

SUMMARY

# **ECJ 14 September 2023, case C-113/22 (TGSS (Refus du complement de maternité), Gender Discrimination, Pension**

***DX – v – Instituto Nacional de la Seguridad Social (INSS), Tesorería  
General de la Seguridad Social (TGSS), Spanish case***

## **Summary**

The pension supplement granted by Spain solely to mothers who are recipients of an invalidity pension, when they have two or more children, to the exclusion of fathers in a comparable situation, was likely to constitute direct discrimination on the ground of sex, contrary to the directive on equal payment.

## **Question**

Must Directive 79/7/EEC, and in particular Article 6 thereof, be interpreted as meaning that, where an application for the grant of a pension supplement submitted by a male scheme member has been rejected by the competent authority, under national legislation limiting the grant of that supplement to female scheme members only, whereas that legislation constitutes direct discrimination on grounds of sex, within the meaning of Directive 79/7, as interpreted by the Court of Justice in a preliminary ruling delivered prior to the decision rejecting such an application, the national court hearing an action against that decision must instruct the competent authority not only to grant the pension supplement claimed to the person concerned, but also to pay him exemplary damages and to reimburse him, on that basis, the costs and lawyers' fees which he has incurred in court, where that rejection decision was adopted in accordance with an administrative practice of continuing to apply the aforementioned legislation despite that preliminary ruling, thereby obliging the person concerned to assert in court his right to that supplement?

## **Ruling**

Directive 79/7/EEC, in particular Article 6 thereof, must be interpreted as meaning that where an application for the grant of a pension supplement submitted by a male scheme member has been rejected by the competent authority, under national legislation limiting the grant of that supplement to females scheme members only, whereas that legislation constitutes direct discrimination on grounds of sex, within the meaning of Directive 79/7, as interpreted by the Court of Justice in a preliminary ruling delivered prior to the decision rejecting such an application, the national court hearing an action against that decision must instruct that authority not only to grant the pension supplement claimed to the person concerned, but also to pay him compensation enabling the loss and damage actually sustained by him as a result of the discrimination to be made good in full, in accordance with the applicable national rules, including costs and lawyers' fees which he has incurred in court, where that rejection decision was adopted in accordance with an administrative practice of continuing to apply the aforementioned legislation despite that preliminary ruling, thereby obliging the person concerned to assert in court his right to that supplement.

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**Creator:** European Court of Justice (ECJ)

**Verdict at:** 2023-09-14

**Case number:** C-113/22