



Press and Information

Court of Justice of the European Union

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Judgment in Case C-385/11

Isabel Elbal Moreno v Instituto Nacional de la Seguridad Social, Tesorería General de la Seguridad Social

## **Spanish legislation on contributory retirement pensions for part-time workers is discriminatory**

*In requiring a proportionally longer contribution period for part-time workers (most of whom are women), it establishes a difference in treatment*

In Spain, in order to qualify for a contributory retirement pension, an applicant must be aged at least 65 years and have completed a minimum contribution period of 15 years. In order to determine the contribution periods required, the Spanish legislation takes into account only the hours actually worked, by calculating the equivalent number of theoretical days of contribution. That rule is attenuated by two correcting rules designed to facilitate access by part-time workers to Social Security protection.

Accordingly, first, a general concept of 'theoretical day of contribution', equivalent to five hours a day of actual work, or to 1 826 hours a year, is established. The contributions made are taken into account in respect of the hours worked, by calculating the equivalent number of theoretical days of contribution. Secondly, in order to give entitlement to retirement pensions, a specific rule is applied, whereby a multiplier of 1.5 is applied to the number of theoretical days of contribution. The latter are thus increased, thereby facilitating access to protection.

Ms Elbal Moreno worked exclusively as a cleaner for a Residents' Association part-time for four hours a week (10% of the 40-hour statutory working week in Spain) for 18 years. Aged 66 years, she applied to the National Institute of Social Security (NISS) for a retirement pension. Her application was refused on the ground that she had not completed the minimum 15-year contribution period required for entitlement to a retirement pension.

In those circumstances, the Juzgado de lo Social de Barcelona (Social Court of Barcelona), before which the case was brought, asks the Court of Justice whether the directive on equal treatment for men and women in matters of social security precludes the Spanish legislation<sup>1</sup>.

In that regard, the Spanish court notes that so long as the Spanish legislation takes into account only the hours worked and not the contribution period (the days worked), this ultimately results in the double application – albeit corrected – of the *pro rata temporis* principle. Thus, a longer qualifying period is required from the part-time worker in inverse proportion to the reduction in his working hours in order to obtain a pension the amount of which is already directly and proportionately lower owing to the part-time nature of the work. In the case of Ms Elbal Moreno, application of the Spanish legislation means that 18 years covered by contributions at the rate of 10% of the working day are treated, on the basis of the contribution period required for entitlement to a pension, as equal to less than 3 years of contributions. Accordingly, Ms Elbal Moreno would have to work for 100 years to complete the minimum necessary qualifying period of 15 years which would give her access to a pension of €112.93 a month.

**In its judgment delivered today, the Court finds that** the directive on equal treatment for men and women in matters of social security precludes the Spanish legislation, under which a

<sup>1</sup> Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security (OJ 1979 L 6, p. 24).

proportionally greater contribution period is required from part-time workers, the vast majority of whom are women, than from full-time workers for the former to qualify, if appropriate, for a contributory retirement pension which is already reduced in proportion to the part-time nature of their work.

The Court states that indirect discrimination arises where a national measure, albeit formulated in neutral terms, works to the disadvantage of far more women than men. As it is, the legislation at issue works to the disadvantage of part-time workers who have worked part-time for a long time, since, in practice, such legislation excludes those workers from any possibility of obtaining a retirement pension because of the method used to calculate the requisite contribution period. Also, that national legislation affects women far more than men, given that in Spain at least 80% of part-time workers are women.

Nonetheless, the Court observes that it is possible for such national legislation to be justified by objective factors unrelated to any discrimination on grounds of sex. That will be the case where the measures chosen reflect a legitimate social-policy objective of the Member State, they are appropriate to achieve that aim and they are necessary in order to do so. In that regard, the Court notes that there is no evidence to support the conclusion that the exclusion of part-time workers, such as Ms Elbal Moreno, from any possibility of obtaining a retirement pension is a measure genuinely necessary to achieve the objective of protecting the contributory social security system, to which the NISS and the Spanish Government refer, and that no other measure less onerous for those workers is capable of achieving the same objective. The Court adds that that conclusion is not affected by the argument that the purpose of the two correcting rules is to facilitate access to a retirement pension for part-time workers. According to the Court, it does not appear that those two corrective measures have any positive effect whatsoever on the situation of part-time workers such as Ms Elbal Moreno. It follows that such national legislation is contrary to the above directive and constitutes indirect discrimination.

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**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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*The [full text](#) of the judgment is published on the CURIA website on the day of delivery.*

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