JUDGMENT OF THE COURT (Grand Chamber)
8 June 2004 (1)

(Principle of equal pay for men and women – Concept of pay – Taking into account, for calculation of termination payments, of periods of military service – Possibility of comparing workers performing military service with women workers who, after their maternity leave, take parental leave the duration of which is not taken into account for calculating a termination payment)

In Case C-220/02,

REFERENCE to the Court under Article 234 EC by the Oberster Gerichtshof (Austria) for a preliminary ruling in the proceedings pending before that court between

Österreichischer Gewerkschaftsbund, Gewerkschaft der Privatangestellten

and

Wirtschaftskammer Österreich,

on the interpretation of Article 141 EC and Article 1 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),

THE COURT (Grand Chamber),

composed of: V. Skouris, President, P. Jann, C.W.A. Timmermans, A. Rosas, J.-P. Puissochet (Rapporteur) and J.N. Cunha Rodrigues, Presidents of Chambers, R. Schintgen, F. Macken, N. Colneric, S. von Bahr and R. Silva de Lapuerta, Judges,

Advocate General: J. Kokott,
Registrar: H. von Holstein, Deputy Registrar,

after considering the written observations submitted on behalf of:

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Österreichischer Gewerkschaftsbund, Gewerkschaft der Privatangestellten, by K. Mayr, Referent der Kammer für Arbeiter und Angestellte für Oberösterreich,

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Wirtschaftskammer Österreich, by O. Körner, acting as Agent,

–
the Austrian Government, by C. Pesendorfer, acting as Agent,

–
the Commission of the European Communities, by N. Yerell and H. Kreppel, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Österreichischer Gewerkschaftsbund, Gewerkschaft der Privatangestellten, represented by K. Mayr; Wirtschaftskammer Österreich, represented by H. Aubauer and H. Kaszanits, acting as Agents; the Austrian Government, represented by G. Hesse, acting as Agent; and the Commission, represented by H. Kreppel, at the hearing on 3 February 2004,

after hearing the Opinion of the Advocate General at the sitting on 12 February 2004,

gives the following

Judgment

1
By order of 22 May 2002, received at the Court on 14 June 2002, the Oberster Gerichtshof (Supreme Court) referred to the Court for a preliminary ruling under Article 234 EC three questions on the interpretation of Article 141 EC and Article 1 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).

2
Those questions were raised in proceedings between Österreichischer Gewerkschaftsbund, Gewerkschaft der Privatangestellten ('the Gewerkschaftsbund'), a trade union representing employees in the private sector, and Wirtschaftskammer Österreich, an Austrian economic chamber, concerning a claim for equal termination payments for men and women workers.

Legal background

Community legislation

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

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

2. For the purpose of this article, "pay" means the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which the worker receives directly or indirectly, in respect of his employment, from his employer.'

4
Article 1 of Directive 75/117 provides:

'The principle of equal pay for men and women outlined in Article 119 of the Treaty (now Article 141 EC), hereinafter called "principle of equal pay", 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.

In particular, where a job classification system is used for determining pay, it must be based on the same criteria for both men and women and so drawn up as to exclude any discrimination on grounds of sex.'

National legislation

5
The relevant national legal context, as it appears from the order for reference, is as follows.

Taking into account, for calculation of a termination payment, of periods of leave during pregnancy and on giving birth

6
Under Paragraph 23 of the Angestelltengesetz (Law on employees, BGBl. 1921/292, amended by BGBl. I 2002/100, ‘the AngG’), which, in accordance with Paragraph 2(1) of the Arbeiter-Abfertigungsgesetz (Law on termination payments for workers), applies also to manual workers, workers are entitled to a termination payment under certain conditions. The amount of the payment depends inter alia on the worker’s length of service in his employment.

7
Under Paragraph 3(1) of the Mutterschutzgesetz 1979 (Law on protection of mothers, BGBl. 1979/221, amended by BGBl. I 2002/100, ‘the MSchG’), pregnant women are not allowed to work during the last eight weeks before the expected date of giving birth. According to Paragraph 3(3) of the MSchG, in addition to that eight-week period, the obligation not to work applies also to pregnant women if continuing to work would endanger the life or health of the mother or the child.

