JUDGMENT OF THE COURT (Second Chamber)

8 September 2005 *

In Case C-191/03,

REFERENCE under Article 234 EC for a preliminary ruling by the Labour Court (Ireland), by decision of 14 April 2003, received at the Court on 12 May 2003, in the proceedings

North Western Health Board

v

Margaret McKenna,

THE COURT (Second Chamber),

composed of C.W.A. Timmermans, President of the Chamber, C. Gulmann (Rapporteur) and R. Schintgen, Judges,

* Language of the case: English

Advocate General: P. Léger,
Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 17 June 2004,

after considering the observations submitted on behalf of:

— the North Western Health Board, by A. Collins, SC, and A. Kerr, BL,

— Ms McKenna, by D. Connolly, SC, and M. Bolger, BL,

— Ireland, by E. Regan and S. Belshaw, BL,

— the Italian Government, by I.M. Braguglia, acting as Agent, and A. Cingolo, avvocato dello Stato,

— the Austrian Government, by E. Riedl, acting as Agent,

— the United Kingdom Government, by R. Caudwell, acting as Agent, and K. Smith, Barrister,

— the Commission of the European Communities, by M.-J. Jonczy and N. Yerrell, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 2 December 2004,

gives the following

Judgment

1 The reference for a preliminary ruling concerns the interpretation of Article 141 EC, of Council Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women (OJ 1975 L 45, p. 19), and of 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 This reference has been submitted in the course of a dispute between the North Western Health Board ('the Board') and Ms McKenna, its employee, concerning the amount of pay which she received during an absence on grounds of a pregnancy-related illness and the offsetting of that absence against the maximum total number of days of paid sick leave to which a worker is entitled over a specified period.

Law

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 purposes 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 first paragraph of Article 1 of Directive 75/117 provides:

'The principle of equal pay for men and women outlined in Article [141] of the Treaty ... means, for the same work or for work to which equal value is attributed, the elimination of all discrimination on grounds of sex with regard to all aspects and conditions of remuneration.'

5 Article 3 of Directive 75/117 provides:

'Member States shall abolish all discrimination between men and women arising from laws, regulations or administrative provisions which is contrary to the principle of equal pay.'

6 Article 4 of Directive 75/117 is worded as follows:

'Member States shall take the necessary measures to ensure that provisions appearing in collective agreements, wage scales, wage agreements or individual contracts of employment which are contrary to the principle of equal pay shall be, or may be declared, null and void or may be amended.'

7 Article 1(1) of Directive 76/207 states that the purpose of that directive 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. ...'

8 Article 2 of Directive 76/207 provides:

'1. 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.

...

3. This Directive shall be without prejudice to provisions concerning the protection of women, particularly as regards pregnancy and maternity.

...'

9 Article 5 of Directive 76/207 sets out in the following terms the rules governing equal treatment in regard to working conditions:

'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;

(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;

...'

10 Directives 75/117 and 76/207 were transposed into Irish law by the Employment Equality Act 1998.

The dispute in the main proceedings and the questions referred for preliminary ruling

11 Ms McKenna is employed by the Board within the public sector in Ireland. In January 2000 she discovered that she was pregnant. For almost the entire duration of her pregnancy she was on sick leave pursuant to medical advice by reason of a pathological condition linked to her pregnancy.

12 Under the Board's sick-leave scheme, its staff members are entitled to 365 days of paid sick leave over any period of four years. Full pay is received for a maximum of 183 days' incapacity over any period of 12 months, with any additional days of sick leave taken within the same 12-month period attracting half pay only, up to a maximum total of 365 days' paid sick leave within that four-year period.

13 The scheme in question does not distinguish between pregnancy-related illnesses and other forms of illness. It treats absence from work on the ground of pregnancy-related illnesses in the same way as sick leave granted by reason of such other forms of illness. The general conditions of the scheme provide that 'sickness as a result of a maternity-related illness prior to the granting of 14 weeks' maternity leave falls to be considered under the Board's sick-leave policy'.

14 Pursuant to those provisions, Ms McKenna was treated as having exhausted her entitlement to full pay on 6 July 2000. She accordingly received half pay from that date until 3 September 2000, the date on which she commenced her maternity leave, which lasted until 11 December 2000.

