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Court of Justice of the European Union

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Judgment in Case C-161/18

Violeta Villar Láiz v Instituto Nacional de Seguridad Social (INSS) and
Tesorería General de la Seguridad Social (TGSS)

The Spanish legislation on the calculation of retirement pensions for part-time workers is contrary to EU law if it is found to be particularly disadvantageous to female workers

Ms Violeta Villar Láiz challenges the calculation of retirement pensions by the Instituto Nacional de Seguridad Social (INSS) (National Institute of Social Security (INSS), Spain). The amount of her retirement pension was calculated taking account of the fact that Ms Villar Láiz had worked part-time for a significant part of her working life. Ms Villar Láiz claims that the difference in treatment established by the national legislation has resulted in indirect sex discrimination, since the majority of part-time workers are women.

As the legal actions she brought were dismissed, Ms Villar Láiz brought an appeal before the Tribunal Superior de Justicia de Castilla y León (High Court of Justice of Castile - Leon, Spain). That court explains that Spanish law on the calculation of retirement pensions has often adverse effects for part time workers. It considers that the Spanish legislation results in indirect sex discrimination contrary to the directive on equal treatment¹ since, according to the Instituto Nacional de Estadística (National Institute of Statistics, Spain), 75% of part time workers in the first quarter of 2017 were women.

The Tribunal Superior de Justicia de Castilla y León decided to refer questions to the Court of Justice for a preliminary ruling asking, in particular, whether the Spanish legislation is contrary to the directive. According to that legislation, the amount of the contributory retirement pension of a part-time worker is to be calculated as follows: first, the basic amount is established on the basis of remuneration actually received and contributions actually paid. The basic amount is then multiplied by a percentage which is related to the length of the contribution period. That period is itself modified by a reduction factor equal to the ratio of the duration of the part-time work actually carried out to the working time of a comparable full-time worker and increased by the application of a factor of 1.5.

By today's judgment, the Court holds that the directive precludes the Spanish legislation if it places at a particular disadvantage workers who are women.

The Court states, first of all, that the directive prohibits any sex discrimination, either directly, or indirectly, as concerns, in particular, the calculation of social security benefits. After rejecting the existence of direct discrimination, the Court recalls that there is discrimination based indirectly on sex in a situation in which an apparently neutral provision puts persons of one sex at a particular disadvantage compared with persons of the other sex. That disadvantage exists when the legislation affects a significantly greater proportion of individuals of one sex as compared with individuals of the other sex.

The Court observes that **the provisions of national law at issue have, most often, effects that place part-time workers at a disadvantage as compared with full-time workers.** For workers

¹ 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).

on short part-time contracts (that is those who have worked, on average, less than two thirds of the normal working time of a comparable full-time worker), the reduction factor applicable to the basic amount is lower than that applicable to the basic amount of full time workers. **It follows that those workers, who represent, according to the file before the Court, 65% of part-time workers, are placed at a disadvantage because of the application of that reduction factor.**

The Court considers that it is for the Tribunal Superior de Justicia de Castilla y León to assess whether the statistical evidence relating to the percentage of male and female workers adduced before it is valid, representative and significant. If, on the basis of the statistical evidence produced and, as the case may be, other relevant information, the Spanish court were to come to the conclusion that the national legislation at issue places women at a particular disadvantage as compared with men, such legislation would be contrary to the directive, unless it were justified by objective factors.

The Court goes on to examine whether the Spanish legislation reflects a legitimate social policy objective. It recalls, to that effect, that a measure which has the effect of reducing a worker's retirement pension by a proportion greater than that resulting when his periods of part-time work are taken into account cannot be regarded as objectively justified on the grounds that the pension is in that case consideration for less work.

The Court states that the national legislation at issue contains two elements that are liable to reduce the amount of the retirement pensions of part-time workers. First, the basic amount of the retirement pension is established according to bases of contribution, constituted by the remuneration actually received in consideration of hours worked. That basic amount is therefore, for a part-time worker, lower than the basic amount of a comparable full-time worker. Second, while that basic amount is multiplied by a percentage according to the number of days of contribution, that number of days is itself modified by a reduction factor corresponding to the ratio of the time of part-time work actually carried out by the worker concerned to the time of work carried out by a comparable full-time worker. Although the second element is mitigated by the fact that the number of days of contribution established after the application of the reduction factor is to be increased by the application of a multiplication factor of 1.5, **the first element is itself capable of ensuring the achievement of the objective pursued, which is, specifically, the protection of a social security system that relies on contributions. Thus, the application, in addition, of a reduction factor relative to part-time work goes beyond what is necessary to attain that objective and entails for the group of workers engaged in short part-time work, that is to say less than two thirds of comparable full time work, a reduction in the amount of the retirement pension greater than that which would result from merely taking account pro rata temporis of their time worked.**

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.

Press contact: Jacques René Zammit 📞 (+352) 4303 3355