8
Paragraph 5(1) of the MSchG provides that women must not work during the eight weeks after giving birth. In the case of a premature birth, multiple birth or caesarean delivery, that period is a minimum of 12 weeks.

9
The Oberster Gerichtshof held in Case 9 ObA 199/00f that the periods corresponding to those prohibitions of working must be taken into account for calculating length of service for the purpose of fixing the amount of a termination payment. The court based its view in particular on the absence of a contrary provision in the legislation.

10
After those periods, the employee is entitled under Paragraph 15(1) of the MSchG, on request, to unpaid leave until her child reaches the age of two years, provided that she lives in the same household as the child. Under Paragraph 15(2) of the MSchG, this parental leave must last for at least three months. During the leave the employment contract may not be terminated and the employee may not be dismissed. Under Paragraph 15(4), the employee enjoys the same protection for four weeks following the end of the leave.

11
Under Paragraph 15f(1) of the MSchG, ‘[u]nless otherwise agreed, the period of [parental] leave shall not be taken into account for the purposes of entitlements of a female employee based on length of service’.

Taking into account, for calculation of a termination payment, of the duration of military service

12
Under Paragraph 8 of the Arbeitsplatz-Sicherungsgesetz (Law on job security, BGBl. 1991/683, amended by BGBl. I 1998/30, ‘the APSG’), ‘[w]here an employee’s entitlements are based on length of service, periods of

1. military service within the meaning of Paragraph 27(1), points 1 to 4 and 6 to 8, of the Wehrgesetz (Law on defence) (now Paragraph 19(1), points 1 to 4 and 6 to 8, of the Wehrgesetz 2001),

2. service as a fixed-term soldier within the meaning of Paragraph 27(1), point 5, of the Wehrgesetz (now Paragraph 19(1), point 5, of the Wehrgesetz 2001) of up to 12 months,

3. training service [for women] and

4. civilian service,

during which the employment relationship was in existence, shall be counted towards length of service.’

13

Paragraph 12 of the APSG provides special protection during those periods for the workers concerned against termination of their contract of employment or dismissal. That protection runs from the time when the worker is notified of being called up for military service, military training service for women or civilian service until, in general, one month after the end of service, under Paragraph 13(1), point 3, of the APSG.

14
Under Paragraph 20(1) of the Wehrgesetz, all persons called up are obliged to perform military service of six months. If required on military grounds, they may be retained for an additional period corresponding to the military requirements concerned, but the total length may not exceed eight months.

15
To the period of that service should be added the periods of field exercises which national servicemen must complete in order to maintain their level of training and for instruction in active duties, in accordance with Paragraph 19(1), point 2, of the Wehrgesetz 2001. The duration of that training depends on military requirements and may not, in general, exceed 15 days a year.

16
Other periods may be taken into account on the same basis, such as periods of cadre training under Paragraph 19(1), point 3, of the Wehrgesetz 2001. Those periods are completed voluntarily or on call-up when required by military requirements. Cadre training serves to train servicemen for cadre duties and to maintain and broaden the skills acquired. The compulsory duration of that training, under point 1 of Paragraph 21(1), is 90 days for officer duties and, under ponit 2 of that provision, 60 days for other cadre duties. It is possible, however, to continue that training on a voluntary basis for up to twice the total length.

17
In addition, under Paragraph 23(1) of the W ehrgesetz 2001, servicemen who have completed the whole of their military service of eight months may, if they volunteer and it accords with military requirements, serve as ‘fixed-term soldiers’ for a maximum total duration of six months. An extension for four months is possible under certain conditions.

18
Under Paragraph 37(1) of the Wehrgesetz 2001, women may also, on a voluntary basis and depending on military requirements, perform military training service (‘Ausbildungsdienst’) within the meaning of Paragraph 8(3) of the APSG for a period of 12 months. If required by compelling military reasons, an extension for a maximum of six months is possible. Paragraph 37(4) states that Paragraphs 3 to 9 of the MSchG on the protection of pregnant women and nursing mothers apply to women performing military training service.

19
Under Paragraph 2(1) of the Zivildienstgesetz 1986 (Law on civilian service), a provision of constitutional status, civilian service is performed by national servicemen who are found to be fit to serve but state that they are unable to perform their military duties because, apart from cases of self-defence or emergency help for others, they refuse on grounds of conscience to use armed force against human beings. The duration of that service is taken into account in calculating length of service in a job, in the same way as military service.

