES AS ARE NEEDED TO ENABLE ALL PERSONS WHO CONSIDER THEMSELVES WRONGED BY DISCRIMINATION ' TO PURSUE THEIR CLAIMS BY JUDICIAL PROCESS ' . IT FOLLOWS FROM THAT PROVISION THAT THE MEMBER STATES MUST TAKE MEASURES WHICH ARE SUFFICIENTLY EFFECTIVE TO ACHIEVE THE AIM OF THE DIRECTIVE AND THAT THEY MUST ENSURE THAT THE RIGHTS THUS CONFERRED MAY BE EFFECTIVELY RELIED UPON BEFORE THE NATIONAL COURTS BY THE PERSONS CONCERNED .

18 THE REQUIREMENT OF JUDICIAL CONTROL STIPULATED BY THAT ARTICLE REFLECTS A GENERAL PRINCIPLE OF LAW WHICH UNDERLIES THE CONSTITUTIONAL TRADITIONS COMMON TO THE MEMBER STATES . THAT PRINCIPLE IS ALSO LAID DOWN IN ARTICLES 6 AND 13 OF THE EUROPEAN CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS OF 4 NOVEMBER 1950 . AS THE EUROPEAN PARLIAMENT , COUNCIL AND COMMISSION RECOGNIZED IN THEIR JOINT DECLARATION OF 5 APRIL 1977 (OFFICIAL JOURNAL C 103 , P . 1) AND AS THE COURT HAS RECOGNIZED IN ITS DECISIONS , THE PRINCIPLES ON WHICH THAT CONVENTION IS BASED MUST BE TAKEN INTO CONSIDERATION IN COMMUNITY LAW .

19 BY VIRTUE OF ARTICLE 6 OF DIRECTIVE NO 76/207 , INTERPRETED IN THE LIGHT OF

THE GENERAL PRINCIPLE STATED ABOVE , ALL PERSONS HAVE THE RIGHT TO OBTAIN AN EFFECTIVE REMEDY IN A COMPETENT COURT AGAINST MEASURES WHICH THEY CONSIDER TO BE CONTRARY TO THE PRINCIPLE OF EQUAL TREATMENT FOR MEN AND WOMEN LAID DOWN IN THE DIRECTIVE . IT IS FOR THE MEMBER STATES TO ENSURE EFFECTIVE JUDICIAL CONTROL AS REGARDS COMPLIANCE WITH THE APPLICABLE PROVISIONS OF COMMUNITY LAW AND OF NATIONAL LEGISLATION INTENDED TO GIVE EFFECT TO THE RIGHTS FOR WHICH THE DIRECTIVE PROVIDES .

20 A PROVISION WHICH , LIKE ARTICLE 53 (2) OF THE SEX DISCRIMINATION ORDER , REQUIRES A CERTIFICATE SUCH AS THE ONE IN QUESTION IN THE PRESENT CASE TO BE TREATED AS CONCLUSIVE EVIDENCE THAT THE CONDITIONS FOR DEROGATING FROM THE PRINCIPLE OF EQUAL TREATMENT ARE FULFILLED ALLOWS THE COMPETENT AUTHORITY TO DEPRIVE AN INDIVIDUAL OF THE POSSIBILITY OF ASSERTING BY JUDICIAL PROCESS THE RIGHTS CONFERRED BY THE DIRECTIVE . SUCH A PROVISION IS THEREFORE CONTRARY TO THE PRINCIPLE OF EFFECTIVE JUDICIAL CONTROL LAID DOWN IN ARTICLE 6 OF THE DIRECTIVE .

21 THE ANSWER TO THIS PART OF THE SIXTH QUESTION PUT BY THE INDUSTRIAL TRIBUNAL MUST THEREFORE BE THAT THE PRINCIPLE OF EFFECTIVE JUDICIAL CONTROL LAID DOWN IN ARTICLE 6 OF COUNCIL DIRECTIVE NO 76/207 OF 9 FEBRUARY 1976 DOES NOT ALLOW A CERTIFICATE ISSUED BY A NATIONAL AUTHORITY STATING THAT THE CONDITIONS FOR DEROGATING FROM THE PRINCIPLE OF EQUAL TREATMENT FOR MEN AND WOMEN FOR THE PURPOSE OF PROTECTING PUBLIC SAFETY ARE SATISFIED TO BE TREATED AS CONCLUSIVE EVIDENCE SO AS TO EXCLUDE THE EXERCISE OF ANY POWER OF REVIEW BY THE COURTS .

THE APPLICABILITY OF DIRECTIVE NO 76/207 TO MEASURES TAKEN TO PROTECT PUBLIC SAFETY

22 IT IS NECESSARY TO EXAMINE NEXT THE INDUSTRIAL TRIBUNAL ' S FIRST QUESTION BY WHICH IT SEEKS TO ASCERTAIN WHETHER , HAVING REGARD TO THE FACT THAT DIRECTIVE NO 76/207 CONTAINS NO EXPRESS PROVISION CONCERNING MEASURES TAKEN FOR THE PURPOSE OF SAFEGUARDING NATIONAL SECURITY OR OF PROTECTING PUBLIC ORDER , AND MORE PARTICULARLY PUBLIC SAFETY , THE DIRECTIVE IS APPLICABLE TO SUCH MEASURES .

23 IN MRS JOHNSTON ' S VIEW , NO GENERAL DEROGATION FROM THE FUNDAMENTAL PRINCIPLE OF EQUAL TREATMENT UNRELATED TO PARTICULAR OCCUPATIONAL ACTIVITIES , THEIR NATURE AND THE CONTEXT IN WHICH THEY ARE CARRIED OUT , EXISTS FOR SUCH PURPOSES . BY BEING BASED ON THE SOLE GROUND THAT A DISCRIMINATORY ACT IS DONE FOR PURPOSES SUCH AS THE PROTECTION OF PUBLIC SAFETY , SUCH A DEROGATION WOULD ENABLE THE MEMBER STATES UNILATERALLY TO

AVOID THE OBLIGATIONS WHICH THE DIRECTIVE IMPOSES ON THEM .

