

SUMMARY

ECJ 14 April 2015, case C-527/13 (Lourdes Cachaldora Fern´andez – v - Instituto Nacional de la Seguridad Social (INSS) and Tesoreria General de la Seguridad Social (TGSS), Gender discrimination

Facts

Ms Cachaldora Fernández made contributions to Spain’s social security system during the following periods and on the following basis:

5 September 1971 – 31 August 1998: full-time

1 September 1998 – 22 January 2002: part-time

23 January 2002 – 30 November 2005: no employment (“contribution gap”)

1 December 2005 – 25 April 2010: full-time

In February 2010, Ms Cachaldora Fernández became disabled as a result of a non-occupational accident or illness. This made her eligible for an invalidity pension under the Spanish General law on social security. She was awarded a pension of 347 per month. This was 55% of the applicable rate. This is because (i) invalidity pension is based on the contributions that were made during the eight year period prior to the invalidity, in this case March 2002 to February 2010 and (ii) in the event there is a period during which there is no obligation to contribute, the part-time percentage that was in force on the date preceding that

period is applied. In this case, that date was 22 January 2002. On that date, Ms Cachaldora Fernández was working part-time. Thus, her pension for the period from March 2002 to November 2005 was calculated as if she had worked part-time ever since 1971, even though in fact she had worked and contributed on a full-time basis for most of her working life. Had the contribution gap been preceded by a period of full-time employment, Ms Cachaldora Fernández would have been awarded an invalidity benefit of € 763 per month, over twice what she actually received.

National proceedings

Ms Cachaldora Fernández brought proceedings against the authority responsible for administering the invalidity pension systems, the INSS. The court dismissed her claim. She appealed. The court of appeal referred two questions to the ECJ. The first was whether the INSS's decision constituted indirect gender discrimination within the meaning of Directive 79/7 on equal treatment for men and women in matters of social security. The second question related to the Framework Agreement on part-time work annexed to Directive 97/81.

ECJ's findings

The national provision at issue is not applicable to all parttime workers, but only to workers who have had a gap in their contributions during the reference period of eight years preceding the date of the event giving rise to the invalidity, when that gap follows a period of part-time work. Accordingly, general statistical data concerning the group of part-time workers, taken as a whole, are not relevant to establish that many more women than men are affected by that provision. Furthermore, even if it appears that a worker such as Ms Cachaldora Fernández is disadvantaged because she worked part time during the period immediately preceding the gap in her contributions, it is possible that some part-time workers may also benefit from the rule of national law at issue in the main proceedings. In all cases where the last contract that preceded professional inactivity is a fulltime contract, but where the workers, for the remainder of the calculation period or even throughout their entire working lives, worked only part-time, they will benefit since they will receive a pension that is overvalued in relation to the contributions actually paid. In those circumstances, the statistical data on which the national court has based its assessments cannot lead to the conclusion that the group of workers disadvantaged by the rule of national law at issue in the main proceedings is mainly composed of part-time workers and, in particular, female workers (§ 24-32).

In the light of the foregoing, the national provision at issue cannot be regarded as placing predominantly one particular category of workers at a disadvantage, in this case those working part-time and, in particular, women. That provision cannot, therefore, be regarded as being an

indirectly discriminatory measure within the meaning of Article 4(1) of Directive 79/7 (§ 33). The pension at issue in the main proceedings is a statutory social security pension. Consequently, that pension cannot be regarded as constituting an employment condition within the meaning of Clause 4(1) of the Framework Agreement and does not, therefore, fall within its scope (§ 38).

Ruling

Article 4(1) of Council Directive 79/7/EEC [.....] must be interpreted as not precluding a rule of national law which provides that the contribution gap existing within the reference period for calculating a contributory invalidity pension after a period of part-time employment, are taken into account by using the minimum contribution bases applicable at any time, reduced as a result of the reduction coefficient of that employment, whereas, if those gaps follow full-time employment, there is no provision for such a reduction.

The Framework Agreement on part-time work [.....] must be interpreted as not applying to legislation of a Member State which provides that the contribution gaps existing within the reference period for calculating a contributory invalidity pension, after a period of part-time employment, are taken into account by using the minimum contribution bases applicable at any time, reduced as a result of the reduction coefficient of that employment, whereas, if those gaps follow full-time employment, there is no provision for such a reduction.

Creator: European Court of Justice (ECJ)

Verdict at: 2015-04-14

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