20
It should also be noted that national legislation provides for other periods of leave whose duration is to be taken into account in the calculation of termination payments. That is the case inter alia of training leave for employees' representatives, under Paragraph 119(1) of the Arbeitsverfassungsgesetz (Law on labour relations, ‘the ArbVG’), for members of the works council.

21
On the other hand, the duration of other kinds of leave is not taken into account. That is the case of training leave agreed by the employer and the employee under Paragraph 11(1) of the Arbeitsvertragsrechts-Anpassungsgesetz (Law adjusting the law on contracts of employment, ‘the AVRAG’) and of unpaid exemption from duties agreed by the employer and the employee during which the latter receives funding from unemployment insurance or the labour market service pursuant to Paragraph 12 of the AVRAG.

The main proceedings

22
The Gewerkschaftsbund, the claimant in the main proceedings, made an application to the Oberster Gerichtshof for a declaration that the first parental leave of workers in an employment relationship must be taken into account in calculating the termination payment, as length of service, for up to eight months in the same way as military or civilian service.

23
According to the Gewerkschaftsbund, the fact that under Paragraph 15f(1) of the MSchG periods of parental leave are not taken into account in calculating the termination payment under Paragraph 23 of the AngG, in contrast to periods of military or civilian service, constitutes indirect discrimination prohibited by Article 141 EC.

24
It submits that 98.253% of workers on parental leave are women, with men making up 1.747% of the total, yet only a minority of collective agreements provide for those periods of parental leave to be taken into account as length of service.

25
On the other hand, the duration of military service, which is compulsory for men, or alternative civilian service is taken into account in full for rights calculated inter alia on the basis of length of service. Those services concern exclusively men. In 2000, for example, only about 100 women performed the military training service which is reserved for them.

26
The Gewerkschaftsbund concludes that that difference in treatment between workers, a majority of whom are women, who take parental leave and workers, a majority of whom are men, who perform military or civilian service constitutes indirect discrimination.

27
The Oberster Gerichtshof states that, in general, the taking into account for calculation of a termination payment of periods of unpaid leave is excluded by the legislation when that leave is taken at the worker's initiative, unless the reasons for which the worker takes the leave constitute an important reason entitling him to terminate the employment relationship while retaining the termination payment, under the conditions laid down by national law.

28
It states that, as regards a worker's decision to continue to take care of her child herself after the end of the 16th week of maternity leave, the Court has already held in Case C-249/97 *Gruber* [1999] ECR I-5295, paragraph 32 et seq., that the important reasons mentioned in Paragraph 26 of the AngG and Paragraph 82a of the Gewerbeordnung 1859 (Trade and Industry Code, 'the GewO 1859') which lead to early termination by the worker are different from the need to care for one's child oneself. The Court said that that is a reason which is unrelated to the conditions of work in the firm or the employer's conduct and does not make it impossible to continue working.

29
The Oberster Gerichtshof concludes that the comparison should be between the group of parents who, in their interests and entirely voluntarily, have taken additional leave to care for their children and the group of workers who, for other reasons which are specific to them but do not prevent them from working, such as looking after a member of the family who is ill, decide to cease working for a lengthy period.

30
It considers that the fact that the legislature gives favourable treatment to parents, in that it allows them the possibility of unilaterally taking childcare leave instead of having to terminate the employment relationship and also affords them special protection against dismissal, cannot be regarded as discrimination against women workers.

31
It notes, however, that the claimant in the main proceedings disagrees with that reasoning and analyses the discrimination said to result from a comparison between the group of persons on parental leave for whom the period during which they do not work is not taken into account in calculating the termination payment and the group of persons whose periods of military or civilian service are taken into account for that calculation.

