



Press and Information

Court of Justice of the European Union

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Judgment in Case C-450/18

WA v Instituto Nacional de la Seguridad Social (Pension complement for mothers)

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**The Pension complement granted by Spain to mothers who are recipients of an invalidity pension where they have two or more children must also be awarded to fathers in a comparable situation**

In January 2017, the Instituto Nacional de la Seguridad Social (National Institute of Social Security, Spain) (INSS) awarded WA a permanent absolute incapacity pension of 100% of the basic amount. WA brought an appeal against that decision, claiming that, as the father of two daughters, he should, on the basis of Spanish law, be entitled to receive a pension supplement representing 5% of the initial amount of his pension. That supplement is granted to women who are the mothers of at least two children and who are in receipt of contributory pensions, namely permanent incapacity, under a scheme within the Spanish social security system. His appeal was dismissed by the INSS, which stated that the pension supplement at issue is granted exclusively to those women because of their demographic contribution to social security.

WA challenged that decision of the INSS before the Juzgado de lo Social No 3 de Gerona (Social Court No 3, Gerona, Spain), claiming that his right to receive the pension complement at issue should be recognised. That court states that national law grants that right to women who have had at least two biological or adopted children, whereas men in an identical situation do not have that right. Having doubts whether such a provision is compatible with EU law, the Juzgado de lo Social No 3 de Gerona submitted a question to the Court of Justice for a preliminary ruling.

By today's judgment, **the Court declares that the directive on equal treatment for men and women in matters of social security<sup>1</sup> precludes that Spanish Law, because men in an identical situation to that of women, who are entitled to the pension supplement at issue, do not have that right.**

The Court observes that the Spanish Law treats men who have had at least two biological or adopted children less favourably. That less favourable treatment constitutes direct discrimination on grounds of sex which is prohibited by the directive.

Indeed, the Court finds that, since the demographic contribution of men is as necessary as that of women, **the ground of demographic contribution to social security alone cannot justify men and women not being in a comparable situation with regard to the award of the supplement at issue.**

The Spanish authorities argue that the supplement was also conceived as a measure to reduce the gap between the pension payments of men and those of women whose career paths have been interrupted or shortened due to the fact that they have had at least two children. Those differences are based on numerous statistical data.

With regard to that objective, the Court points out that the Spanish Law is intended, at least in part, to protect women in their capacity as parents. First, this is a quality which both men and women

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<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).

may have and, secondly, the situation of a father and that of a mother may be comparable as regards the bringing-up of children. In those circumstances, the existence of statistical data highlighting structural differences between the pension payments of women and those of men is not sufficient to reach the conclusion that, as regards the pension supplement at issue, women and men are not in a comparable situation as parents.

**According to the Court, given the characteristics of the supplement at issue, it does not come under one of the derogations from the prohibition of direct discrimination on grounds of sex provided for in that directive.** In the first place, with regard to the derogation relating to the protection of women on the ground of maternity, there is nothing in the Spanish Law that establishes a link between the award of that supplement and taking maternity leave or the disadvantages suffered by a woman in her career as a result of being absent from work during the period following the birth of a child. In the second place, with regard to the derogation which allows Member States to exclude from its scope advantages in respect of old-age pension schemes granted to persons who have brought up children and the acquisition of benefit entitlements following periods of interruption of employment due to the bringing-up of children, the Court states that the Spanish Law makes the award of the supplement at issue subject, not to the bringing-up of children or the existence of periods of interruption of employment due to the bringing-up of children, but only to the fact that recipients have had at least two biological or adopted children and receive a contributory pension, namely permanent incapacity.

Finally, **the supplement at issue does not come under Article 157(4) TFEU** which, in order to ensure full equality between men and women in working life, allows Member States to maintain or adopt measures providing for specific advantages in order to make it easier for the under-represented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers. Indeed, the supplement at issue is limited to granting women a surplus at the time when a pension is awarded, without providing a remedy for the problems which they may encounter in the course of their professional career, and without compensating for the disadvantages to which women are exposed.

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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 EU law or the validity of a European Union act. 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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