



Press and Information

Court of Justice of the European Union

PRESS RELEASE No 168/21

Luxembourg, 30 September 2021

Advocate General's Opinion in Case C-389/20
TGSS (Domestic worker unemployment)

Domestic workers in Spain: according to Advocate General Szpunar, legislation which excludes them from unemployment benefits, where those workers are almost exclusively women, is contrary to EU law

This constitutes indirect discrimination based on sex, which is not justified by objective factors unrelated to any discrimination on grounds of sex

The protection afforded by the special social security scheme applicable to domestic workers, as provided for by Spanish law, does not include unemployment protection.

A female domestic worker, working for an employer who is a natural person, has been registered with that special scheme since January 2011. In November 2019, she applied to the Tesorería General de la Seguridad Social (General Social Security Fund; 'the TGSS') to pay contributions in respect of unemployment protection in order to acquire the right to benefits. Her employer was prepared to pay the required contribution. The TGSS rejected that application on the ground that the possibility of contributing to the special scheme in order to acquire unemployment protection is expressly prohibited by legislation.

The worker then appealed to the Juzgado de lo Contencioso-Administrativo No 2 de Vigo (Administrative Court No 2, Vigo, Spain), claiming in essence that the national legislation places domestic workers in a situation of social distress when their employment ends for reasons which cannot be attributed to them. This prevents them from obtaining not only unemployment benefits but also the other types of social assistance which are dependent on the end to entitlement to those benefits.

Against that background, the Spanish court points out that the category of workers at issue is a group which consists almost entirely in women, which is why it asks the Court of Justice to interpret the directive on the principle of equal treatment in matters of social security,¹ in order to determine whether that situation involves indirect discrimination on grounds of sex, which is prohibited by that directive.

In today's Opinion, Advocate General Maciej Szpunar observes first of all that **the Member States must comply with the principle of non-discrimination on grounds of sex in matters of social security when exercising their power in social security matters and, in particular, as regards unemployment benefits.**

Contrary to the Spanish Government's claims, the Advocate General finds that **the exclusion laid down by the national legislation creates a particular disadvantage for domestic workers.**

While stating that it is for the Spanish court to ascertain, in the light of those circumstances, whether that exclusion may be regarded as an 'indirectly discriminatory measure' for the purposes of the directive, the Advocate General observes that, in accordance with the Spanish legislation, all employed persons covered by the general social security scheme are in principle entitled to unemployment benefits and that, within that group, the proportion of men and women was roughly

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).

equal. By contrast, that proportion differs greatly in the group of workers subject to the special scheme at issue, since women represent more than 95% of the workers who are covered by that scheme. The exclusion clause at issue thus adversely affects a significantly greater proportion of female domestic workers than male domestic workers.

Consequently, if the Spanish court were to conclude that that provision places female domestic workers at a particular disadvantage, then the provision should be found to be contrary to the directive, unless it were justified by objective factors unrelated to any discrimination on grounds of sex.

The Advocate General then examines whether that unequal treatment to the detriment of female domestic workers may be justified by objective factors unrelated to any discrimination on grounds of sex.

The TGSS and the Spanish Government argued, inter alia, that the difference in treatment in question is justified by objectives relating to the specific characteristics of the category of domestic worker and the status of their employers, and by objectives concerning employee protection, safeguarding the level of employment in that sector and combating illegal work and fraud.

The Advocate General confirms that **those reasons constitute legitimate social policy objectives. Nevertheless, he considers that those objectives are not unrelated to discrimination on grounds of sex and, consequently, cannot justify discrimination against women.**

In the view of Mr Szpunar, the reasons based on the characteristics of domestic workers (as low-skilled workers who are remunerated at the minimum wage) or on those of their employers (householders) appear in fact to be rooted in **gender stereotypes** and, therefore, not likely to be unrelated to discrimination on grounds of sex.

The Advocate General also rejects the argument that the possibility of unemployment protection for domestic workers could **encourage them to commit fraud**. Mr Szpunar observes that **were that found to be so, then that would be the case for all low-skilled workers being paid the minimum wage in other sectors of the labour market**, who should also be excluded from unemployment benefits. **However, since that is not the case**, there is no link between that justification and the exclusion at issue.

As regards the objective of safeguarding the level of employment in the activity category of domestic worker, the Advocate General states that **the exclusion at issue has the effect of reinforcing the traditional social view of gender roles**, making it possible, moreover, not only **to exploit the structurally weaker position of the people who make up that category**, but also **to undervalue the work they do**, which should, on the contrary, be recognised and valued by society.

Mr Szpunar considers that, in any event, **the exclusionary provision in question does not appear to be appropriate to securing the objectives of combating illegal work and fraud and of safeguarding employment**, since the provision does not seem either genuinely to reflect a concern to attain those aims or to be pursued in a consistent and systematic manner. He also finds that, **by totally excluding all domestic workers from entitlement to unemployment benefits, that provision goes beyond what is necessary to attain the objectives pursued.**

The Advocate General therefore proposes that the Court of Justice should reply to the Spanish court that **the directive precludes a national provision which excludes unemployment benefits from the benefits granted to domestic workers by a statutory social security scheme where it is found that those workers are almost exclusively women.**

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.

Unofficial document for media use, not binding on the Court of Justice.

The [full text](#) of the Opinion is published on the CURIA website on the day of delivery.

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