24 THE UNITED KINGDOM TAKES THE VIEW THAT THE SAFEGUARD CLAUSES CONTAINED IN ARTICLES 36 , 48 , 56 , 66 , 223 AND 224 OF THE EEC TREATY SHOW THAT NEITHER THE TREATY NOR , THEREFORE , THE LAW DERIVED FROM IT APPLY TO THE FIELDS MENTIONED IN THE INDUSTRIAL TRIBUNAL ' S QUESTION AND DO NOT RESTRICT THE MEMBER STATES ' POWER TO TAKE MEASURES WHICH THEY CAN CONSIDER EXPEDIENT OR NECESSARY FOR THOSE PURPOSES . THE MEASURES REFERRED TO IN THE FIRST QUESTION DO NOT THEREFORE FALL WITHIN THE SCOPE OF THE DIRECTIVE .

25 THE COMMISSION SUGGESTS THAT THE DIRECTIVE SHOULD BE INTERPRETED WITH REFERENCE TO ARTICLE 224 OF THE EEC TREATY SO THAT CONSIDERATIONS OF PUBLIC SAFETY COULD , IN THE SPECIAL CONDITIONS ENVISAGED BY THAT ARTICLE AND SUBJECT TO JUDICIAL REVIEW , JUSTIFY DEROGATIONS FROM THE PRINCIPLE OF EQUAL TREATMENT EVEN WHERE THE STRICT CONDITIONS LAID DOWN IN ARTICLE 2 (2) AND (3) OF THE DIRECTIVE ARE NOT FULFILLED .

26 IT MUST BE OBSERVED IN THIS REGARD THAT THE ONLY ARTICLES IN WHICH THE TREATY PROVIDES FOR DEROGATIONS APPLICABLE IN SITUATIONS WHICH MAY INVOLVE PUBLIC SAFETY ARE ARTICLES 36 , 48 , 56 , 223 AND 224 WHICH DEAL WITH EXCEPTIONAL AND CLEARLY DEFINED CASES . BECAUSE OF THEIR LIMITED CHARACTER THOSE ARTICLES DO NOT LEND THEMSELVES TO A WIDE INTERPRETATION AND IT IS IS NOT POSSIBLE TO INFER FROM THEM THAT THERE IS INHERENT IN THE TREATY A GENERAL PROVISIO COVERING ALL MEASURES TAKEN FOR REASONS OF PUBLIC SAFETY . IF EVERY PROVISION OF COMMUNITY LAW WERE HELD TO BE SUBJECT TO A GENERAL PROVISIO , REGARDLESS OF THE SPECIFIC REQUIREMENTS LAID DOWN BY THE PROVISIONS OF THE TREATY , THIS MIGHT IMPAIR THE BINDING NATURE OF COMMUNITY LAW AND ITS UNIFORM APPLICATION .

27 IT FOLLOWS THAT THE APPLICATION OF THE PRINCIPLE OF EQUAL TREATMENT FOR MEN AND WOMEN IS NOT SUBJECT TO ANY GENERAL RESERVATION AS REGARDS MEASURES TAKEN ON GROUNDS OF THE PROTECTION OF PUBLIC SAFETY , APART FROM THE POSSIBLE APPLICATION OF ARTICLE 224 OF THE TREATY WHICH CONCERNS A WHOLLY EXCEPTIONAL SITUATION AND IS THE SUBJECT-MATTER OF THE SEVENTH QUESTION . THE FACTS WHICH INDUCED THE COMPETENT AUTHORITY TO INVOKE THE NEED TO PROTECT PUBLIC SAFETY MUST THEREFORE IF NECESSARY BE TAKEN INTO CONSIDERATION , IN THE FIRST PLACE , IN THE CONTEXT OF THE APPLICATION OF THE SPECIFIC PROVISIONS OF THE DIRECTIVE .

28 THE ANSWER TO THE FIRST QUESTION MUST THEREFORE BE THAT ACTS OF SEX DISCRIMINATION DONE FOR REASONS RELATED TO THE PROTECTION OF PUBLIC SAFETY MUST BE EXAMINED IN THE LIGHT OF THE EXCEPTIONS TO THE PRINCIPLE OF EQUAL

TREATMENT FOR MEN AND WOMEN LAID DOWN IN DIRECTIVE NO 76/207 .

THE DEROGATIONS ALLOWED ON ACCOUNT OF THE CONTEXT IN WHICH THE OCCUPATIONAL ACTIVITY IS CARRIED OUT

29 THE INDUSTRIAL TRIBUNAL ' S SECOND AND THIRD QUESTIONS ARE CONCERNED WITH THE INTERPRETATION OF THE DEROGATION , PROVIDED FOR IN ARTICLE 2 (2) OF THE DIRECTIVE , FROM THE PRINCIPLE OF EQUAL TREATMENT AND ARE DESIGNED TO ENABLE THE TRIBUNAL TO DECIDE WHETHER A DIFFERENCE IN TREATMENT , SUCH AS THAT IN QUESTION , IS COVERED BY THAT DEROGATION . IT ASKS TO BE INFORMED OF THE CRITERIA AND PRINCIPLES TO BE APPLIED FOR DETERMINING WHETHER AN ACTIVITY SUCH AS THAT IN QUESTION IN THE PRESENT CASE IS ONE OF THE 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 ' .

30 MRS JOHNSTON TAKES THE VIEW THAT A REPLY TO THIS QUESTION IS NOT POSSIBLE IN TERMS SO GENERAL . SHE STATES THAT SHE HAS ALWAYS WORKED SATISFACTORILY IN PERFORMING HER DUTIES WITH THE POLICE AND MAINTAINS THAT WOMEN ARE QUITE CAPABLE OF BEING TRAINED IN THE HANDLING OF FIRE-ARMS . IT IS FOR THE INDUSTRIAL TRIBUNAL TO DETERMINE WHETHER A DEROGATION IS POSSIBLE UNDER ARTICLE 2 (2) OF THE DIRECTIVE , HAVING REGARD TO THE SPECIFIC DUTIES WHICH SHE IS REQUIRED TO CARRY OUT . THAT PROVISION DOES NOT MAKE IT POSSIBLE FOR HER TO BE COMPLETELY EXCLUDED FROM ANY EMPLOYMENT IN THE RUC FULL-TIME RESERVE .