15 During her maternity leave, Ms McKenna received her full pay in accordance with the regulations applied to the Health Boards by the Department of Health and Children.

16 On the expiry of her maternity leave, Ms McKenna was still unfit for work on medical grounds. Her salary was once again reduced to half pay under the terms of the sick-leave scheme.

17 Ms McKenna challenged before the Equality Officer the application of the sick-leave scheme to her situation.

18 She contended that she had been the victim of discrimination contrary to Directive 76/207 inasmuch as her pregnancy-related illness had been treated in the same way as a 'normal' illness and her period of absence offset against her overall sick-leave entitlement.

19 She also argued that placing her on half pay after the 183-day period during which she had been entitled to full pay constituted unfavourable treatment in respect of pay contrary to Article 141 EC and Directive 75/117.

20 By decision of 13 August 2001 the Equality Officer upheld Ms McKenna's argument. She ordered that the arrears of pay in issue be paid to Ms McKenna together with compensation for the discrimination which she had suffered.

21 The Board appealed to the Labour Court against that decision.

22 The Labour Court first points out that the employer is an extension of the State, with the result that a directive may be relied upon against it.

23 It then goes on to point out that the complaint before it comprises two aspects. In the first place, it is necessary to determine whether Ms McKenna was the victim of unequal treatment by reason of the fact that her absence on grounds of a pregnancy-related illness was offset against her total sick-leave entitlement, with the result that

the value and duration of sickness benefit due to her over future years will have been diminished or exhausted should she fall ill again. Second, it is necessary to consider whether Ms McKenna was discriminated against in terms of pay by reason of the fact that she was placed on half pay after the first 183 days of absence.

24 In those circumstances the Labour Court decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'1. Does the operation of a sick-leave scheme which treats employees suffering from pregnancy-related illnesses and pathological illness in an identical fashion come within the scope of Directive 76/207?

2. If the answer to Question 1 is in the affirmative, is it contrary to Directive 76/207 for an employer to offset, against an employee's total entitlement to benefit under an occupational sick-leave scheme, a period of absence from work due to incapacity caused by a pregnancy-related illness arising during pregnancy?

3. If the answer to Question 1 is in the affirmative, does Directive 76/207 require an employer to have in place special arrangements to cover absence from work due to incapacity caused by pregnancy-related illness arising during pregnancy?

4. Does the operation of a sick-leave scheme which treats employees suffering from pregnancy-related illness and pathological illness [in the same way] come within the scope of Article 141 [EC] and Directive 75/117?

5. If the answer to Question 4 is in the affirmative, is it contrary to Article 141 [EC] and Directive 75/117 for an employer to reduce a woman's pay after she has been absent from work for a designated period where the absence is caused by incapacity due to a pregnancy-related illness arising during pregnancy in circumstances in which a non-pregnant woman or a man absent from work for the same period as a result of incapacity due to purely pathological illness would suffer the same reduction?'

The questions referred for preliminary ruling

The first and fourth questions

25 By its first and fourth questions, which it is appropriate to examine together, the national court is essentially asking whether a sick-leave scheme which treats in the same way female workers suffering from a pregnancy-related illness and other workers suffering from an illness unrelated to pregnancy comes within the scope of Directive 76/207 or within that of Article 141 EC and Directive 75/117.

26 Ms McKenna and the Italian Government take the view that a scheme such as that in issue in the main proceedings is covered by Directive 76/207, inasmuch as it provides that absences resulting from a pregnancy-related illness are to be offset against sick-leave entitlement on other grounds, but that it is also covered by Article 141 EC and Directive 75/117, inasmuch as it results in a reduction in pay after 183 days of absence on grounds of a pregnancy-related illness.

27 The Board, together with Ireland and the Austrian and United Kingdom Governments, submits that such a scheme is covered only by Article 141 EC and Directive 75/117, as the element in issue in the main proceedings constitutes pay within the terms of those provisions and the reduction in income challenged by Ms McKenna follows directly and automatically from application of that scheme.

28 The Commission of the European Communities, by contrast, takes the view that working conditions are here in issue. The effects on pay are, it argues, merely incidental. Directive 76/207 alone is for that reason applicable.

