

Gender discrimination in the recent case law of the Court of Justice of the European Union

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Indirect discrimination on grounds of sex



Directive 79/ 7/ EEC

regarding Equal treatment for men and women in matters of social security



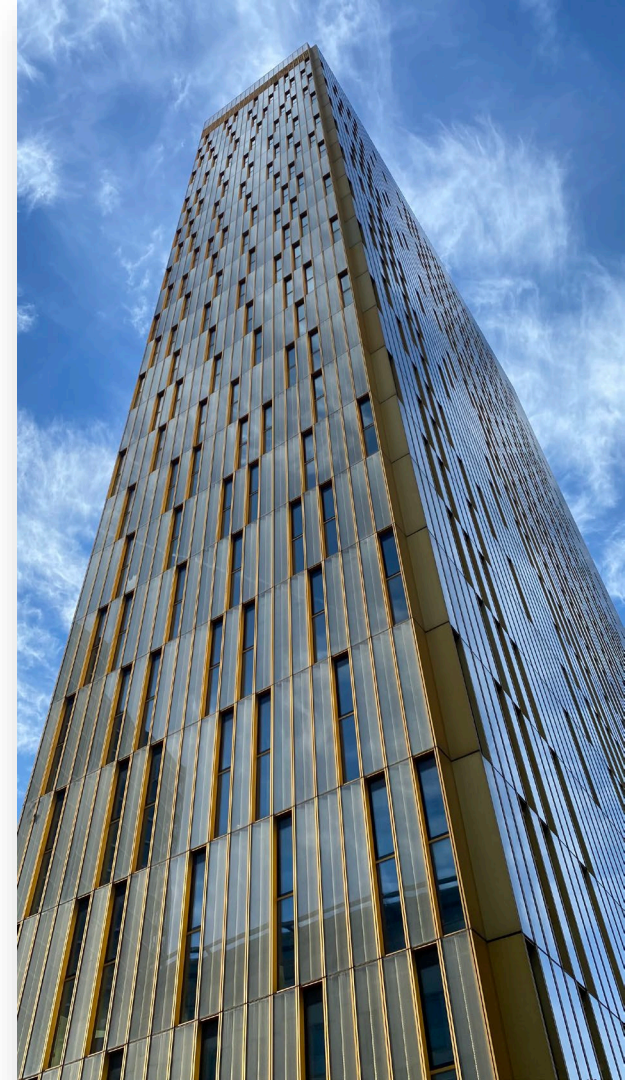
Directive 2006/ 54/ EC

on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.

“Indirect discrimination on grounds of sex occurs where an apparently neutral provision, criterion or practice would put persons of one sex at **a particular disadvantage compared with persons of the other sex**, unless that provision, criterion or practice is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary”. (judgments of 8 May 2019, *Villar Láiz*, C-161/18, EU:C:2019:382, paragraph 37 and the case-law cited, and of 21 January 2021, *INSS*, C-843/19, EU:C:2021:55, paragraph 24)

G 625/ 20 KMv. Instituto Nacional de la Seguridad Social (Inss)

- the Spanish social security system consists of **two main schemes** RGSS, which covers employees in general, RETA, which covers self-employed persons
- The Spanish Courts tend to allow a **combination of two total occupational invalidity pensions** where those pensions come under different social security schemes, but does not where those two pensions come under the same social security schemes.
- *“According to the statistical data provided by the INSS relating to the reference date of 31 January 2020, whereas the distribution of men and women affiliated to the RGSS is fairly balanced, **women represent only 36.15% of those affiliated to the RETA.** That small proportion reflects the greater difficulty women have in taking up a professional activity under the status of self-employed worker”*





C-389/ 20 CJ v. Tesorería General de la Seguridad Social (TGSS)

- Article 251 of the Ley General de la Seguridad Social (General Law on Social Security) provides:
“(d) *the protection afforded by the special scheme for **domestic workers** shall not include protection in respect of **unemployment.**”*
- “On 31 May 2021 (...) the cohort of employees covered by the Special Scheme for Domestic Workers consisted of 384 175 workers, of which 366 991 were women (**95.53% of the persons enrolled in the special scheme**, that is to say, 4.72% of the female employees) and 17 171 were men (4.47% of the persons enrolled in the special scheme, that is to say, 0.21% of the male employees)”.

C-405/20 EB, JS, DP v. Versicherungsanstalt öffentlich
Bediensteter, Eisenbahnen und Bergbau (BVAEB)

- The higher levels of pension had been adjusted only to a lesser extent.
- According to statistical analysis the recipients of retirement pensions of a monthly amount in excess of EUR 4 980 comprised **8 417 men and 1 040 women**
- *“According to the Court’s case-law, while budgetary considerations cannot justify discrimination against one of the sexes, the objectives of ensuring the long-term funding of retirement benefits and narrowing the gap between State-funded pension levels can be considered to constitute legitimate social-policy objectives wholly unrelated to any discrimination based on sex (see, to that effect, judgments of 24 September 2020, YS (Occupational pensions of managerial staff), C-223/19, EU:C:2020:753, paragraph 61, and of 21 January 2021, INSS, C-843/19, EU:C:2021:55, paragraph 38)”*.

C-314/23, Sindicato de Tripulantes Auxiliares de Vuelo de Líneas Aéreas (STAMLA),
Ministerio Fiscal v. Air Nostrum, Líneas Aéreas del Mediterráneo SA— **pending case**

- ❑ the amount of **daily subsistence allowances** provided for in the Cabin Crew Agreement is significantly lower than that provided for in the Flight Crew Agreement to deal with the same situation
- ❑ **women represent 94% of cabin crew (6% being men) and men 93.71% of flight crew (6.29% being women)**
- ❑ the *‘fact that the rates of pay at issue are decided by collective bargaining processes conducted separately for each of the two professional groups concerned, without any discriminatory effect within each group, does not preclude a finding of prima facie discrimination where the results of those processes show that two groups with the same employer and the same trade union are treated differently’* - Judgment of 27 October 1993, *Enderby* (C-127/92, EU:C:1993:859, paragraph 22)