31 THE UNITED KINGDOM SUBMITS THAT THE MEMBER STATES HAVE A DISCRETION IN DECIDING WHETHER , OWING TO REQUIREMENTS OF NATIONAL SECURITY AND PUBLIC SAFETY OR PUBLIC ORDER , THE CONTEXT IN WHICH AN OCCUPATIONAL ACTIVITY IN THE POLICE IS CARRIED OUT PREVENTS THAT ACTIVITY FROM BEING CARRIED OUT BY AN ARMED POLICEWOMAN . IN DETERMINING THAT QUESTION THE MEMBER STATES MAY TAKE INTO CONSIDERATION CRITERIA SUCH AS THE DIFFERENCE IN PHYSICAL STRENGTH BETWEEN THE SEXES , THE PROBABLE REACTION OF THE PUBLIC TO THE APPEARANCE OF ARMED POLICEWOMEN AND THE RISK OF THEIR BEING ASSASSINATED . SINCE THE DECISION TAKEN BY THE CHIEF CONSTABLE WAS TAKEN ON THE APPLICATION OF SUCH CRITERIA , IT IS COVERED BY ARTICLE 2 (2) OF THE DIRECTIVE .

32 THE COMMISSION TAKES THE VIEW THAT , OWING TO THE CONTEXT IN WHICH IT IS CARRIED OUT BUT NOT TO ITS NATURE , THE OCCUPATIONAL ACTIVITY OF AN ARMED POLICE OFFICER COULD BE CONSIDERED AN ACTIVITY FOR WHICH THE SEX OF THE OFFICER IS A DETERMINING FACTOR . A DEROGATION MUST , HOWEVER , BE JUSTIFIED IN RELATION TO SPECIFIC DUTIES AND NOT IN RELATION TO AN EMPLOYMENT CONSIDERED IN ITS ENTIRETY . IN PARTICULAR , THE PRINCIPLE OF PROPORTIONALITY MUST BE OBSERVED . THE NATIONAL COURT MUST LOOK AT THE DISCRIMINATION IN QUESTION

FROM THAT POINT OF VIEW .

33 IN THIS REGARD IT MUST BE STATED FIRST OF ALL THAT , IN SO FAR AS THE COMPETENT POLICE AUTHORITIES IN NORTHERN IRELAND HAVE DECIDED , BECAUSE OF THE REQUIREMENTS OF PUBLIC SAFETY , TO DEPART FROM THE PRINCIPLE , GENERALLY APPLIED IN OTHER PARTS OF THE UNITED KINGDOM , OF NOT ARMING THE POLICE IN THE ORDINARY COURSE OF THEIR DUTIES , THAT DECISION DOES NOT IN ITSELF INVOLVE ANY DISCRIMINATION BETWEEN MEN AND WOMEN AND IS THEREFORE OUTSIDE THE SCOPE OF THE PRINCIPLE OF EQUAL TREATMENT . IT IS ONLY IN SO FAR AS THE CHIEF CONSTABLE DECIDED THAT WOMEN WOULD NOT BE ARMED OR TRAINED IN THE USE OF FIRE-ARMS , THAT GENERAL POLICING DUTIES WOULD IN FUTURE BE CARRIED OUT ONLY BY ARMED MALE OFFICERS AND THAT CONTRACTS OF WOMEN IN THE RUC FULL-TIME RESERVE WHO , LIKE MRS JOHNSTON , HAD PREVIOUSLY BEEN ENTRUSTED WITH GENERAL POLICING DUTIES , WOULD NOT BE RENEWED , THAT AN APPRAISAL OF THOSE MEASURES IN THE LIGHT OF THE PROVISIONS OF THE DIRECTIVE IS RELEVANT .

34 SINCE , AS IS CLEAR FROM THE INDUSTRIAL TRIBUNAL ' S DECISION , IT IS EXPRESSLY PROVIDED THAT THE SEX DISCRIMINATION ORDER IS TO APPLY TO EMPLOYMENT IN THE POLICE AND SINCE IN THIS REGARD NO DISTINCTION IS MADE BETWEEN MEN AND WOMEN IN THE SPECIFIC PROVISIONS THAT ARE APPLICABLE , THE NATURE OF THE OCCUPATIONAL ACTIVITY IN THE POLICE FORCE IS NOT A RELEVANT GROUND OF JUSTIFICATION FOR THE DISCRIMINATION IN QUESTION . WHAT MUST BE EXAMINED , HOWEVER , IS THE QUESTION WHETHER , OWING TO THE SPECIFIC CONTEXT IN WHICH THE ACTIVITY DESCRIBED IN THE INDUSTRIAL TRIBUNAL ' S DECISION IS CARRIED OUT , THE SEX OF THE PERSON CARRYING OUT THAT ACTIVITY CONSTITUTES A DETERMINING FACTOR .

35 AS IS CLEAR FROM THE INDUSTRIAL TRIBUNAL ' S DECISION , THE POLICY TOWARDS WOMEN IN THE RUC FULL-TIME RESERVE WAS ADOPTED BY THE CHIEF CONSTABLE BECAUSE HE CONSIDERED THAT IF WOMEN WERE ARMED THEY MIGHT BECOME A MORE FREQUENT TARGET FOR ASSASSINATION AND THEIR FIRE-ARMS COULD FALL INTO THE HANDS OF THEIR ASSAILANTS , THAT THE PUBLIC WOULD NOT WELCOME THE CARRYING OF FIRE-ARMS BY WOMEN , WHICH WOULD CONFLICT TOO MUCH WITH THE IDEAL OF AN UNARMED POLICE FORCE , AND THAT ARMED POLICEWOMEN WOULD BE LESS EFFECTIVE IN POLICE WORK IN THE SOCIAL FIELD WITH FAMILIES AND CHILDREN IN WHICH THE SERVICES OF POLICEWOMEN ARE PARTICULARLY APPRECIATED . THE REASONS WHICH THE CHIEF CONSTABLE THUS GAVE FOR HIS POLICY WERE RELATED TO THE SPECIAL CONDITIONS IN WHICH THE POLICE MUST WORK IN THE SITUATION EXISTING IN NORTHERN IRELAND , HAVING REGARD TO THE REQUIREMENTS OF THE PROTECTION OF PUBLIC SAFETY IN A CONTEXT OF SERIOUS INTERNAL DISTURBANCES .