29 It must be recalled in this regard that the continued payment of wages to a worker in the event of illness falls within the concept of 'pay' within the meaning of Article 141 EC (Case 171/88 *Rinner-Kühn* [1988] ECR 2743, paragraph 7), a concept which comprises any consideration, whether in cash or in kind, whether immediate or future, provided that the worker receives it, albeit indirectly, in respect of his or her employment from his or her employer, and irrespective of whether it is received under a contract of employment, by virtue of legislative provisions or on a voluntary basis (Case C-66/96 *Høj Pedersen and Others* [1998] ECR I-7327, paragraph 32).

30 Pay within the terms of Article 141 EC and Directive 75/117 cannot also come within the scope of Directive 76/207. As is clear from the second recital in its preamble, Directive 76/207 does not apply to 'pay' within the meaning of the abovementioned provisions (see Case C-342/93 *Gillespie and Others* [1996] ECR I-475, paragraph 24).

31 A scheme such as that in issue in the main proceedings defines the conditions governing maintenance of the worker's pay in the event of absence on grounds of illness. It makes the maintenance of full pay subject to the condition that a

maximum annual period of sick leave is not exceeded and, if that period is exceeded, it provides for the maintenance of pay at 50% of its level for a maximum total period determined over the course of four years.

32 Such a scheme, which results in a reduction in pay and subsequently in an exhaustion of entitlement to pay, operates automatically on the basis of an arithmetical calculation of the days of absence on grounds of illness.

33 The rules established thus come within the scope of Article 141 EC and Directive 75/117 (see by way of analogy, in respect of a system for acquiring entitlement to a higher salary on the basis of rules on seniority, Case C-184/89 *Nimz* [1991] ECR I-297, paragraphs 9 and 10).

34 The fact that a reduction or extinction of entitlement to maintenance of pay is not immediate but occurs on the expiry of maximum periods does not deprive those rules of their automatic nature once the conditions laid down have been satisfied.

35 The answer to the first and fourth questions referred must therefore be that a sick-leave scheme which treats identically female workers suffering from a pregnancy-related illness and other workers suffering from an illness that is unrelated to pregnancy comes within the scope of Article 141 EC and Directive 75/117.

The second, third and fifth questions

36 In the light of the reply given to the first and fourth questions and of the facts of the dispute in the main proceedings requiring consideration by the national court, it is appropriate to examine together the second, third and fifth questions.

37 By those three questions the national court is essentially asking whether Article 141 EC and Directive 75/117 are to be construed as meaning that the following constitute discrimination on grounds of sex:

— a rule of a sick-leave scheme which provides, in the case of female workers who are absent prior to maternity leave because of a pregnancy-related illness, as well as in the case of male workers who are absent as a result of any other illness, for a reduction in pay in the case where the absence exceeds a certain duration;

— a rule of a sick-leave scheme which provides for absences on grounds of illness to be offset against a maximum total number of days of paid sick leave to which a worker is entitled during a given period, irrespective of whether the illness is or is not pregnancy-related.

38 The Board, together with Ireland and the United Kingdom Government, takes the view, with regard to pay, that a female worker is not entitled to full maintenance of her pay and that a rule such as that in issue in the main proceedings is not

discriminatory. Neither the Board nor the United Kingdom Government has submitted observations on the offsetting of absences on grounds of illness. Ireland takes the view, generally, that Member States are not obligated to adopt specific provisions applicable to absences by reason of an illness that has arisen during pregnancy.

39 Ms McKenna, the Italian and Austrian Governments and the Commission submit that a reduction in pay such as that in issue in the main proceedings constitutes discrimination on grounds of sex. Ms McKenna, the Italian Government and the Commission contend that the same holds true in regard to the offsetting of absences on grounds of illness against the maximum total number of days of sick leave to which a worker is entitled. The Austrian Government states in general terms that pregnancy-related incapacity to work must be subject to the application of provisions that differ from those applicable to work incapacity unrelated to pregnancy.