The questions referred for a preliminary ruling

32
Since it considered, in those circumstances, that the outcome to the dispute pending before it depended on the interpretation of the relevant provisions of Community law, the Oberster Gerichtshof decided to stay the proceedings and refer the following questions to the Court for a preliminary ruling:

'1.
Is the term "pay" in Article 141 EC and in Article 1 of [Directive 75/117] to be interpreted as meaning that it also encompasses statutory provisions of general application, such as Paragraph 8 of [the APSG], where, in the public interest, periods of service in the performance of public duties as defined therein, during which it is generally not possible to perform services of a private-employment nature, are to be taken into account for the purposes of claims under employment law calculated according to length of service in a private-employment relationship?

2.
Are Article 141 EC and Article 1 of Directive 75/117 … to be interpreted as meaning that, from the equal pay point of view, in the case of a system of pay that awards termination payments to workers essentially based on past loyalty to their employer and graduated according to the length of their employment in order to tide them over the actual termination of that employment, unless the employment is brought to an end by the worker without important reason or its termination is the result of fault on his part, whereby individual periods of employment are categorised as independent and the exclusion of periods of unpaid leave is permitted, if that unpaid leave is taken for reasons that are in the worker's interests and at his initiative and if those reasons do not constitute an important reason that would entitle the worker to terminate the employment and retain the termination payment, the group of male and female workers covered by Paragraph 8 of the APSG (Group A) is comparable with the group of female workers who decide, in accordance with Paragraph 15 of the Mutterschutzgesetz to take parental leave ("childcare leave") to care for their child without pay after their normal 16-week period of "maternity leave" has expired and until, at the maximum, the child reaches its second birthday (Group B)?

3.
Are Article 141 EC and Article 1 of Directive 75/117 … to be interpreted as meaning that the differences between the groups of male and female workers referred to in Question 2, which consist principally in the fact that, in the case of Group A, "persons on military service",

– there is normally an obligation to "report for duty" or, in any event, if they should report voluntarily,

– reporting for duty is only permissible in so far as it is in the public interest, and

– it is normally not possible to perform services under an employment relationship governed by private law, even another employment relationship,

whereas, in the case of Group B, male and female workers on "unpaid parental leave",

– it is left to the individual worker in a particular employment relationship alone to choose whether she wishes to take unpaid parental leave to care for her child, and

–

during that unpaid leave and in the time available to her after caring for her children, she can also undertake work of a limited nature in a private employment relationship,

constitute sufficient objective justification for the different treatment of those periods for the purposes of rights based on length of service?'

Question 1

33
By its first question the national court essentially asks whether the benefit, for persons performing military service or, as an alternative, compulsory civilian service which may be extended voluntarily, consisting in the taking into account, for calculation of a termination payment they might subsequently be entitled to claim, of the duration of that service is to be regarded as part of their pay within the meaning of Article 141 EC.

Observations submitted to the Court

34
The Gewerkschaftsbund, the Austrian Government and the Commission of the European Communities take the view that an increased entitlement to a termination payment such as that which follows from Paragraph 8 of the APSG for persons performing military service or the equivalent must, like the termination payment (see *Gruber*, paragraph 22, and Case C-190/98 *Graf* [2000] ECR I-493, paragraph 14), be regarded as part of pay.

35
The Wirtschaftskammer Österreich contends, on the other hand, that a private sector employer's obligation to take periods in which the employment relationship is suspended into account for calculating the termination payment does not fall within the concept of pay within the meaning of Article 141 EC or Directive 75/117.

Findings of the Court

36
It is not disputed by the parties to the main proceedings or by the Austrian Government or the Commission that the main proceedings relate to the duration of employment relationships with an employer and that that duration must be taken into account to calculate the amount of the termination payment, which falls within the concept of pay (see, to that effect, *Gruber*, paragraph 22).

37
The fact that that duration may be increased by virtue of a statutory provision, by taking into account the duration of military or civilian service which is performed in the public interest and is not connected with the employment in respect of which the payment is granted, has no effect on the character of that payment as 'pay'.

38
So, since the system of termination payments falls within the scope of Article 141 EC, individual situations concerning different workers with regard to that system may be analysed on the basis of the provisions of that article.

39
Consequently, the answer to Question 1 must be that the benefit, for persons performing military service or, as an alternative, compulsory civilian service which may be extended voluntarily, consisting in the taking into account, for calculation of a termination payment they might subsequently be entitled to claim, of the duration of that service is to be regarded as part of their pay within the meaning of Article 141 EC.