36 AS REGARDS THE QUESTION WHETHER SUCH REASONS MAY BE COVERED BY ARTICLE 2 (2) OF THE DIRECTIVE , IT SHOULD FIRST BE OBSERVED THAT THAT PROVISION , BEING

A DEROGATION FROM AN INDIVIDUAL RIGHT LAID DOWN IN THE DIRECTIVE , MUST BE INTERPRETED STRICTLY . HOWEVER , IT MUST BE RECOGNIZED THAT THE CONTEXT IN WHICH THE OCCUPATIONAL ACTIVITY OF MEMBERS OF AN ARMED POLICE FORCE ARE CARRIED OUT IS DETERMINED BY THE ENVIRONMENT IN WHICH THAT ACTIVITY IS CARRIED OUT . IN THIS REGARD , THE POSSIBILITY CANNOT BE EXCLUDED THAT IN A SITUATION CHARACTERIZED BY SERIOUS INTERNAL DISTURBANCES THE CARRYING OF FIRE-ARMS BY POLICEWOMEN MIGHT CREATE ADDITIONAL RISKS OF THEIR BEING ASSASSINATED AND MIGHT THEREFORE BE CONTRARY TO THE REQUIREMENTS OF PUBLIC SAFETY .

37 IN SUCH CIRCUMSTANCES , THE CONTEXT OF CERTAIN POLICING ACTIVITIES MAY BE SUCH THAT THE SEX OF POLICE OFFICERS CONSTITUTES A DETERMINING FACTOR FOR CARRYING THEM OUT . IF THAT IS SO , A MEMBER STATE MAY THEREFORE RESTRICT SUCH TASKS , AND THE TRAINING LEADING THERETO , TO MEN . IN SUCH A CASE , AS IS CLEAR FROM ARTICLE 9 (2) OF THE DIRECTIVE , THE MEMBER STATES HAVE A DUTY TO ASSESS PERIODICALLY THE ACTIVITIES CONCERNED IN ORDER TO DECIDE WHETHER , IN THE LIGHT OF SOCIAL DEVELOPMENTS , THE DEROGATION FROM THE GENERAL SCHEME OF THE DIRECTIVE MAY STILL BE MAINTAINED .

38 IT MUST ALSO BE BORNE IN MIND THAT , IN DETERMINING THE SCOPE OF ANY DEROGATION FROM AN INDIVIDUAL RIGHT SUCH AS THE EQUAL TREATMENT OF MEN AND WOMEN PROVIDED FOR BY THE DIRECTIVE , THE PRINCIPLE OF PROPORTIONALITY , ONE OF THE GENERAL PRINCIPLES OF LAW UNDERLYING THE COMMUNITY LEGAL ORDER , MUST BE OBSERVED . THAT PRINCIPLE REQUIRES THAT DEROGATIONS REMAIN WITHIN THE LIMITS OF WHAT IS APPROPRIATE AND NECESSARY FOR ACHIEVING THE AIM IN VIEW AND REQUIRES THE PRINCIPLE OF EQUAL TREATMENT TO BE RECONCILED AS FAR AS POSSIBLE WITH THE REQUIREMENTS OF PUBLIC SAFETY WHICH CONSTITUTE THE DECISIVE FACTOR AS REGARDS THE CONTEXT OF THE ACTIVITY IN QUESTION .

39 BY REASON OF THE DIVISION OF JURISDICTION PROVIDED FOR IN ARTICLE 177 OF THE EEC TREATY , IT IS FOR THE NATIONAL COURT TO SAY WHETHER THE REASONS ON WHICH THE CHIEF CONSTABLE BASED HIS DECISION ARE IN FACT WELL FOUNDED AND JUSTIFY THE SPECIFIC MEASURE TAKEN IN MRS JOHNSTON ' S CASE . IT IS ALSO FOR THE NATIONAL COURT TO ENSURE THAT THE PRINCIPLE OF PROPORTIONALITY IS OBSERVED AND TO DETERMINE WHETHER THE REFUSAL TO RENEW MRS JOHNSTON ' S CONTRACT COULD NOT BE AVOIDED BY ALLOCATING TO WOMEN DUTIES WHICH , WITHOUT JEOPARDIZING THE AIMS PURSUED , CAN BE PERFORMED WITHOUT FIRE-ARMS .

40 THE ANSWER TO THE INDUSTRIAL TRIBUNAL ' S SECOND AND THIRD QUESTIONS SHOULD THEREFORE BE THAT ARTICLE 2 (2) OF DIRECTIVE NO 76/207 MUST BE INTERPRETED AS MEANING THAT IN DECIDING WHETHER , BY REASON OF THE CONTEXT IN WHICH THE ACTIVITIES OF A POLICE OFFICER ARE CARRIED OUT , THE SEX OF THE OFFICER CONSTITUTES A DETERMINING FACTOR FOR THAT OCCUPATIONAL ACTIVITY , A

MEMBER STATE MAY TAKE INTO CONSIDERATION REQUIREMENTS OF PUBLIC SAFETY IN ORDER TO RESTRICT GENERAL POLICING DUTIES , IN AN INTERNAL SITUATION CHARACTERIZED BY FREQUENT ASSASSINATIONS , TO MEN EQUIPPED WITH FIRE-ARMS .

THE DEROGATIONS ALLOWED ON THE GROUND OF A CONCERN TO PROTECT WOMEN

41 IN ITS FOURTH AND FIFTH QUESTION THE INDUSTRIAL TRIBUNAL THEN ASKS THE COURT FOR AN INTERPRETATION OF THE EXPRESSIONS ' PROTECTION OF WOMEN ' IN ARTICLE 2 (3) OF THE DIRECTIVE AND ' CONCERN FOR PROTECTION ' IN ARTICLE 3 (2) (C), WHICH INSPIRED CERTAIN PROVISIONS OF NATIONAL LAW , SO THAT IT CAN DECIDE WHETHER THE DIFFERENCE IN TREATMENT IN QUESTION MAY FALL WITHIN THE SCOPE OF THE DEROGATIONS FROM THE PRINCIPLE OF EQUAL TREATMENT LAID DOWN FOR THOSE PURPOSES .