The function and development of the Community-law rules governing equality as between men and women in regard to the rights of pregnant women and women who have given birth

40 It should be stated that, in the case in the main proceedings, the reduction in pay and the offsetting of the absence caused by a pregnancy-related illness result from the application to pregnant women or women who have given birth of the general scheme which is applied to any worker in the event of illness.

41 It is necessary to examine the questions referred in the light of the function and development of the Community-law rules governing equality as between men and women with regard to the rights of pregnant women or women who have given birth.

42 In this area, the objective pursued by those rules is to protect female workers before and after they have given birth (see, in connection with maternity leave, *Gillespie and Others*, cited above, paragraph 20).

43 Community law first of all guarantees specific protection against dismissal up to the end of maternity leave.

44 The Court has ruled that a woman is protected, during her maternity leave, against dismissal due to absence (Case C-179/88 *Handels- og Kontorfunktionærernes Forbund* [1990] ECR I-3979, paragraph 15).

45 By contrast, in the case of an illness manifesting itself after such maternity leave, the Court has ruled there is no reason to distinguish an illness attributable to pregnancy or confinement from any other illness, and that such a pathological condition is covered by the general rules applicable in the event of illness. With regard to such a situation, the Court concluded that Community law does not preclude dismissals which are the result of absences due to an illness attributable to pregnancy or confinement (*Handels- og Kontorfunktionærernes Forbund*, cited above, paragraphs 16 and 19).

46 With regard to the possibility of a female worker being dismissed by reason of a pregnancy-related illness which arose prior to her maternity leave, the Court has held that, although pregnancy is not in any way comparable to a pathological condition, it is a period during which disorders and complications may arise compelling a woman to undergo strict medical supervision and, in some cases, to rest absolutely for all or part of her pregnancy. The Court found that those disorders

and complications, which could cause incapacity for work, formed part of the risks inherent in the condition of pregnancy and were thus a specific feature of that condition (Case C-394/96 *Brown* [1998] ECR I-4185, paragraph 22).

47 The Court accordingly ruled that protection against dismissal had to be accorded to women not only during maternity leave but also for the entire duration of their pregnancy, after stressing that the risk of dismissal may detrimentally affect the physical and mental state of female workers who are pregnant or have recently given birth, including the particularly serious risk that pregnant women may be prompted voluntarily to terminate their pregnancy. The Court held that dismissal of a female worker during pregnancy for absences due to incapacity for work resulting from her pregnancy is linked to the occurrence of risks inherent in pregnancy and must therefore be regarded as essentially based on the fact of pregnancy. From this the Court concluded that such a dismissal can affect only women and therefore constitutes direct discrimination on grounds of sex (*Brown*, cited above, paragraphs 18 and 24).

48 In view of the harmful effects which the risk of dismissal may have on the physical and mental state of pregnant workers, workers who have recently given birth or those who are breastfeeding, Article 10 of Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) (OJ 1992 L 348, p. 1) laid down a prohibition of dismissal during a period from the beginning of pregnancy to the end of maternity leave.

49 In addition to protection against loss of employment, Community law also guarantees, within certain limits, protection for the income of a worker who is pregnant or has recently given birth.

50 The Court has pointed out in this regard that women who are on maternity leave are in a special position which requires them to be afforded special protection, but which is not comparable either to that of a man or to that of a woman actually at work (*Gillespie and Others*, paragraph 17). The Court went on to rule that neither Article 119 of the EEC Treaty (which became Article 119 of the EC Treaty (Articles 117 to 120 of the EC Treaty have been replaced by Articles 136 EC to 143 EC)) nor Article 1 of Directive 75/117 required that women should continue to receive full pay during maternity leave, while stating that the amount payable could not, however, be so low as to undermine the purpose of maternity leave, namely the protection of women before and after giving birth (*Gillespie and Others*, paragraph 20).

51 With regard also to maternity leave, Directive 92/85, which was not applicable *ratione temporis* to the dispute which resulted in the judgment in *Gillespie and Others*, provides in Article 11(2)(b) that 'maintenance of a payment to, and/or entitlement to an adequate allowance for, workers within the meaning of Article 2' must be ensured. Article 11(3) provides that the 'allowance referred to in point 2(b) shall be deemed adequate if it guarantees income at least equivalent to that which the worker concerned would receive in the event of a break in her activities on grounds connected with her state of health'.