Questions 2 and 3

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By its second and third questions the national court essentially asks whether Article 141 EC and Directive 75/117 preclude the calculation of the termination payment from taking into account as length of service the duration of military or equivalent civilian service performed mostly by men but not that of parental leave taken most often by women.

Observations submitted to the Court

41
The Gewerkschaftsbund submits that, according to the settled case-law of the Oberster Gerichtshof, unpaid periods must as a general rule be taken into account in calculating the amount of the termination payment, as long as the employment relationship is maintained.

42
It considers that there are no real differences between Group A (workers performing military or civilian service) and Group B (workers on parental leave) defined in the national court's Questions 1 and 2.

43
Thus it is not correct to state that, unlike military service, performance of which is an obligation in the public interest, parental leave, in that it expresses 'the wish to continue caring for one's child oneself', rests on a voluntary basis and is therefore exclusively within the private interest of the person concerned.

44
First, military service may be extended for voluntary periods. Second, taking parental leave is a necessity for women when places in child-care centres are scarce, men are not attracted by such leave, and there are criminal penalties for failing to comply with the obligation to look after and bring up children.

45
Moreover, according to the Gewerkschaftsbund, the two groups are in the same position as regards their possibility of working during the period in question.

46
The Gewerkschaftsbund concludes that, from the point of view of equal pay within the meaning of Article 141 EC or Article 1 of Directive 75/117, the group of workers referred to in Paragraph 8 of the APSG is comparable with the group of women workers subject to Paragraph 15 of the MSchG, and that it can only be concluded that the latter group suffers unjustified discrimination in comparison with the former.

47
According to the Wirtschaftskammer Österreich, it is not possible to compare Group A, consisting of persons doing military service, with Group B, consisting of persons on parental leave, in that the objectives pursued by the legislature are different for the rules concerning each of those two groups, so that their situations cannot be regarded as comparable.

48
It submits that the Oberster Gerichtshof states in the order for reference that the Austrian system of entitlement to a termination payment allows the duration of parental leave to be left out of account on the ground that that leave is taken for reasons concerned with the worker's interests and at the worker's initiative.

49
By contrast, the worker's interests have nothing to do with the compulsory service referred to in Paragraph 8 of the APSG. As for service on a voluntary basis, which moreover includes the military training service open to women, the military requirements of the State constitute the sole criterion of authorisation. In that case, the interruption of the contract of employment serves general, in particular military, interests.

50
In those circumstances, the differential treatment of Groups A and B is consistent with Article 141 EC and Article 1 of Directive 75/117.

51

The Wirtschaftskammer Österreich adds that the main reason why Groups A and B cannot be compared is connected with the fact that persons performing military service suffer unequal treatment based directly on their sex. That inequality consists in the exclusion of those persons, for the duration of military or civilian service, not only from access to employment but also from occupational training and promotion, which places them at a disadvantage compared with women. The compatibility with Community law of advantages given to men to compensate for that unequal treatment was accepted in Case C-79/99 *Schnorbus* [2000] ECR I-10997 and Case C-186/01 *Dory* [2003] ECR I-2479.

52
The Austrian Government too considers that women workers who take parental leave in accordance with the MSchG and persons performing military service are not in a comparable situation.

53
It considers that there are objective reasons which explain why those periods during which the obligations under the contract of employment are suspended are not taken into account in the same way for calculation of the termination payment, and that that difference is not connected with discrimination on grounds of sex prohibited by Article 141 EC.

54
The Commission submits that there is no need to do a comparison of the two systems of termination payments analysed above. It submits that the Oberster Gerichtshof merely wishes to know whether Article 141 EC and Article 1 of Directive 75/117 are to be interpreted as precluding, from the point of view of indirect discrimination, a national rule such as that in Paragraph 15f of the MSchG.

55
According to the Commission, there appears, moreover, to be direct discrimination on grounds of sex, in that the case in the main proceedings relates to the failure to take account of leave which in fact concerns women employees only, since the exclusion which follows from Paragraph 15f(1) of the MSchG applies only to women. The Commission adopts the ground chosen by the national court, however, and examines whether there is indirect discrimination.