42 IN MRS JOHNSTON ' S VIEW , THOSE PROVISIONS MUST BE INTERPRETED STRICTLY . THEIR SOLE PURPOSE IS TO ASSURE WOMEN SPECIAL TREATMENT IN ORDER TO PROTECT THEIR HEALTH AND SAFETY IN THE CASE OF PREGNANCY OR MATERNITY . THAT IS NOT THE CASE WHERE WOMEN ARE COMPLETELY EXCLUDED FROM SERVICE IN AN ARMED POLICE FORCE .

43 THE UNITED KINGDOM STATES THAT THE AIM OF THE POLICY WITH REGARD TO WOMEN IN THE RUC FULL-TIME RESERVE IS TO PROTECT WOMEN BY PREVENTING THEM FROM BECOMING TARGETS FOR ASSASSINATION . THE EXPRESSION ' PROTECTION OF WOMEN ' MAY COVER SUCH AN AIM IN A PERIOD OF SERIOUS DISTURBANCES . THE COMMISSION ALSO TAKES THE VIEW THAT AN EXCEPTIONAL SITUATION SUCH AS EXISTS IN NORTHERN IRELAND AND THE RESULTANT DANGERS FOR ARMED WOMEN POLICE OFFICERS MAY BE TAKEN INTO CONSIDERATION FROM THE VIEWPOINT OF THE PROTECTION OF WOMEN .

44 IT MUST BE OBSERVED IN THIS REGARD THAT , LIKE ARTICLE 2 (2) OF THE DIRECTIVE , ARTICLE 2 (3), WHICH ALSO DETERMINES THE SCOPE OF ARTICLE 3 (2) (C), MUST BE INTERPRETED STRICTLY . IT IS CLEAR FROM THE EXPRESS REFERENCE TO PREGNANCY AND MATERNITY THAT THE DIRECTIVE IS INTENDED TO PROTECT A WOMAN ' S BIOLOGICAL CONDITION AND THE SPECIAL RELATIONSHIP WHICH EXISTS BETWEEN A WOMAN AND HER CHILD . THAT PROVISION OF THE DIRECTIVE DOES NOT THEREFORE ALLOW WOMEN TO BE EXCLUDED FROM A CERTAIN TYPE OF EMPLOYMENT ON THE GROUND THAT PUBLIC OPINION DEMANDS THAT WOMEN BE GIVEN GREATER PROTECTION THAN MEN AGAINST RISKS WHICH AFFECT MEN AND WOMEN IN THE SAME WAY AND WHICH ARE DISTINCT FROM WOMEN ' S SPECIFIC NEEDS OF PROTECTION , SUCH AS THOSE EXPRESSLY MENTIONED .

45 IT DOES NOT APPEAR THAT THE RISKS AND DANGERS TO WHICH WOMEN ARE EXPOSED

WHEN PERFORMING THEIR DUTIES IN THE POLICE FORCE IN A SITUATION SUCH AS EXISTS IN NORTHERN IRELAND ARE DIFFERENT FROM THOSE TO WHICH ANY MAN IS ALSO EXPOSED WHEN PERFORMING THE SAME DUTIES . A TOTAL EXCLUSION OF WOMEN FROM SUCH AN OCCUPATIONAL ACTIVITY WHICH , OWING TO A GENERAL RISK NOT SPECIFIC TO WOMEN , IS IMPOSED FOR REASONS OF PUBLIC SAFETY IS NOT ONE OF THE DIFFERENCES IN TREATMENT THAT ARTICLE 2 (3) OF THE DIRECTIVE ALLOWS OUT OF A CONCERN TO PROTECT WOMEN .

46 THE ANSWER TO THE INDUSTRIAL TRIBUNAL ' S FOURTH AND FIFTH QUESTIONS MUST THEREFORE BE THAT THE DIFFERENCES IN TREATMENT BETWEEN MEN AND WOMEN THAT ARTICLE 2 (3) OF DIRECTIVE NO 76/207 ALLOWS OUT OF A CONCERN TO PROTECT WOMEN DO NOT INCLUDE RISKS AND DANGERS , SUCH AS THOSE TO WHICH ANY ARMED POLICE OFFICER IS EXPOSED WHEN PERFORMING HIS DUTIES IN A GIVEN SITUATION , THAT DO NOT SPECIFICALLY AFFECT WOMEN AS SUCH .

THE EFFECTS OF DIRECTIVE NO 76/207

47 BY ITS SIXTH QUESTION THE INDUSTRIAL TRIBUNAL ALSO SEEKS TO ASCERTAIN WHETHER AN INDIVIDUAL MAY RELY UPON THE PROVISIONS OF THE DIRECTIVE IN PROCEEDINGS BROUGHT BEFORE A NATIONAL COURT . IN VIEW OF THE FOREGOING , THIS QUESTION ARISES MORE PARTICULARLY WITH REGARD TO ARTICLES 2 AND 6 OF THE DIRECTIVE .

48 MRS JOHNSTON CONSIDERS THAT ARTICLE 2 (1) OF THE DIRECTIVE IS UNCONDITIONAL AND SUFFICIENTLY CLEAR AND PRECISE TO HAVE DIRECT EFFECT . IT MAY BE RELIED UPON AS AGAINST THE CHIEF CONSTABLE ACTING AS A PUBLIC AUTHORITY . IN ANY EVENT , THE DIRECTIVE HAS HORIZONTAL DIRECT EFFECT EVEN IN REGARD TO PRIVATE PERSONS .

49 IN THE VIEW OF THE UNITED KINGDOM , ARTICLE 2 (1) OF THE DIRECTIVE IS A CONDITIONAL PROVISION INASMUCH AS IT IS SUBJECT TO DEROGATIONS WHICH THE MEMBER STATE MAY DETERMINE IN A DISCRETIONARY MANNER . THE CHIEF CONSTABLE IS CONSTITUTIONALLY INDEPENDENT OF THE STATE AND IN THE PRESENT CASE IS INVOLVED ONLY AS AN EMPLOYER ; THE DIRECTIVE HAS NO DIRECT EFFECT IN SUCH RELATIONSHIPS .

