

Case C-177/88

Elisabeth Johanna Pacifica Dekker

v

Stichting Vormingscentrum voor Jong Volwassenen (VJV-Centrum)
Plus

(Reference for a preliminary ruling
from the Hoge Raad der Nederlanden)

(Equal treatment for men and women —
Refusal to appoint a pregnant woman)

Report for the Hearing	3942
Opinion of Mr Advocate General Darmon delivered on 14 November 1989	3956
Judgment of the Court, 8 November 1990	3968

Summary of the Judgment

- 1. Social policy — Male and female workers — Access to employment and working conditions — Equal treatment — Refusal to appoint a pregnant woman — Discrimination — No male candidates — Not material
(Council Directive 76/207, Arts 2(1) and 3(1))*
 - 2. Social policy — Male and female workers — Access to employment and working conditions — Equal treatment — Implementation by Member States — Choice of penalties for discrimination — Civil liability — Grounds of exemption under national law not applicable
(Council Directive 76/207)*
1. An employer is in direct contravention of the principle of equal treatment embodied in Articles 2(1) and 3(1) 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 if he refuses to enter into a contract of employment with a female candidate whom he considers to be suitable for the job where such refusal is based on the possible adverse consequences for him of employing a pregnant woman, owing to rules on unfitness for work adopted by the public authorities, which assimilate inability to work on account of pregnancy and confinement to inability to work on account of illness. The fact that no man applied for the job is irrelevant.

2. Although Directive 76/207 gives the Member States, in penalizing infringement of the prohibition of discrimination, freedom to choose between the various solutions appropriate for achieving its purpose, it nevertheless requires that, where a Member State opts for a sanction forming part of the rules on civil liability, any infringement of the prohibition of discrimination suffices in itself to make the person guilty of it fully liable, and no regard may be had to the grounds of exemption envisaged by national law.

REPORT FOR THE HEARING
in Case C-177/88 *

I — Legal context

Article 2(1) of the Directive specifies

A — *Directive 76/207/EEC*

The purpose of Council Directive 76/207/EEC of 9 February 1976 (Official Journal 1976 L 39, p. 40) (hereinafter referred to as 'the Directive') is, according to Article 1(1) thereof, to put into effect in the Member States the principle of equal treatment for men and women as regards access to employment, training and working conditions.

'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.'

Article 2(3), however, provides that the Directive 'shall be without prejudice to provisions concerning the protection of

* Language of the case: Dutch.