

## Case C-584/23, Gender Discrimination, Social Insurance

Asepeyo Mutua Colaboradora de la Seguridad Social n.º 151, KT. – v – INSS, TGSS, Alcampo S. A., successor to Supermercados Sabeco, S. A., reference lodged by the Juzgado de lo Social n.º 3 de Barcelona (Spain) on 21 September 2023

1. Is the Spanish rule on calculating the basic amount of benefits for permanent invalidity resulting from an accident at work, established in Article 60 of the Decreto de 22 de junio de 1956 (Decree of 22 June 1956), contrary to the EU rules established in Article 4 of 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 and Article 5 of Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast), in so far as this would constitute a case of indirect discrimination on grounds of sex, since it is mostly women who reduce their working hours to care for children and therefore the benefit entitlement is clearly lower?
2. Bearing in mind that the Spanish rule establishing the method used to calculate benefits for permanent invalidity resulting from an accident at work – Article 60(2) of the Decree of 22 June 1956 – takes account of the salary actually received at the time of the accident, and that the Spanish public social security system establishes, as a contributory family benefit – Article 237(3) of the Ley General de la Seguridad Social (General Social Security Law) – that, during the first two years of the period when working hours are reduced to care for a child, as provided for in Article 37(6) of the Estatuto de los Trabajadores (Statute of Workers' Rights), [the contributions] are increased to 100%, and that, according to statistical data, 90% of the persons applying for a reduction of working hours to care for a child are women, are the above-mentioned Spanish rules contrary to Article 8 of the Treaty on the Functioning of the European Union, Articles 21

and 23 of the Charter of Fundamental Rights of the European Union, Article 4 of Directive 79/7/EEC and Article 5 of Directive 2006/54/EC, and do they constitute indirect discrimination on grounds of sex?

## Case C-623/23, Gender Discrimination, Social Insurance

UV – v – INSS, reference lodged by the Juzgado de lo Social n.º 3 de Pamplona (Spain) on 6 October 2023

1. Must 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, be interpreted as meaning that a national rule such as that contained in Article 60 of the Ley General de Seguridad Social (General Law on Social Security; 'the LGSS') does not comply with the principle of equal treatment preventing any discrimination on grounds of sex, recognised in Articles 1 and 4 of that directive, where that rule, under the heading 'Supplement to contributory pensions to reduce the gender gap', in the case of women who have had biological or adopted children and are recipients of such pensions, recognises the right to a supplement to contributory retirement and permanent incapacity pensions, without any other requirement and irrespective of the amount of their pensions, which is not recognised on the same terms in the case of men in an identical situation, in that, in order to access the supplement to their retirement or permanent incapacity pension, certain periods without making contributions, or making lower contributions, following the birth of the children or the adoption, are required, and, in particular, in the case of children born or adopted up to 31 December 1994, having more than one hundred and twenty days without making contributions in the nine months prior to the birth and the three years following that date or, in the case of adoption, from the date of the court order establishing it and in the three subsequent years, provided that the total of the amounts of the pensions granted is less than the total of the pensions to which the woman is entitled and, in the case

- of children born or adopted since 1 January 1995, that the total of the income on the basis of which contributions are calculated for the twenty-four months following the birth or the court order establishing the adoption is less, by more than 15 per cent, than that for the immediately preceding twenty-four months, provided that the total of the amounts of the pensions granted is less than the total of the pensions to which the woman is entitled?
2. Does 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, require, as a consequence of the discrimination resulting from the exclusion of the male pensioner, that he should be granted the supplement to the retirement pension, even though Article 60 of the LGSS provides that the supplement may only be granted to one of the parents, and, at the same time, is it necessary that the granting of the supplement to the male pensioner does not bring about, as an effect of the judgment of the Court of Justice and of the lack of alignment between the national rule and the Directive, the withdrawal of the supplement granted to the female recipient of the retirement pension, where she satisfies the legal requirements of being the mother of one or more children?

## Case C-626/23, Gender Discrimination, Social Insurance

XXX – v – INSS, reference lodged by the Tribunal Superior de Justicia de Madrid (Spain) on 12 October 2023

Must 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, and Articles 20, 21 and 23 and Article 34(1) of the Charter of Fundamental Rights of the European Union be interpreted as meaning that they preclude national legislation, such as that at issue in the main proceedings, which establishes the right to a pension supplement for recipients of contributory retirement pensions who have had biological or adopted children, which is granted automatically to women, while, in the case of men, they are required either to be in receipt of a widower's pension on account of the death of the other parent, with one of the children being in receipt of an orphan's pension, or to have had their professional career interrupted or harmed (as provided for by law and described previously) on account of the birth or adoption of the child?