50 THE COMMISSION TAKES THE VIEW THAT THE CASE MAY BE DEALT WITH WITHIN THE SCOPE OF NATIONAL LAW AND THAT A RULING ON THE DIRECT EFFECT OF ARTICLES 2 AND 3 OF THE DIRECTIVE IS NOT NECESSARY .

51 ON THIS POINT IT MUST BE OBSERVED FIRST OF ALL THAT IN ALL CASES IN WHICH A DIRECTIVE HAS BEEN PROPERLY IMPLEMENTED ITS EFFECTS REACH INDIVIDUALS

THROUGH THE IMPLEMENTING MEASURES ADOPTED BY THE MEMBER STATES CONCERNED . THE QUESTION WHETHER ARTICLE 2 (1) MAY BE RELIED UPON BEFORE A NATIONAL COURT THEREFORE HAS NO PURPOSE SINCE IT IS ESTABLISHED THAT THE PROVISION HAS BEEN PUT INTO EFFECT IN NATIONAL LAW .

52 THE DEROGATION FROM THE PRINCIPLE OF EQUAL TREATMENT WHICH , AS STATED ABOVE , IS ALLOWED BY ARTICLE 2 (2) CONSTITUTES ONLY AN OPTION FOR THE MEMBER STATES . IT IS FOR THE COMPETENT NATIONAL COURT TO SEE WHETHER THAT OPTION HAS BEEN EXERCISED IN PROVISIONS OF NATIONAL LAW AND TO CONSTRUE THE CONTENT OF THOSE PROVISIONS . THE QUESTION WHETHER AN INDIVIDUAL MAY RELY UPON A PROVISION OF THE DIRECTIVE IN ORDER TO HAVE A DEROGATION LAID DOWN BY NATIONAL LEGISLATION SET ASIDE ARISES ONLY IF THAT DEROGATION WENT BEYOND THE LIMITS OF THE EXCEPTIONS PERMITTED BY ARTICLE 2 (2) OF THE DIRECTIVE .

53 IN THIS CONTEXT IT SHOULD BE OBSERVED FIRST OF ALL THAT , AS THE COURT HAS ALREADY STATED IN ITS JUDGMENTS OF 10 APRIL 1984 (CASE 14/83 VON COLSON AND KAMANN V LAND NORDRHEIN-WESTFALEN (1984) ECR 1891 AND CASE 79/83 HARZ V DEUTSCHE TRADAX GMBH (1984) ECR 1921) THE MEMBER STATES ' OBLIGATION UNDER A DIRECTIVE TO ACHIEVE THE RESULT ENVISAGED BY THAT DIRECTIVE AND THEIR DUTY UNDER ARTICLE 5 OF THE TREATY TO TAKE ALL APPROPRIATE MEASURES , WHETHER GENERAL OR PARTICULAR , TO ENSURE THE FULFILMENT OF THAT OBLIGATION , IS BINDING ON ALL THE AUTHORITIES OF MEMBER STATES INCLUDING , FOR MATTERS WITHIN THEIR JURISDICTION , THE COURTS . IT FOLLOWS THAT , IN APPLYING NATIONAL LAW , AND IN PARTICULAR THE PROVISIONS OF NATIONAL LEGISLATION SPECIFICALLY INTRODUCED IN ORDER TO IMPLEMENT DIRECTIVE NO 76/207 , NATIONAL COURTS ARE REQUIRED TO INTERPRET THEIR NATIONAL LAW IN THE LIGHT OF THE WORDING AND THE PURPOSE OF THE DIRECTIVE IN ORDER TO ACHIEVE THE RESULT REFERRED TO IN THE THIRD PARAGRAPH OF ARTICLE 189 OF THE EEC TREATY . IT IS THEREFORE FOR THE INDUSTRIAL TRIBUNAL TO INTERPRET THE PROVISIONS OF THE SEX DISCRIMINATION ORDER , AND IN PARTICULAR ARTICLE 53 (1) THEREOF , IN THE LIGHT OF THE PROVISIONS OF THE DIRECTIVE , AS INTERPRETED ABOVE , IN ORDER TO GIVE IT ITS FULL EFFECT .

54 IN THE EVENT THAT , HAVING REGARD TO THE FOREGOING , THE QUESTION SHOULD STILL ARISE WHETHER AN INDIVIDUAL MAY RELY ON THE DIRECTIVE AS AGAINST A DEROGATION LAID DOWN BY NATIONAL LEGISLATION , REFERENCE SHOULD BE MADE TO THE ESTABLISHED CASE-LAW OF THE COURT (SEE IN PARTICULAR ITS JUDGMENT OF 19 JANUARY 1982 IN CASE 8/81 BECKER V FINANZAMT MUNSTER-INNENSTADT (1982) ECR 53). MORE PARTICULARLY , THE COURT RECENTLY HELD IN ITS JUDGMENT DELIVERED ON 26 FEBRUARY 1986 IN CASE 152/84 (MARSHALL V SOUTHAMPTON AND SOUTH WEST HAMPSHIRE AREA HEALTH AUTHORITY (1986) ECR 723) THAT CERTAIN PROVISIONS OF DIRECTIVE NO 76/207 ARE , AS FAR AS THEIR SUBJECT-MATTER IS CONCERNED , UNCONDITIONAL AND SUFFICIENTLY PRECISE AND THAT THEY MAY BE RELIED UPON BY

INDIVIDUALS AS AGAINST A MEMBER STATE WHERE IT FAILS TO IMPLEMENT IT CORRECTLY .

