



Press and Information

Court of Justice of the European Union

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Judgment in Case C-624/19
Tesco Stores

The principle, laid down by EU law, of equal pay for male and female workers can be relied upon directly, in respect both of ‘equal work’ and of ‘work of equal value’, in proceedings between individuals

Tesco Stores is a retailer that sells its products online and in stores located in the United Kingdom. The stores, of varying size, have a total of approximately 250 000 workers, who carry out various types of jobs. That company also has a distribution network with approximately 11 000 employees, who carry out various types of jobs. Approximately 6 000 employees or former employees of Tesco Stores, both female and male, who work or used to work in its stores, brought proceedings against it before the referring tribunal, the Watford Employment Tribunal (United Kingdom), from February 2018 onwards, on the ground that they had not enjoyed equal pay for male and female workers for equal work, contrary to national legislation and Article 157 TFEU.¹ The referring tribunal stayed the male workers’ claims, since it took the view that their outcome depended on the outcome of the claims brought by the female claimants in the main proceedings.

The female claimants in the main proceedings submit that their work and that of the male workers employed by Tesco Stores in the distribution centres in its network are of equal value and that they are entitled to compare their work and that of those workers under Article 157 TFEU although the work is carried out in different establishments. They contend that, in accordance with that article, there is a ‘single source’, namely Tesco Stores, for their terms and conditions of employment and the terms and conditions of employment of those workers. Tesco Stores submits that Article 157 TFEU is not directly effective in the context of claims based on work of equal value, and therefore the female claimants in the main proceedings cannot rely on that provision before the referring tribunal. Furthermore, it disputes that it can be classified as a ‘single source’.

The referring tribunal observes in respect of Article 157 TFEU that there is uncertainty, within United Kingdom courts and tribunals, regarding its direct effect, connected in particular with the distinction articulated by the Court between discrimination which may be identified solely with the aid of the criteria based on equal work and equal pay and discrimination which can only be identified by reference to more explicit implementing provisions.² The claims at issue in the main proceedings could fall within the latter category, where there is no direct effect.

It was in that context that the referring tribunal sought a preliminary ruling from the Court. In its judgment, **the Court holds that Article 157 TFEU has direct effect in proceedings between individuals in which failure to observe the principle of equal pay for male and female workers for ‘work of equal value’, as referred to in that article, is pleaded.**

Findings of the Court

¹ Under that provision, ‘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 The referring tribunal makes reference, in that regard, to paragraph 18 of the judgment of 8 April 1976, *Defrenne*, [43/75](#).

As a preliminary point, the Court holds that it has jurisdiction, pursuant to Article 86 of the withdrawal agreement,³ to reply to the request for a preliminary ruling, despite the United Kingdom's withdrawal from the European Union.

As to the substance, the Court observes first of all, in respect of the wording of Article 157 TFEU, that that article imposes, clearly and precisely, an obligation to achieve a particular result and is mandatory as regards both 'equal work' and 'work of equal value'. It recalls next that, according to its settled case-law, Article 157 TFEU produces direct effects by creating rights for individuals which the national courts must safeguard, in particular in cases of discrimination arising directly from legislative provisions or collective labour agreements, as well as in cases in which work is carried out in the same establishment or service, whether private or public. The Court points out that it has explained that such discrimination is among the forms of discrimination which may be identified solely by reference to the criteria based on equal work and equal pay laid down by Article 119 of the EEC Treaty and that in such a situation a court is in a position to establish all the facts enabling it to decide whether a female worker is receiving lower pay than a male worker engaged in equal work or work of equal value.⁴ Thus, it is apparent from settled case-law that, contrary to Tesco Stores' submissions, the direct effect of Article 157 TFEU is not limited to situations in which the workers of different sex who are compared perform 'equal work', but extends to situations of 'work of equal value'. In that context, the Court explains that the question whether the workers concerned perform 'equal work' or 'work of equal value' is a matter of factual assessment by a court.

Furthermore, the Court holds that the objective pursued by Article 157 TFEU, namely the elimination, for equal work or work of equal value, of all discrimination on grounds of sex as regards all aspects and conditions of remuneration, bears out such an interpretation. It observes in that regard that the principle, referred to in Article 157 TFEU, of equal pay for male and female workers for equal work or work of equal value forms part of the foundations of the European Union.

Finally, the Court points out that, where the differences identified in the pay conditions of workers performing equal work or work of equal value cannot be attributed to a single source, there is no entity which could restore equal treatment, with the result that such a situation does not come within the scope of Article 157 TFEU. By contrast, where such pay conditions can be attributed to a single source, the work and the pay of those workers can be compared, even if they work in different establishments. Consequently, that provision may be relied upon before national courts in proceedings concerning work of equal value carried out by workers of different sex having the same employer and in different establishments of that employer, provided that the latter constitutes such a single source.

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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³ See Decision (EU) 2020/135 of 30 January 2020 on the conclusion of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (OJ 2020 L 29, p. 1), by which the Council of the European Union approved that agreement (OJ 2020 L 29, p. 7), which was attached to the decision, on behalf of the European Union and the EAEC. The Court states that it follows from Article 86 of that agreement that it is to continue to have jurisdiction to give preliminary rulings on requests from courts and tribunals of the United Kingdom which were made before the end of the transition period set at 31 December 2020, and that this is so in the present instance.

⁴ See, to that effect, judgments of 8 April 1976, *Defrenne*, [43/75](#), and of 11 March 1981, *Worringham and Humphreys v Lloyds Bank*, [69/80](#), concerning Article 119 of the EEC Treaty, which became, after amendment, Article 141 EC, now Article 157 TFEU.

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