52 The Court has also ruled, by way of an interpretation given in the context of a dismissal but valid also in regard to the remuneration paid to a female worker, that,

where pathological conditions caused by pregnancy or childbirth arise after the end of maternity leave, they are covered by the general rules applicable in the event of illness. The Court added that the sole question is whether a female worker's absences, following maternity leave, caused by her incapacity for work brought on by such disorders, are treated in the same way as a male worker's absences, of the same duration, caused by incapacity for work; if they are, there is no discrimination on grounds of sex (*Brown*, paragraph 26). The Court thus acknowledged that a pathological condition linked to pregnancy or childbirth and arising after maternity leave may result in a reduction in remuneration under the same conditions as any other illness.

53 With regard to the case of a pregnancy-related illness affecting a worker before her maternity leave, the Court pointed out in paragraph 33 of its judgment in *Høj Pedersen and Others*, cited above, replicating the terms used in paragraph 22 of its judgment in *Brown*, that the disorders and complications linked to pregnancy, which may cause incapacity for work, form part of the risks inherent in the condition of pregnancy and are thus a specific feature of that condition. The Court went on to point out that, within the context of the dispute in the main proceedings, a woman was deprived, before the beginning of her maternity leave, of her full pay when her incapacity for work was the result of a pregnancy-related pathological condition, even though, under the national legislation in issue, all workers were in principle entitled to continue to be paid in full in the event of incapacity for work. In those circumstances, the Court ruled that the application of legislative provisions such as those at issue in the main proceedings in that case involved discrimination against women (*Høj Pedersen and Others*, paragraphs 34, 35 and 37).

54 It follows that, as Community law stands at present, a female worker:

— cannot be dismissed during her maternity leave by reason of her condition or, prior to such leave, by reason of an illness related to the pregnancy and arising before such leave;

— may, in appropriate cases, be dismissed by reason of an illness related to pregnancy or childbirth and arising after the maternity leave;

— may, in appropriate cases, suffer a reduction in pay either during maternity leave or, after such leave, in the event of an illness related to pregnancy or childbirth and arising after such leave.

55 It also follows from the foregoing that the Court has not hitherto been asked to specify whether a female worker is entitled, in any event, to continue to receive full pay in the event of a pregnancy-related illness arising prior to her maternity leave, even if the contested national rule provides for the application of a reduction in the same measure to the remuneration paid to a worker in the event of an illness unrelated to a condition of pregnancy.

56 Finally, it follows from the foregoing that the condition of pregnancy is not comparable to a pathological illness and that the disorders and complications linked to pregnancy and causing incapacity for work form part of the risks inherent in the condition of pregnancy and are thus a specific feature of that condition (see paragraphs 46 and 53 of the present judgment).

The remuneration of a female worker during pregnancy

57 It does not necessarily follow from the finding that pregnancy-related illnesses are *sui generis* that a female worker who is absent by reason of a pregnancy-related illness is entitled to maintenance of full pay, whereas a worker absent by reason of an illness unrelated to pregnancy does not have such a right.

58 It is first necessary to point out in this regard that, so far as dismissals are concerned, the special nature of a pregnancy-related illness may only be accommodated by denying an employer the right to dismiss a female worker for that reason. By contrast, so far as pay is concerned, the full maintenance thereof is not the only way in which the special nature of a pregnancy-related illness may be accommodated. That special nature may, indeed, be accommodated within the context of a scheme which, in the event of the absence of a female worker by reason of a pregnancy-related illness, provides for a reduction in pay.

59 Next, it is necessary to bear in mind that, as Community law stands at present, no general provision or principle thereof requires that women should continue to receive full pay during maternity leave, provided that the amount of remuneration payable is not so low as to undermine the Community-law objective of protecting female workers, in particular before giving birth (see, to that effect, *Gillespie and Others*, paragraph 20).

60 If a rule providing, within certain limits, for a reduction in pay to a female worker during her maternity leave does not constitute discrimination based on sex, a rule

providing, within the same limits, for a reduction in pay to that female worker who is absent during her pregnancy by reason of an illness related to that pregnancy also cannot be regarded as constituting discrimination of that kind.