55 THAT STATEMENT WAS MADE , IN THE AFORESAID JUDGMENT OF 26 FEBRUARY 1986 , WITH REGARD TO THE APPLICATION OF THE PRINCIPLE OF EQUAL TREATMENT LAID DOWN IN ARTICLE 2 (1) OF THE DIRECTIVE TO THE CONDITIONS GOVERNING DISMISSAL REFERRED TO IN ARTICLE 5 (1). THE SAME APPLIES AS REGARDS THE APPLICATION OF THE PRINCIPLE CONTAINED IN ARTICLE 2 (1) TO THE CONDITIONS GOVERNING ACCESS TO JOBS AND ACCESS TO VOCATIONAL TRAINING AND ADVANCED VOCATIONAL TRAINING REFERRED TO IN ARTICLES 3 (1) AND 4 WHICH ARE IN QUESTION IN THIS CASE .

56 THE COURT ALSO HELD IN THE AFORESAID JUDGMENT THAT INDIVIDUALS MAY RELY ON THE DIRECTIVE AS AGAINST AN ORGAN OF THE STATE WHETHER IT ACTS QUA EMPLOYER OR QUA PUBLIC AUTHORITY . AS REGARDS AN AUTHORITY LIKE THE CHIEF CONSTABLE , IT MUST BE OBSERVED THAT , ACCORDING TO THE INDUSTRIAL TRIBUNAL ' S DECISION , THE CHIEF CONSTABLE IS AN OFFICIAL RESPONSIBLE FOR THE DIRECTION OF THE POLICE SERVICE . WHATEVER ITS RELATIONS MAY BE WITH OTHER ORGANS OF THE STATE , SUCH A PUBLIC AUTHORITY , CHARGED BY THE STATE WITH THE MAINTENANCE OF PUBLIC ORDER AND SAFETY , DOES NOT ACT AS A PRIVATE INDIVIDUAL . IT MAY NOT TAKE ADVANTAGE OF THE FAILURE OF THE STATE , OF WHICH IT IS AN EMANATION , TO COMPLY WITH COMMUNITY LAW .

57 THE ANSWER TO THE SIXTH QUESTION SHOULD THEREFORE BE THAT INDIVIDUALS MAY CLAIM THE APPLICATION , AS AGAINST A STATE AUTHORITY CHARGED WITH THE MAINTENANCE OF PUBLIC ORDER AND SAFETY ACTING IN ITS CAPACITY OF AN EMPLOYER , OF THE PRINCIPLE OF EQUAL TREATMENT FOR MEN AND WOMEN LAID DOWN IN ARTICLE 2 (1) OF DIRECTIVE NO 76/207 TO THE MATTERS REFERRED TO IN ARTICLES 3 (1) AND 4 CONCERNING THE CONDITIONS FOR ACCESS TO POSTS AND TO VOCATIONAL TRAINING AND ADVANCED VOCATIONAL TRAINING IN ORDER TO HAVE A DEROGATION FROM THAT PRINCIPLE UNDER NATIONAL LEGISLATION SET ASIDE IN SO FAR AS IT EXCEEDS THE LIMITS OF THE EXCEPTIONS PERMITTED BY ARTICLE 2 (2).

58 AS REGARDS ARTICLE 6 OF THE DIRECTIVE WHICH , AS EXPLAINED ABOVE , IS ALSO APPLICABLE IN THIS CASE , THE COURT HAS ALREADY HELD IN ITS JUDGMENTS OF 10 APRIL 1984 , CITED ABOVE , THAT THAT ARTICLE DOES NOT CONTAIN , AS FAR AS SANCTIONS FOR ANY DISCRIMINATION ARE CONCERNED , ANY UNCONDITIONAL AND SUFFICIENTLY PRECISE OBLIGATION WHICH MAY BE RELIED UPON BY AN INDIVIDUAL . ON THE OTHER HAND , IN SO FAR AS IT FOLLOWS FROM THAT ARTICLE , CONSTRUED IN THE LIGHT OF A GENERAL PRINCIPLE WHICH IT EXPRESSES , THAT ALL PERSONS WHO CONSIDER THEMSELVES WRONGED BY SEX DISCRIMINATION MUST HAVE AN EFFECTIVE JUDICIAL REMEDY , THAT PROVISION IS SUFFICIENTLY PRECISE AND UNCONDITIONAL TO BE CAPABLE OF BEING RELIED UPON AS AGAINST A MEMBER STATE WHICH HAS NOT ENSURED THAT IT IS FULLY IMPLEMENTED IN ITS INTERNAL LEGAL ORDER .

59 THE ANSWER TO THIS PART OF THE SIXTH QUESTION MUST THEREFORE BE THAT THE PROVISION CONTAINED IN ARTICLE 6 TO THE EFFECT THAT ALL PERSONS WHO CONSIDER THEMSELVES WRONGED BY DISCRIMINATION BETWEEN MEN AND WOMEN MUST HAVE AN EFFECTIVE JUDICIAL REMEDY MAY BE RELIED UPON BY INDIVIDUALS AS AGAINST A MEMBER STATE WHICH HAS NOT ENSURED THAT IT IS FULLY IMPLEMENTED IN ITS INTERNAL LEGAL ORDER .

ARTICLE 224 OF THE EEC TREATY

60 AS FAR AS CONCERNS THE SEVENTH QUESTION , ON THE INTERPRETATION OF ARTICLE 224 , IT FOLLOWS FROM THE FOREGOING THAT ARTICLE 2 (2) OF DIRECTIVE NO 76/207 ALLOWS A MEMBER STATE TO TAKE INTO CONSIDERATION THE REQUIREMENTS OF THE PROTECTION OF PUBLIC SAFETY IN A CASE SUCH AS THE ONE BEFORE THE COURT . AS REGARDS THE REQUIREMENT THAT THE QUESTION WHETHER THE RULES LAID DOWN BY THE DIRECTIVE HAVE BEEN COMPLIED WITH MUST BE AMENABLE TO JUDICIAL REVIEW , NONE OF THE FACTS BEFORE THE COURT AND NONE OF THE OBSERVATIONS SUBMITTED TO IT SUGGEST THAT THE SERIOUS INTERNAL DISTURBANCES IN NORTHERN IRELAND MAKE JUDICIAL REVIEW IMPOSSIBLE OR THAT MEASURES NEEDED TO PROTECT PUBLIC SAFETY WOULD BE DEPRIVED OF THEIR EFFECTIVENESS BECAUSE OF SUCH REVIEW BY THE NATIONAL COURTS . IN THOSE CIRCUMSTANCES , THE QUESTION WHETHER ARTICLE 224 OF THE EEC TREATY MAY BE RELIED UPON BY A MEMBER STATE IN ORDER TO AVOID COMPLIANCE WITH THE OBLIGATIONS IMPOSED ON IT BY COMMUNITY LAW AND IN PARTICULAR BY THE DIRECTIVE DOES NOT ARISE IN THIS CASE .