56
As regards the questions asked by the national court, the Commission submits that the question of indirect discrimination arising from the different systems of parental leave and periods of military or civilian service, as regards the termination payment, may be left open. A comparison of those two systems, first, adds nothing as regards a finding of discrimination, which has already been established simply on the basis of the restriction in Paragraph 15f of the MSchG and, second, would also be incapable of disclosing an objective reason not connected with any discrimination on grounds of sex capable of justifying that discrimination.

57
In any event, the Commission considers that there is no objective reason not connected with any discrimination on grounds of sex capable of justifying the unequal treatment of women produced by Paragraph 15f of the MSchG.

Findings of the Court

58
The direct discrimination alleged by the Commission would derive from the fact that, for male workers, there is no reference to Paragraph 15f(1) of the MSchG which prescribes that periods of parental leave are not taken into account. However, it is not disputed either by the parties to the main proceedings or by the Austrian Government or by the Commission that the legislation in force suffices to ensure identical treatment for parental leave taken by men and women.

59
As regards the question put by the national court concerning the difference in treatment, from the point of view of termination payments, between workers who take parental leave and those who perform military or civilian service, it must be recalled that the principle of equal pay enshrined in Article 141 EC and Directive 75/117, like the principle of non-discrimination of which it is a specific expression, assumes that the male

and female workers whom it benefits are in comparable situations (see Case C-218/98 *Abdoulaye and Others* [1999] ECR I-5723, paragraph 16, and Case C-366/99 *Griesmar* [2001] ECR I-9383, paragraph 39).

60
In the present case, parental leave is leave taken voluntarily by a worker in order to bring up a child. The voluntary nature of such leave is not lost because of difficulties in finding appropriate structures for looking after a very young child, however regrettable such a situation may be. Parental leave does not have the same purpose as maternity leave; it is regulated by different legislation, and may moreover be taken at periods other than those following maternity leave.

61
The performance of national service, on the other hand, corresponds to a civic obligation laid down by law and is not governed by the individual interests of the worker. The constraint imposed in the public interest on the contract of employment is of a general nature, whatever the size of the undertaking and the employee's length of service may be.

62
In the context of national service, the person called up is at the disposal of the armed forces, at a time which he does not choose. The specific character of the obligation to do military service has, moreover, led the Court to rule that Community law does not preclude that obligation being reserved, in a Member State, to men (the *Dory* judgment).

63
The circumstance that that service can be extended voluntarily does not deprive it of its character or change its purpose. Even though the extension of military service rests on a voluntary basis, such an extension is still dictated by the satisfaction of a requirement of a public nature by virtue of the APSG, which makes the possibility of extension subject to military requirements (Paragraph 8 of the APSG and Paragraphs 19, 20, 23 and 37 of the Wehrgesetz).

64
In each case, the suspension of the contract of employment is thus based on particular reasons, more precisely the interests of the worker and family in the case of parental leave and the collective interests of the nation in the case of national service. As those reasons are of a different nature, the workers who benefit are not in comparable situations.

65
Accordingly, the answer to Questions 2 and 3 must be that Article 141 EC and Directive 75/117 do not preclude the calculation of a termination payment from taking into account, as length of service, the duration of periods of military service or the civilian equivalent performed mainly by men but not of parental leave taken most often by women.

Costs

66
The costs incurred by the Austrian Government and by the Commission, which have submitted observations to the Court, are not recoverable. 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.

On those grounds,

THE COURT (Grand Chamber),

in answer to the questions referred to it by the Oberster Gerichtshof by order of 22 May 2002, hereby rules:

1.

The benefit, for persons performing military service or, as an alternative, compulsory civilian service which may be extended voluntarily, consisting in the taking into account, for calculation of a termination payment they might subsequently be entitled to claim, of the duration of that service is to be regarded as part of their pay within the meaning of Article 141 EC.

2. **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 do not preclude the calculation of a termination payment from taking into account, as length of service, the duration of periods of military service or the civilian equivalent performed mainly by men but not of parental leave taken most often by women.**

Skouris	Jann	Timmermans
Rosas	Puissochet	Cunha Rodrigues
Schintgen	Macken	Colneric
von Bahr		Silva de Lapuerta

Delivered in open court in Luxembourg on 8 June 2004.

R. Grass	V. Skouris
Registrar	President

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1 – Language of the case: German.