

## JUDGMENT OF THE COURT (Fourth Chamber)

17 December 2015 (\*)

(Reference for a preliminary ruling — Social policy — Directive 2006/54/EC — Equal treatment of men and women in matters of employment and occupation — Discriminatory dismissal — Article 18 — Compensation or reparation for the loss and damage actually sustained — Deterrent effect — Article 25 — Penalties — Punitive damages)

In Case C-407/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Juzgado de lo Social No 1 de Córdoba (Social Court No 1, Cordoba, Spain), made by decision of 1 August 2014, received at the Court on 27 August 2014, in the proceedings

**María Auxiliadora Arjona Camacho**

v

**Securitas Seguridad España SA,**

THE COURT (Fourth Chamber),

composed of L. Bay Larsen, President of the Third Chamber, acting as President of the Fourth Chamber, J. Malenovský, M. Safjan (Rapporteur), A. Prechal and K. Jürimäe, Judges,

Advocate General: P. Mengozzi,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Ms Arjona Camacho, by R. Alcaide Aranda, abogado,
- the Spanish Government, by L. Banciella Rodríguez-Miñón and A. Rubio González Alejandro, acting as Agents,
- the Polish Government, by B. Majczyna, acting as Agent,
- the United Kingdom Government, by J. Kraehling, acting as Agent, and by A. Bates, Barrister,
- the European Commission, by D. Roussanov and E. Adsera Ribera, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 3 September 2015,

gives the following

### Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 18 of Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (OJ 2006 L 204, p. 23).

- 2 The request has been made in proceedings between Ms Arjona Camacho and Securitas Seguridad España SA ('Securitas Seguridad España') which concern the award of punitive damages to Ms Arjona Camacho following her dismissal constituting discrimination on grounds of sex.

### Legal context

#### *EU law*

#### Directive 76/207/EEC

- 3 In its original version, Article 6 of Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (OJ 1976 L 39, p. 40) stated:

'Member States shall introduce into their national legal systems such measures as are necessary to enable all persons who consider themselves wronged by failure to apply to them the principle of equal treatment within the meaning of Articles 3, 4 and 5 to pursue their claims by judicial process after possible recourse to other competent authorities.'

- 4 Directive 76/207 was amended by Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 (OJ 2002 L 269, p. 15). According to recital 18 in the preamble to Directive 2002/73:

'The Court of Justice has ruled that, in order to be effective, the principle of equal treatment implies that, whenever it is breached, the compensation awarded to the employee discriminated against must be adequate in relation to the damage sustained. It has furthermore specified that fixing a prior upper limit may preclude effective compensation and that excluding an award of interest to compensate for the loss sustained is not allowed.'

- 5 Article 6 of Directive 76/207 was amended as follows by Directive 2002/73:

1. Member States shall ensure that judicial and/or administrative procedures, including, where they deem it appropriate, conciliation procedures, for the enforcement of obligations under this Directive are available to all persons who consider themselves wronged by failure to apply the principle of equal treatment to them, even after the relationship in which the discrimination is alleged to have occurred has ended.

2. Member States shall introduce into their national legal systems such measures as are necessary to ensure real and effective compensation or reparation as the Member States so determine for the loss and damage sustained by a person injured as a result of discrimination contrary to Article 3, in a way which is dissuasive and proportionate to the damage suffered; such compensation or reparation may not be restricted by the fixing of a prior upper limit, except in cases where the employer can prove that the only damage suffered by an applicant as a result of discrimination within the meaning of this Directive is the refusal to take his/her job application into consideration.

...'

- 6 Directive 2002/73 also added to Directive 76/207 an Article 8d, which is worded as follows:

'Member States shall lay down the rules on sanctions applicable to infringements of the national provisions adopted pursuant to this Directive, and shall take all measures necessary to ensure that they are applied.

The sanctions, which may comprise the payment of compensation to the victim, must be effective, proportionate and dissuasive. The Member States shall notify those provisions to the Commission by 5 October 2005 at the latest and shall notify it without delay of any subsequent amendment affecting them.'

- 7 Article 34(1) of Directive 2006/54 repealed Directive 76/207 with effect from 15 August 2009.