61 THE SEVENTH QUESTION THEREFORE HAS NO PURPOSE IN VIEW OF THE ANSWERS TO THE OTHER QUESTIONS .

COSTS

62 THE COSTS INCURRED BY THE UNITED KINGDOM , THE GOVERNMENT OF DENMARK AND THE COMMISSION OF THE EUROPEAN COMMUNITIES , WHICH HAVE SUBMITTED OBSERVATIONS TO THE COURT , ARE NOT RECOVERABLE . SINCE THESE PROCEEDINGS ARE , IN SO FAR AS THE PARTIES TO THE MAIN PROCEEDINGS ARE CONCERNED , IN THE NATURE OF A STEP IN THE PROCEEDINGS PENDING BEFORE THE NATIONAL TRIBUNAL , THE DECISION ON COSTS IS A MATTER FOR THAT TRIBUNAL .

ON THOSE GROUNDS ,

THE COURT ,

Decision on costs

IN ANSWER TO THE QUESTIONS SUBMITTED TO IT BY THE INDUSTRIAL TRIBUNAL OF NORTHERN IRELAND BY DECISION OF 8 AUGUST 1984 , HEREBY RULES :

(1) THE PRINCIPLE OF EFFECTIVE JUDICIAL CONTROL LAID DOWN IN ARTICLE 6 OF COUNCIL DIRECTIVE NO 76/207 OF 9 FEBRUARY 1976 DOES NOT ALLOW A CERTIFICATE ISSUED BY A NATIONAL AUTHORITY STATING THAT THE CONDITIONS FOR DEROGATING FROM THE PRINCIPLE OF EQUAL TREATMENT FOR MEN AND WOMEN FOR THE PURPOSES OF PROTECTING PUBLIC SAFETY ARE SATISFIED TO BE TREATED AS CONCLUSIVE EVIDENCE SO AS TO EXCLUDE THE EXERCISE OF ANY POWER OF REVIEW BY THE COURTS . THE PROVISION CONTAINED IN ARTICLE 6 TO THE EFFECT THAT ALL PERSONS WHO CONSIDER THEMSELVES WRONGED BY DISCRIMINATION BETWEEN MEN AND WOMEN MUST HAVE AN EFFECTIVE JUDICIAL REMEDY MAY BE RELIED UPON BY INDIVIDUALS AS AGAINST A MEMBER STATE WHICH HAS NOT ENSURED THAT IT IS FULLY IMPLEMENTED IN ITS INTERNAL LEGAL ORDER .

Operative part

(2)ACTS OF SEX DISCRIMINATION DONE FOR REASONS RELATED TO THE PROTECTION OF PUBLIC SAFETY MUST BE EXAMINED IN THE LIGHT OF THE DEROGATIONS FROM THE PRINCIPLE OF EQUAL TREATMENT FOR MEN AND WOMEN WHICH ARE LAID DOWN IN DIRECTIVE NO 76/207 .

(3)ARTICLE 2 (2) OF DIRECTIVE NO 76/207 MUST BE INTERPRETED AS MEANING THAT IN DECIDING WHETHER , BY REASON OF THE CONTEXT IN WHICH THE ACTIVITIES OF A POLICE OFFICER ARE CARRIED OUT , THE SEX OF THE OFFICER CONSTITUTES A DETERMINING FACTOR FOR THAT OCCUPATIONAL ACTIVITY , A MEMBER STATE MAY TAKE INTO CONSIDERATION REQUIREMENTS OF PUBLIC SAFETY IN ORDER TO RESTRICT GENERAL POLICING DUTIES , IN AN INTERNAL SITUATION CHARACTERIZED BY FREQUENT ASSASSINATIONS , TO MEN EQUIPPED WITH FIRE-ARMS .

(4)THE DIFFERENCES IN TREATMENT BETWEEN MEN AND WOMEN THAT ARTICLE 2 (3) OF DIRECTIVE NO 76/207 ALLOWS OUT OF A CONCERN TO PROTECT WOMEN DO NOT INCLUDE RISKS AND DANGERS , SUCH AS THOSE TO WHICH ANY ARMED POLICE OFFICER IS EXPOSED IN THE PERFORMANCE OF HIS DUTIES IN A GIVEN SITUATION , THAT DO NOT SPECIFICALLY AFFECT WOMEN AS SUCH .

(5)INDIVIDUALS MAY CLAIM THE APPLICATION , AS AGAINST A STATE AUTHORITY CHARGED WITH THE MAINTENANCE OF PUBLIC ORDER AND SAFETY ACTING IN ITS CAPACITY AS EMPLOYER , OF THE PRINCIPLE OF EQUAL TREATMENT FOR MEN AND WOMEN

LAI D DOWN IN ARTICLE 2 (1) OF DIRECTIVE NO 76/207 TO THE MATTERS REFERRED TO IN ARTICLES 3 (1) AND 4 CONCERNING THE CONDITIONS FOR ACCESS TO POSTS AND TO VOCATIONAL TRAINING AND ADVANCED VOCATIONAL TRAINING IN ORDER TO HAVE A DEROGATION FROM THAT PRINCIPLE CONTAINED IN NATIONAL LEGISLATION SET ASIDE IN SO FAR AS IT EXCEEDS THE LIMITS OF THE EXCEPTIONS PERMITTED BY ARTICLE 2 (2).

MACKENZIE STUART KOOPMANS EVERLING BAHLMANN JOLIET DUE GALMOT KAKOURIS O ' HIGGINS DELIVERED IN OPEN COURT IN LUXEMBOURG ON 15 MAY 1986 .

P . HEIM A . J . MACKENZIE STUART

REGISTRAR PRESIDENT

** TRANSLATED FROM THE FRENCH .*