61 In those circumstances, it must be concluded that, as it stands at present, Community law does not require the maintenance of full pay for a female worker who is absent during her pregnancy by reason of an illness related to that pregnancy.

62 During an absence resulting from such an illness, a female worker may thus suffer a reduction in her pay, provided that she is treated in the same way as a male worker who is absent on grounds of illness, and provided that the amount of payment made is not so low as to undermine the objective of protecting pregnant workers.

Offsetting of absences on grounds of illness against a maximum total number of days of paid sick-leave to which a worker is entitled over a specified period

63 The scheme in issue in the main proceedings provides for absences on grounds of illness to be offset against the total number of days of paid sick-leave to which a worker is entitled over a specified period. It thus treats in an identical manner all illnesses, whether or not they are pregnancy-related.

64 Such a scheme does not take any account of the special nature of pregnancy-related illnesses.

65 That special nature does not, however, preclude absences on grounds of pregnancy-related illness from being offset, within certain limits, against the total number of days of paid sick-leave.

66 The exclusion, in all circumstances, of such offsetting would not be compatible with the possibility of reducing pay during pregnancy. It would also be difficult to reconcile it with the case-law resulting from the abovementioned judgments in *Handels- og Kontorfunktionærernes Forbund* and *Brown*, according to which, after maternity leave, an illness which has its origin in the pregnancy or childbirth comes under the general scheme applicable in the event of illness.

67 However, the offsetting of absences during pregnancy on grounds of a pregnancy-related illness against a maximum total number of days of paid sick-leave to which a worker is entitled over a specified period cannot have the effect that, during the absence affected by that offsetting after the maternity leave, the female worker receives pay that is below the minimum amount to which she was entitled over the course of the illness which arose during her pregnancy (see paragraph 62 of the present judgment).

68 Special provisions must therefore be implemented in order to prevent such an effect.

69 The answer to the second, third and fifth questions must therefore be that Article 141 EC and Directive 75/117 must be construed as meaning that the following do not constitute discrimination on grounds of sex:

— a rule of a sick-leave scheme which provides, in regard to female workers absent prior to maternity leave by reason of an illness related to their pregnancy, as also in regard to male workers absent by reason of any other illness, for a reduction in pay in the case where the absence exceeds a certain duration, provided that the female worker is treated in the same way as a male worker who is absent on grounds of illness and provided that the amount of payment made is not so low as to undermine the objective of protecting pregnant workers;

— a rule of a sick-leave scheme which provides for absences on grounds of illness to be offset against a maximum total number of days of paid sick-leave to which a worker is entitled over a specified period, whether or not the illness is pregnancy-related, provided that the offsetting of the absences on grounds of pregnancy-related illness does not have the effect that, during the absence affected by that offsetting after the maternity leave, the female worker receives pay that is lower than the minimum amount to which she was entitled during the illness which arose while she was pregnant.

Costs

70 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 (Second Chamber) hereby rules:

1. **A sick-leave scheme which treats identically female workers suffering from a pregnancy-related illness and other workers suffering from an illness that is unrelated to pregnancy comes within the scope of Article 141 EC and Council Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women.**

2. **Article 141 EC and Directive 75/117 must be construed as meaning that the following do not constitute discrimination on grounds of sex:**

   — **a rule of a sick-leave scheme which provides, in regard to female workers absent prior to maternity leave by reason of an illness related to their pregnancy, as also in regard to male workers absent by reason of any other illness, for a reduction in pay in the case where the absence exceeds a certain duration, provided that the female worker is treated in the same way as a male worker who is absent on grounds of illness and provided that the amount of payment made is not so low as to undermine the objective of protecting pregnant workers;**

— **a rule of a sick-leave scheme which provides for absences on grounds of illness to be offset against a maximum total number of days of paid sick-leave to which a worker is entitled over a specified period, whether or not the illness is pregnancy-related, provided that the offsetting of the absences on grounds of a pregnancy-related illness does not have the effect that, during the absence affected by that offsetting after the maternity leave, the female worker receives pay that is lower than the minimum amount to which she was entitled during the illness which arose while she was pregnant.**

[Signatures]