



Press and Information

Court of Justice of the European Union

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Judgment in Case C-527/13

Lourdes Cachaldora Fernández v Instituto Nacional de la Seguridad Social (INSS) and Tesorería General de la Seguridad Social (TGSS)

## **Spanish legislation on the calculation of permanent invalidity pensions complies with EU law**

*Even if a provision of that law results in reducing the amount of the permanent invalidity pension granted to certain part-time workers, it is not discriminatory on grounds of sex*

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: that is to say, a total of 5523 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 a pension for permanent total invalidity rendering her incapable of working in her usual occupation. The monthly basic amount was fixed at €347.03 and the applicable coefficient at 55%. 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 equal to €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 the 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

<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).

in question could be 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.

By today's judgment, the Court of Justice replies **that the Spanish law cannot be classified as a discriminatory measure, either directly** (the law applies without distinction to both male and female workers) **or indirectly** (the law does not disadvantage predominantly a particular category of workers – in this case those working part-time – nor, in particular, women).

**The Spanish law is not applicable to all part-time workers, but only to workers who, after a period of part-time employment, have had a gap in their contributions during the reference period of eight years preceding the date of the event giving rise to the invalidity.** Accordingly, general statistical data concerning the group of part-time workers, taken as a whole, are not relevant to establish that many more women than men are affected by that law. Moreover, **it is possible that some part-time workers may also benefit from the Spanish law** in cases where they worked only part-time for the remainder of the calculation period or even throughout their entire working lives, but the last contract that preceded professional inactivity is a full-time contract. Such workers will benefit since they will receive a pension that is overvalued in relation to the contributions actually paid.

With regard to the Framework Agreement on part-time work, the Court considers that **the pension claimed by Ms Cachaldora Fernández is a statutory social security pension, which does not fall within the scope of the Framework Agreement.** The Court adds that, in view of the random nature of the impact of the Spanish law on part-time workers, it cannot be regarded as a legal obstacle likely to limit the opportunities for part-time work.

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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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