



Press and Information

Court of Justice of the European Union
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Judgment in Case C-389/20
TGSS (domestic worker unemployment)

Spanish legislation excluding domestic workers from unemployment benefit while they are almost exclusively women is contrary to EU law

That exclusion constitutes indirect discrimination on grounds of sex as regards access to social security benefits

The protection afforded by the special social security scheme for domestic workers under Spanish legislation does not include protection in respect of unemployment.

A domestic worker who is the employee of 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, Spain, 'the TGSS') to pay contributions in respect of unemployment protection in order to acquire the right to those benefits. The TGSS rejected that application on the grounds that the Spanish legislation expressly prevented her from contributing to that scheme in order to obtain protection from unemployment.

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 are not attributable to themselves. That prevents them from obtaining not only unemployment benefit but also the other types of social assistance which are dependent on entitlement to unemployment benefit having come to an end.

In that context, the Spanish court emphasizes that the category of workers in question consists almost exclusively of women, which is why it asks the Court to interpret the directive on equality in matters of social security,¹ in order to determine whether there is indirect discrimination on grounds of sex, which is prohibited by that directive.

In today's judgment, the Court holds that the directive on equality in matters of social security precludes a national provision which excludes unemployment benefit from the social security benefits granted to domestic workers by a statutory social security scheme, since that provision places female workers at a particular disadvantage compared with male workers and is not justified by objective factors unrelated to any discrimination on grounds of sex.

The Court recalls at the outset that indirect discrimination on grounds of sex occurs when an apparently neutral provision places persons of one sex at a particular disadvantage compared with persons of the other sex, unless that provision is objectively justified and proportionate.

While noting that it is for the Spanish court to examine whether that is the situation in the present case, the Court of Justice provides guidance to it in that regard.

The Court notes that, under Spanish legislation, all employed persons covered by the general social security scheme into which the Special Scheme for Domestic Workers is incorporated are, in principle, entitled to unemployment benefit. In Spain, the proportion of male and female workers is

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).

roughly the same. However, there is a large difference in that proportion among domestic workers, since more than 95% of that group are women. The proportion of female employees affected by the difference in treatment resulting from the exclusion in question is therefore significantly higher than the proportion of male employees. Consequently, **the national legislation places female workers at a particular disadvantage and thus gives rise to indirect discrimination on grounds of sex, which is contrary to the directive unless it reflects a legitimate social policy objective and is suitable and necessary for achieving that objective.**

The Spanish Government and the TGSS claim that the exclusion of domestic workers from unemployment protection is linked to the specific characteristics of that occupational sector, including the status of employers, and reflects the objectives of safeguarding the level of employment and combating illegal work and social security fraud. The Court confirms that **those objectives are legitimate from a social policy perspective. However, it considers that the Spanish legislation does not appear to be appropriate to achieve those objectives, since it does not appear to be pursued in a consistent and systematic manner with regard to these objectives.**

The Court notes that **the category of workers excluded from protection against unemployment has not been meaningfully distinguished from other categories of workers which are not excluded.** It points out that those other categories of workers, in respect of which the employment relationship takes place in the homes of non-professional employers or in respect of which the field of work has the same specific characteristics in terms of levels of employment, skills and remuneration as that of domestic workers, pose similar risks in terms of reduced levels of employment, social security fraud and recourse to illegal work, but are all covered by unemployment protection. In addition, the Court adds that **registration in the Special Scheme for Domestic Workers confers entitlement, in principle, to all the benefits granted by the general Spanish social security system** except unemployment benefit. That scheme covers, inter alia, risks related to work accidents and occupational diseases. There is also a lack of consistency in that respect, in so far as these other benefits **present the same risks of social security fraud** as unemployment benefit.

Finally, the Court considers that the **Spanish legislation appears to go beyond what is necessary to achieve those objectives.** Exclusion from unemployment protection entails the impossibility of obtaining other social security benefits to which domestic workers would be entitled and the granting of which is conditional on the extinction of the right to unemployment benefit. **That exclusion would thus lead to a greater lack of social protection resulting in a situation of social distress.**

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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