

ORDER OF THE COURT (Seventh Chamber)

17 November 2015 (*)

(Reference for a preliminary ruling — Article 99 of the Rules of Procedure of the Court — Directive 79/7/EEC — Article 4(1) — Equal treatment of male and female workers — Part-time workers, primarily female — National legislation providing for a maximum amount of unemployment benefit — Legislation referring, for the purposes of the calculation of that amount, to the relationship between the working hours of the part-time employees concerned and the working hours of full-time employees)

In Case C-137/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunal Superior de Justicia de la Comunidad Autónoma del País Vasco (High Court of Justice of the Autonomous Community of the Basque Country, Spain), made by decision of 24 February 2015, received at the Court on 20 March 2015, in the proceedings

María Pilar Plaza Bravo

v

Servicio Público de Empleo Estatal Dirección Provincial de Álava,

THE COURT (Seventh Chamber),

composed of C. Toader, President of the Chamber, A. Prechal (Rapporteur) and E. Jarašiūnas, Judges,

Advocate General: E. Sharpston,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the Kingdom of Spain, by L. Banciella Rodríguez-Miñón and A. Gavela Llopis, acting as Agents,
- the European Commission, by S. Pardo Quintillán, A. Szmytkowska and D. Martin, acting as Agents,

having decided, after hearing the Advocate General, to give a decision by reasoned order, in accordance with Article 99 of the Rules of Procedure of the Court of Justice,

makes the following

Order

- 1 This request for a preliminary ruling concerns the interpretation of 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 (OJ 1979 L 6, p. 24).
- 2 The request has been made in proceedings between Ms Plaza Bravo and the Servicio Público de Empleo Estatal Dirección Provincial de Álava (State Public Employment Service, Provincial Directorate of Álava; ‘the SPE’) concerning the amount of unemployment benefits she received.

Legal context

EU law

3 Under Article 2 of Directive 79/7, the directive applies, inter alia, to workers whose activity is interrupted by involuntary unemployment. Furthermore the directive applies, by virtue of its Article 3, inter alia, to statutory schemes which provide protection against unemployment.

4 Article 4(1) of the directive provides:

‘The principle of equal treatment means that there shall be no discrimination whatsoever on ground of sex either directly, or indirectly by reference in particular to marital or family status, in particular as concerns:

- the scope of the schemes and the conditions of access to them;
- the obligation to contribute and the calculation of contributions;
- the calculation of benefits including increases due in respect of a spouse and for dependants and the conditions governing the duration and retention of entitlement to benefits.’

Spanish Law

5 Article 211 of the General Law on Social Security (Ley General de la Seguridad Social), approved by Royal Legislative Decree No 1/94 of 20 June 1994 (BOE No 154, 29 June 1994, p. 20658; ‘the LGSS’), as applicable to the facts at issue in the main proceedings, provides:

‘1. The basis for calculating the unemployment benefit shall be the average of the basis on which contributions were paid in that respect in the last 180 days of [work].

...

2. The amount of unemployment benefit shall be determined by applying to the basis for calculation the following percentages: 70% during the first 180 days and 50% from day 181.

3. The maximum amount of the unemployment benefit shall be 175% of the Multi-purpose Public Income Indicator (indicador público de rentas de efectos multiples; “the IPREM”), except when the worker has one or more dependent children, in which case the amount shall be 200% or 225%, respectively, of that rate.

The minimum amount of the unemployment benefit shall be 107% or 80% of [the IPREM], depending on whether the employee has or has not, respectively, dependent children.

In the case of unemployment as a result of loss of part-time or full-time employment, the maximum and minimum amounts of the benefit referred to above shall be determined by taking into account [the IPREM], calculated on the basis of the average number of hours worked during the last 180 days referred to in paragraph 1 of this article, such average being weighted in relation to the number of days in every part- or full-time employment during that period.

[The IPREM] taken into account for the purpose of this paragraph is that which applied at the time when the right arises, increased by one sixth.

...’

The dispute in the main proceedings and the question referred for a preliminary ruling

6 It follows from the order for reference that the applicant in the main proceedings worked from 30 March 1977 as a waitress in a hotel owned by a hotel chain. She entered into an open-ended, part-

time employment contract, under which her working hours were the equivalent of 60% of full-time employment. She contributed to the general Spanish social security scheme.

