



Press and Information

Court of Justice of the European Union

**PRESS RELEASE No 135/14**

Luxembourg, 9 October 2014

Advocate General's Opinion in Case C-527/13  
Lourdes Cachaldora Fernández v Instituto Nacional de la Seguridad Social  
(INSS) and Tesorería General de la Seguridad Social (TGSS)

**According to Advocate General Bot, a provision of the Spanish law on the calculation of permanent invalidity pensions is contrary to EU law**

*The provision in question, which reduces the permanent invalidity pension payable to some part-time workers, introduces indirect discrimination on the grounds of gender*

Under Spanish law, permanent invalidity pensions are to be calculated by taking into account the contributions paid in the eight years prior to the occurrence of the event giving rise to the invalidity. The law provides a corrective mechanism if, during some months of that reference period, the person concerned has not paid contributions to the social security scheme. That corrective mechanism enables those periods to form part of the basis for calculating the invalidity pension, with 'notional' contributions being taken into account. If the person concerned ceased his professional activity immediately after a period of full-time employment, the contribution applicable to periods of full-time employment is to be taken into account. By contrast, if the person concerned was working part-time during the period immediately prior to the moment when his contribution payments were interrupted, the integration of the periods during which that person did not pay contributions is to be calculated using a reduced contribution: the reduction is the result of applying the part-time work coefficient.

Ms Lourdes Cachaldora Fernández paid contributions to the Spanish social security scheme from 15 September 1971 until 25 April 2010: a total of 5 523 days. During that period, she was mostly engaged in full-time employment, except between 1 September 1998 and 23 January 2002, when she was employed on a part-time basis. However, Ms Cachaldora Fernández did not engage in any professional activity between 23 January 2002 and 30 November 2005 and, consequently, did not pay any contributions to the social security scheme during that period.

In 2010, Ms Cachaldora Fernández applied to the INSS (Spanish National Institute of Social Security) for an invalidity pension. She was granted that pension owing to her 'permanent total invalidity rendering her incapable of working in her usual occupation'. The permanent invalidity pension was fixed at 55% of her basic monthly reference salary of €347.03. Ms Cachaldora Fernández lodged a complaint against that decision, arguing that, in order to calculate her pension, account should have been taken of the full amount (rather than the reduced amount) of the minimum contributions payable each year for the period during which her contribution payments were interrupted. According to the method of calculation proposed by Ms Cachaldora Fernández, the basic amount of her pension would be €763.76. Her complaint having been rejected and her action against that decision dismissed, Ms Cachaldora Fernández brought an appeal before the Tribunal Superior de Justicia de Galicia (High Court of Justice, Galicia (Spain)).

That court asks the Court of Justice to assess whether the Spanish methods for calculating permanent invalidity pensions are compatible with rules of EU law which preclude (i) discrimination between men and women in matters of social security<sup>1</sup> and (ii) discrimination between full-time and part-time workers.<sup>2</sup> The Spanish court finds that the methods of calculation in question could be

<sup>1</sup> Article 4 of 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).

<sup>2</sup> Clause 5(1)(a) of Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC (OJ 1998 L 14, p. 9).

discriminatory towards workers who have engaged in part-time work during the period immediately prior to the interruption of their contributions to the Spanish social security scheme. Women would be particularly affected thereby, given that there are far more female part-time workers in Spain than male part-time workers (80% in 2010 and 73% in 2013).

In his Opinion, delivered today, Advocate General Bot considers, first of all, that the Spanish legislation does not fall within the scope of the Directive on part-time work. He is of the view, however, that **the Spanish legislation introduces indirect discrimination on the basis of gender, contrary to the Directive on discrimination between men and women in matters of social security.**

The Advocate General states that the method of calculation established by the Spanish law **penalises workers who have engaged in part-time work** during the period immediately prior to the interruption of their contributions to the social security scheme. He also considers that, although **the Spanish law** does not differentiate between male workers and female workers, and thus does not introduce discrimination directly based on gender, it none the less **introduces indirect discrimination**, contrary to the Directive on discrimination between men and women in matters of social security. The method in question **is likely to penalise a far higher number of women than men**, since the percentage of female part-time workers is considerably higher than the percentage of male workers in the same category.

According to the Advocate General, **the method in question**, in a situation such as Ms Cachaldora Fernández's, **reduces the permanent invalidity pension in a way which is disproportionate in view of the contributions paid by Ms Cachaldora Fernández over the whole of her professional career**: Ms Cachaldora Fernández worked part-time for three years and ten months, which represents a very small portion of the professional career which she has pursued over the course of approximately 39 years. The Advocate General adds that **it is not possible to justify the use of the method in question** on the grounds of objective factors such as the contributory nature of the social security scheme and the need to adhere to the principle of proportionality.

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**NOTE:** The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

**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 Opinion is published on the CURIA website on the day of delivery.*

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