

Ruling (judgment)

1. Article 26 of Directive 2004/18/EC [...] must be interpreted as not precluding legislation of a regional entity of a Member State, such as that at issue in the main proceedings, which requires tenderers and their subcontractors to undertake, by means of a written declaration to be enclosed with their tender, to pay staff who are called upon to perform the services covered by the public contract in question a minimum wage laid down in that legislation.
2. Article 26 of Directive 2004/18 [...] must be interpreted as not precluding legislation of a regional entity of a Member State, such as that at issue in the main proceedings, which provides for the exclusion from participation in a procedure for the award of a public contract of tenderers and their subcontractors who refuse to undertake, by means of a written declaration to be enclosed with their tender, to pay staff who are called upon to perform the services covered by the public contract in question a minimum wage laid down in that legislation.

ECJ 17 December 2015, case C-407/14. (Arjona Camacho), Discrimination – Sanction

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María Auxiliadora Arjona Camacho –v– Securitas Seguridad España SA, Spanish case

Summary

Directive 2006/54 requires Member States to ensure that victims of sex discrimination are compensated in a way that is “dissuasive”. This means that compensation must be full, but not that, where punitive damages do not form part of a country’s legal tradition, the courts have a duty to award such damages.

Facts

Ms Arjona Camacho was employed as a security guard, to work full-time within a juvenile detention centre in Cordoba (Spain). She was dismissed on 24 April 2014. She brought an action before the *Juzgado de lo Social No 1 de Córdoba*, contesting her dismissal and claiming that it should be declared invalid. She submitted, principally, that her dismissal constituted, in particular, discrimination on grounds of sex. She requested that damages of € 6,000 be awarded for the loss and damage sustained.

National proceedings

The referring court accepts that Ms Arjona Camacho’s dismissal constitutes discrimination on grounds of sex. It adds that its forthcoming judgment will also specify the reasons for its view that the sum of € 3,000, by way of damages, is sufficient to compensate Ms Arjona Camacho in full for the loss and damage which she sustained by reason of her dismissal on grounds of sex. However, the referring court expresses uncertainty as to whether, pursuant to Article 18 of Directive 2006/54, according to which the loss and damage must be the subject of compensation or reparation in a way which is dissuasive, it must award Ms Arjona Camacho damages which go beyond full compensation for the loss and damage which she sustained, in the form of punitive damages, in order to serve as an example to her former employer and others. The referring court states that the concept of ‘punitive damages’ does not exist in Spanish law. In those circumstances the court stayed the proceedings and refer the following question to the ECJ for a preliminary ruling:

‘May Article 18 of Directive 2006/54, which refers to the dissuasive (in addition to real, effective and proportionate) nature of the compensation to be awarded to a victim of discrimination on grounds of sex, be interpreted as meaning that it enables the national court to award the victim reasonable punitive damages that are truly additional, that is to say, an additional amount which, although going beyond the full reparation of the actual loss and damage suffered by the victim, serves as an example to others (in addition to the person responsible for the damage), provided that the amount in question is not disproportionate, that also being the case even when the concept of punitive damages does not form part of the legal tradition of that national court?’

ECJ’s findings

1. Under Article 18 of Directive 2006/54, Member States are required to introduce into their national legal systems such measures as are necessary to ensure real and effective compensation or reparation as they so determine for the loss and damage sustained by a person injured as a result of discrimination on grounds of sex, in a way which is dissuasive and proportionate to the damage suffered, that compensation not being restricted by the fixing of a prior upper limit, except in the case of refusal to take that person’s job application into consideration. That provision reproduces the wording of Article 6(2) of Directive 76/207, as amended by Directive 2002/73 (§ 26–27).
2. According to the Court’s case-law, Article 6 of Directive 76/207 does not prescribe a specific measure to be taken by Member States in the event of a

breach of the prohibition of discrimination, but leaves them free to choose between the different solutions suitable for achieving the objective of the directive, depending on the different situations which may arise. However, the measures appropriate to restore genuine equality of opportunity must guarantee real and effective judicial protection and have a genuine deterrent effect on the employer (see *von Colson and Kamann*, 14/83, paragraphs 23 and 24; *Draehmpaehl*, C-180/95, paragraph 25; and *Paquay*, C-460/06, paragraph 45). Such requirements necessarily entail that the particular circumstances of each breach of the principle of equal treatment should be taken into account. In the event of discriminatory dismissal, a situation of equality could not be restored without either reinstating the victim of discrimination or, in the alternative, granting financial compensation for the loss and damage sustained (§ 30-32).

3. It followed from Article 6 of Directive 76/207, both in its original version and as amended, and from the case-law of the Court, that the genuine deterrent effect sought by Article 6 did not involve awarding, to the person injured as a result of discrimination on grounds of sex, punitive damages which go beyond full compensation for the loss and damage actually sustained and which constitute a punitive measure (§34).
4. There has been no substantive change in EU law which might lead to an interpretation of Article 18 of Directive 2006/54 differing, in that regard, from that of Article 6 of Directive 76/207. Therefore, it is appropriate to hold that, like Article 6 of Directive 76/207, and in order for the loss and damage sustained as a result of discrimination on grounds of sex to be the subject of genuine and effective compensation or reparation in a way which is dissuasive and proportionate, Article 18 of Directive 2006/54 requires Member States which choose the financial form of compensation to introduce in their national legal systems, in accordance with detailed arrangements which they determine, measures providing for payment to the person injured of compensation which covers in full the loss and damage sustained, but does not provide for the payment of punitive damages (§ 36-37).
5. Article 25 of the Directive regarding the rules on penalties allows, but does not require, Member States to take measures providing for the payment of punitive damages to the person who has suffered discrimination on grounds of sex. Likewise, Article 27(1) states that Member States may introduce or maintain provisions which are more favourable to the protection of the principle of equal treatment than those laid down in that directive (§ 40-41).

Ruling (judgment)

Article 18 of Directive 2006/54 [...] must be interpreted as meaning that, in order for the loss and damage sustained as a result of discrimination on grounds of sex to be the subject of genuine and effective compensation or reparation in a way which is dissuasive and proportionate, that article requires Member States which choose the financial form of compensation to introduce in their national legal systems, in accordance with detailed arrangements which they determine, measures providing for payment to the person injured of compensation which covers in full the loss and damage sustained.

ECJ 17 December 2015, joined cases C-25/14 and C-26/14. (UNIS), Free Movement – Social Insurance

Union des syndicats de l'immobilier (UNIS) –v– Ministre du Travail, de l'Emploi, de la Formation professionnelle et du Dialogue social, Syndicat national des résidences de tourisme (SNRT) and Others and Beaudout Père et Fils SARL –v– Ministre du Travail, de l'Emploi, de la Formation professionnelle et du Dialogue social, Confédération nationale de la boulangerie et boulangerie-pâtisserie française, Fédération générale agroalimentaire FGA – CFDT and Others, French case

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Summary

The obligation of transparency precludes Member States from extending to all employers and employees within a sector a collective agreement, under which a single insurance company, selected by the social partners, manages a compulsory supplementary social insurance scheme, unless this is done in a completely transparent manner.

Facts

This case concerns two collective agreements, one for the real property sector and one for the bakeries and pastry-making sector. The collective agreements include supplementary social insurance schemes. In 2011, the government issued orders (the “extension decision”)