- 7 On 9 May 2013, her employment with the company was terminated as a result of a collective redundancy procedure based on economic, organisational and production-related grounds that affected several establishments in the chain and affecting a total of 359 employees, of whom 317 were women and 42 were men.
- 8 Following the termination of her employment, the applicant in the main proceedings applied for contributory unemployment benefit, which she was granted on 15 May 2013 by the SPE, with effect from 10 May 2013 and for a period of 720 days. The initial amount of EUR 21.74 per day was reached by a two-step calculation.
- 9 In the first step, the daily unemployment benefit was calculated by multiplying the daily basic amount by 70% as provided for in Article 211(2) of the LGSS. This basic amount was obtained by dividing the average of the applicant in the main proceedings' monthly remuneration over the last 180 days, namely EUR 1 554.52, by 30. The total daily benefit was therefore EUR 36.27.
- 10 In the second step, the amount of this daily benefit was limited to the maximum as set out in Article 211(3) of the LGSS. Firstly, since the applicant in the main proceedings did not have a dependent child, the monthly maximum limit of unemployment benefit was determined by multiplying the monthly IPREM for 2013 of EUR 532.51, increased by one sixth, by 175%. This gave an amount of EUR 1 087.20. Next, the amount was divided by 30 to give the maximum daily amount of unemployment benefit. Finally, the maximum daily amount of EUR 36.24 was adjusted by a reduction coefficient of 60%, corresponding to the applicant's 60% part-time working hours. This calculation led to an amount of EUR 21.74, corresponding to the amount specified in paragraph 8 above.
- 11 The applicant in the main proceedings submitted an administrative complaint claiming that that reduction coefficient should not be applied to her. That complaint was rejected by decision of the SPE of 3 July 2013. By a ruling of 30 June 2014, the Juzgado de lo Social No 3 de Vitoria-Gasteiz (Labour Court No 3 of Vitoria-Gasteiz) upheld that decision on the basis of Article 211(3) of the LGSS.
- 12 On appeal against that ruling, the referring court explained, as a preliminary point, that the vast majority of part-time employees in Spain are female. This well-known fact is corroborated by, inter alia, the labour force survey prepared by the National Statistical Institute (Instituto Nacional de Estadística) of December 2014, according to which the number of women working part-time in Spain represents 25.3% of all female employees, namely one in four women, whereas the percentage is only 7.8% for male employees, namely less than one in twelve men.
- 13 According to the referring court, the application of Article 211(3) of the LGSS results in the unfavourable treatment of part-time workers compared to full-time workers in that the provision establishes a maximum amount of unemployment benefit, determined by taking into account the IPREM, calculated on the basis of the average number of hours worked during the last 180 working days.
- 14 In order to illustrate this difference of treatment, the same court points out that a part-time employee with no dependent children, like the applicant in the main proceedings, who has worked the equivalent of 60% of the hours worked by a full-time employee in the last 180 days prior to becoming unemployed, receives an average monthly salary of EUR 1 554.52, on the basis of which she pays social security contributions, and after 36 years loses the only employment she has had as well as seniority gained, will receive a contributory unemployment benefit equal to EUR 652.20 a month (EUR 21.74 x 30 days), while a full-time employee in comparable family circumstances, earning the same salary and paying the same amount in social security contributions, would receive EUR 1 087.20 (EUR 36.24 x 30 days).
- 15 Furthermore, the referring court considers that the provision at issue in the main proceedings, under Article 211(3) of the LGSS, is not justified by objective circumstances and results in an interference with the principles of equal treatment and non-discrimination on grounds of sex. It notes, in particular, that full-time and part-time employees pay the same contributions towards financing unemployment

insurance, which is linked to the salary they receive, while at the same time the amount of benefits they receive differ greatly. This difference of treatment principally affects women. This difference is also greater the higher the part-time work coefficient is.

16 In those circumstances the Tribunal Superior de Justicia de la Comunidad Autónoma del País Vasco (High Court of Justice of the Autonomous Community of the Basque Country) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Is it contrary to Article 4(1) of ... Directive 79/7 ..., in circumstances such as those of this case, for national legislation under which, in order for the amount of the benefit for total unemployment to be received by an employee following the loss of her only part-time employment to be calculated, a reduction coefficient for part-time work that corresponds to the percentage represented by the part-time working hours in relation to the hours completed by a comparable worker employed full-time is applied to the maximum amount of unemployment benefit generally laid down by law, regard being had to the fact that in that Member State the vast majority of part-time workers are women?’

Consideration of the question referred

17 Under Article 99 of the Rules of Procedure of the Court, where a question referred to the Court for a preliminary ruling is identical to a question on which the Court has already ruled, where the reply to such a question may be clearly deduced from existing case-law or where the answer to the question referred for a preliminary ruling admits of no reasonable doubt, the Court may at any time, on a proposal from the Judge-Rapporteur and after hearing the Advocate General, decide to rule by reasoned order.

