

SUMMARY

ECJ 9 November 2017, case C-98/15 (Espadas Recio), Part-time work

<p>While a provision that treats the unemployment benefits of vertical part-time workers unfavourably compared to full-time workers falls outside the scope of the Framework Agreement on part-time work, such a benefit scheme may still violate the principle of equal treatment of men and women, for example, if it is indirectly discriminatory towards women.</p>

Summary

While a provision that treats the unemployment benefits of vertical part-time workers unfavourably compared to full-time workers falls outside the scope of the Framework Agreement on part-time work, such a benefit scheme may still violate the principle of equal treatment of men and women, for example, if it is indirectly discriminatory towards women.

Facts

Ms Espadas Recio worked as a cleaner part time from 23 December 1999 to 29 July 2013. She worked two and a half hours on Mondays, Wednesdays and Thursdays every week and four hours on the first Friday of every month. Upon termination of her employment contract, she applied for unemployment benefits.

Legal background

The Spanish General Law on Social Security (Ley General de la Seguridad Social, 'LGSS') regulates unemployment protection. Article 210(1) of the LGSS states that the length of time an employee is entitled to unemployment benefits depends on the number of days over which social security conditions have been paid in the six years prior to the unemployment. A royal decree (Real Decreto 625/1985 por el que se desarrolla la Ley 31/1984, de 2 de Agosto, de

Protección por Desempleo) stipulates that, when contributions relate to part-time work, every day worked shall be calculated as a day in respect of which contributions have been paid, whatever the length of the day.

Relevant EU directives are:

Directive 97/81/EC containing the Framework Agreement on part-time work. Clauses 4(1) and (2) of the Framework Agreement say that, in respect of employment conditions, part-time workers shall not be treated less favourably than comparable full-time workers solely because they work part time unless different treatment is justified on objective grounds and that, where appropriate, the principle of *pro rata temporis* shall apply.

Directive 79/7/EEC on the progressive implementation of the principle of equal treatment for men and women in matters of social security. Article 3 says that statutory schemes providing protection against unemployment fall within scope of the Directive and Article 4(1) forbids both direct and indirect discrimination on ground of sex, in particular as regards the scope of schemes and conditions of access, the obligation to contribute and the calculation of benefits.

National proceedings

Upon Ms Espadas Recio's application, the SPEE (Public Employment Service) granted her 120 days of unemployment benefits. Ms Espadas Recio challenged that decision, as she believed she was entitled to 720 days of unemployment benefits. Subsequently, the SPEE granted her 420 days of unemployment benefits, as it took the view that it should take into account only days actually worked in the last six years (i.e. 1,387) rather than six full years of contributions.

Ms Espadas Recio appealed to Social Court No 33 of Barcelona (Juzgado de lo Social nº 33 de Barcelona) claiming the maximum of 720 days' benefits, on the basis that she had worked for six consecutive years, during which contributions had been paid for 30 or 31 days per month (hence 2,160 days in total). She argued that excluding the days not worked for the purpose of calculating her unemployment benefits amounted to a difference in treatment to the detriment of 'vertical part-time workers'. Part-time work is called 'vertical' when the person performing it concentrates his or her working hours on certain working days of the week, and 'horizontal' is when the person perform some work on every working day of the week. In the present case, Ms Espadas Recio's hours of work were concentrated mainly on three days per

week. Consequently, for the purpose of determining unemployment benefit, not all (week) days would be taken into account.

The referring court noted that vertical part-time workers are in fact doubly penalized, as the pro rata temporis principle is applied twice: first, as the lower (part-time) salary results in a (proportionally) lower amount of unemployment benefit and, second, as the duration of the unemployment benefit is reduced because only the days actually worked are taken into account. In comparison, both horizontal part-time and fulltime workers would be entitled to a longer period of unemployment benefit, even if they worked the same number of hours per week. Further, the referring court established that the law in question affects a much larger proportion of women than men.

Questions put to the ECJ

Does Clause 4 of the Framework Agreement apply to a contributory unemployment benefit such as that at issue in the main proceedings?

Must Article 4(1) of Directive 79/7 be interpreted as precluding legislation of a Member State which, in the case of ‘vertical’ part-time work, excludes days not worked from the calculation of days in respect of which contributions have been paid and therefore reduces the unemployment benefit payment period, when it is established that the majority of vertical part-time workers are women who are adversely affected by such national measures?

ECJ’s findings

Clause 4(1) of the Framework Agreement prohibits part-time workers being treated less favourably than comparable full-time workers solely because they work part-time, unless different treatment is justified on objective grounds. Nevertheless, the preamble of the Framework Agreement recognizes that matters concerning statutory social security are for decision by the Member States (Cachaldora Fernández, C-527/13). While ‘employment conditions’ under the Framework Agreement cover pensions that depend on an employment relationship between the worker and the employer, they exclude statutory social security pensions, as they are determined social policy (Elbar Moreno, C-381/11 and Cachaldora Fernández, C-527/13). Although the contributions for unemployment benefits in the case at hand were borne by both the employer and the worker, they were payable pursuant to national law and not governed by the employment contract. Consequently, those unemployment benefits fell outside the scope of ‘employment conditions’ and, hence, the Framework Agreement.

As regards Article 4(1) of Directive 79/7, while Member States have the authority to organise

their own social security system – to the extent not harmonised at EU level – Member States must still comply with EU law (Watts, C-372/04 and Somova, C-103/13). Indirect discrimination against women arises when a national measure, albeit neutrally formulated, disadvantages far more women than men (Brachner, C-123/10 and Elbal Moreno, C-385/11).

The Court noted that the case at hand differed from previous cases (Cachaldora Fernández, C-527/13) in that the referring court had already established that national law provision at issue (i.e. the provision that disadvantaged vertical part-time workers) impacts upon the vast majority of female workers and therefore constitutes a difference in treatment to the detriment of women. Article 4(1) of Directive 79/7 forbids unequal treatment, unless it is justified by objective factors unrelated to any discrimination on grounds of sex. That is the case if the measures reflect a legitimate social policy objective, are appropriate to achieve that aim and are necessary in order to do so (Elbal Moreno, C-381/11).

As for the legitimate objective, Spain argued before the Court that the principle of ‘contribution to the social security system’ justifies the existence of the difference in treatment. Leaving that for the national court to decide, the ECJ noted that the national measure at issue did not appear to be appropriate to ensure the correlation that must, according to the Spanish Government, exist between the contributions paid by the worker and the rights to which he or she is entitled in respect of unemployment benefit. A vertical part-time worker who has paid contributions for every day of every month receives unemployment benefit for a shorter period than a full-time worker who has paid the same contribution, meaning a breakdown of the correlation between contributions and rights.

Yet the correlation could be preserved if, for vertical part-time workers, the authorities took into account factors such as the period during which the workers contributed, the total number of contributions paid or the hours worked, since those factors are considered for horizontal workers, regardless whether they work full time or part-time.

Ruling

Clause 4(1) of the Framework Agreement on part-time work concluded on 6 June 1997, which is annexed to Council Directive 97/81/EC of 15 December 1997 concerning the framework agreement on part-time [...], does not apply to a contributory unemployment benefit such as that at issue in the main proceedings.

Article 4(1) 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 must be interpreted as precluding legislation of a Member State which, in the case of ‘vertical’ part-time work, excludes days not worked from the calculation of days in respect of

which contributions have been paid, and therefore reduces the unemployment benefit payment period, when it is established that the majority of vertical part-time workers are women who are adversely affected by such legislation.

Creator: European Court of Justice (ECJ)

Verdict at: 2017-11-09

Case number: C-98/15 (Espadas Recio)