18 It is appropriate to apply that procedural provision in the present case.

19 It should be noted that, while it is established that EU law respects the power of the Member States to organise their social security systems and that, in the absence of harmonisation at EU level, it is for the legislation of each Member State to determine the conditions for the grant of social security benefits, the fact nevertheless remains that, when exercising that power, Member States must comply with EU law (judgment in *Cachaldora Fernández*, C-527/13, EU:C:2015:215, paragraph 25 and the case-law cited).

20 Consequently, EU law does not affect, in principle, the choice of the Spanish legislature to prescribe, by a provision such as Article 211(3) of the LGSS, the maximum and minimum amounts of unemployment benefit and to apply a reduction coefficient for part-time work to those amounts. However, it is necessary to establish whether, in the main proceedings, that choice complies with Directive 79/7 (see, by analogy, the judgment in *Cachaldora Fernández*, C-527/13, EU:C:2015:215, paragraph 26).

21 The Court notes, from the outset, that a rule of national law such as that at issue in the main proceedings is not directly discriminatory on grounds of sex, since it applies without distinction to both male and female workers. It is therefore necessary to examine whether it is indirectly discriminatory on grounds of that criterion.

22 As regards the question of whether legislation such as that at issue in the main proceedings constitutes indirect discrimination, as the referring court suggests, it is apparent from the settled case-law of the Court that indirect discrimination arises where a national measure, albeit formulated in neutral terms, works to the disadvantage of a far greater number of women than men (judgment in *Cachaldora Fernández*, C-527/13, EU:C:2015:215, paragraph 28 and the case-law cited).

23 In the present case, the Court notes that the assessment of the referring court is based on the dual premiss that the national provision at issue in the main proceedings, namely Article 211(3) of the LGSS, concerns the category of part-time workers, the great majority of which is made up of female workers.

- 24 In that regard, it should be noted that, as is apparent from the order for reference and as the Spanish Government also points out, the national provision at issue in the main proceedings is not applicable to all part-time workers, but only to those to whom, taking into account the salary that they received during the last 180 days of their employment, the maximum and minimum amounts of unemployment benefit are intended to apply. Accordingly, general statistical data concerning of part-time workers, taken as a whole, does not establish that a much higher number of women than men are affected by that provision (see, by analogy, the judgment in *Cachaldora Fernández*, C-527/13, EU:C:2015:215, paragraph 30).
- 25 Similarly, it is not apparent from the case file presented to the Court of Justice that the statistical data, relating to a specific group of employees affected by the national provision at issue in the main proceedings, exists which establishes that a much higher number of women are affected by that provision than men.
- 26 In addition it should be clarified that, as noted by the Spanish Government and the Commission, the maximum amounts of unemployment benefit provided for under Article 211(3) of the LGSS, which is particularly relevant in the main proceedings, may disadvantage full-time employees as much, if not more, where the amounts are determined in light of the IPREM, which is applicable to all employees.
- 27 Furthermore, the fact that those amounts are to be adjusted pro rata temporis to take account of the reduced length of employment of part-time employees compared to full-time employees cannot be regarded as being of itself contrary to EU law (see, to that effect, the judgment in *Österreichischer Gewerkschaftsbund*, C-476/12, EU:C:2014:2332, paragraph 23 and the case-law cited).
- 28 Moreover, as the Commission rightly points out, that adjustment pro rata temporis is such as to ensure the same maximum amount of benefits per hour worked and, therefore, promotes equal treatment.
- 29 In the light of the foregoing, the national provision at issue in the main proceedings cannot, on the basis of the information provided in the order for reference, be regarded as predominantly placing at a disadvantage a particular category of employees, 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.
- 30 Consequently, the answer to the question referred is that Article 4(1) of Directive 79/7 does not preclude, in circumstances such as those in the main proceedings, a provision of national law under which, in order for the amount of the benefit for total unemployment to be received by an employee following the loss of her only part-time employment to be calculated, a reduction coefficient for part-time work that corresponds to the percentage represented by the part-time working hours in relation to the hours completed by a comparable worker employed full-time is applied to the maximum amount of unemployment benefit laid down by law.

Costs

- 31 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Seventh Chamber) hereby orders:

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 does not preclude, in circumstances such as those in the main proceedings, a provision of national law under which, in order for the amount of the benefit for total unemployment to be received by an employee following the loss of her only part-time employment to be calculated, a reduction coefficient for part-time work that corresponds to the percentage represented by the part-time working hours in relation to the hours completed by a comparable worker employed full-time is applied to the maximum amount of unemployment benefit laid down by law.

[Signatures]

*Language of the case: Spanish.