## Directive 2006/54

8 Recitals 1, 33 and 35 in the preamble to Directive 2006/54 state:

‘(1) ... Directive 76/207 ... and Council Directive 86/378/EEC of 24 July 1986 on the implementation of the principle of equal treatment for men and women in occupational social security schemes [OJ 1986 L 225, p. 40] have been significantly amended. ... Now that new amendments are being made to the said Directives, it is desirable, for reasons of clarity, that the provisions in question should be recast by bringing together in a single text the main provisions existing in this field as well as certain developments arising out of the case-law of the Court of Justice ...

...

(33) It has been clearly established by the Court of Justice that in order to be effective, the principle of equal treatment implies that the compensation awarded for any breach must be adequate in relation to the damage sustained. It is therefore appropriate to exclude the fixing of any prior upper limit for such compensation, except where the employer can prove that the only damage suffered by an applicant as a result of discrimination within the meaning of this Directive was the refusal to take his/her job application into consideration.

...

(35) Member States should provide for effective, proportionate and dissuasive penalties in the event of any breach of the obligations under this Directive.’

9 Article 1 of that directive provides:

‘The purpose of this Directive is to ensure the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.

To that end, it contains provisions to implement the principle of equal treatment in relation to:

...

(b) working conditions, including pay;

...

It also contains provisions to ensure that such implementation is made more effective by the establishment of appropriate procedures.’

10 Article 14 of Directive 2006/54, entitled ‘Prohibition of discrimination’, provides in paragraph 1(c):

‘There shall be no direct or indirect discrimination on grounds of sex in the public or private sectors, including public bodies, in relation to:

...

(c) employment and working conditions, including dismissals, as well as pay as provided for in Article [157 TFEU].’

11 Article 18 of that directive, entitled ‘Compensation or reparation’, provides:

‘Member States shall introduce into their national legal systems such measures as are necessary to ensure real and effective compensation or reparation as the Member States so determine for the loss and damage sustained by a person injured as a result of discrimination on grounds of sex, in a way which is dissuasive and proportionate to the damage suffered. Such compensation or reparation may not be restricted by the fixing of a prior upper limit, except in cases where the employer can prove that

the only damage suffered by an applicant as a result of discrimination within the meaning of this Directive is the refusal to take his/her job application into consideration.'

12 Article 25 of Directive 2006/54, entitled 'Penalties', is worded as follows:

'Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive, and shall take all measures necessary to ensure that they are applied. The penalties, which may comprise the payment of compensation to the victim, must be effective, proportionate and dissuasive. The Member States shall notify those provisions to the Commission by 5 October 2005 at the latest and shall notify it without delay of any subsequent amendment affecting them.'

13 Article 27 of that directive, entitled 'Minimum requirements', provides in paragraph 1:

'Member States may introduce or maintain provisions which are more favourable to the protection of the principle of equal treatment than those laid down in this Directive.'

#### *Spanish law*

14 Article 10 of Organic Law 3/2007 on effective equality between women and men (Ley orgánica 3/2007 para la igualdad efectiva de mujeres y hombres), of 22 March 2007 (BOE No 71, of 23 March 2007, p. 12611), entitled 'Legal consequences of discriminatory conduct', provides:

'Where acts under and terms of legally binding arrangements constitute or cause discrimination on grounds of sex, they shall be regarded as null and void, and shall give rise to liability [on the part of the person responsible] through a system of reparation or compensation that shall be real, effective and proportionate to the damage suffered, and, where necessary, through an efficient and dissuasive system of penalties that prevents the occurrence of discriminatory conduct.'

15 Article 183 of Law 36/2011 governing the social courts (Ley 36/2011, reguladora de la jurisdicción social), of 10 October 2011 (BOE No 245, of 11 October 2011, p. 106584), entitled 'Damages', provides, in paragraphs 1 and 2:

'1. Where the judgment declares that an infringement has taken place, the court shall rule on the amount of any damages that may be payable to the applicant for discrimination suffered or any other infringement of his/her fundamental rights and civil liberties, on the basis of both the non-material damage linked to the infringement of the fundamental right and the additional damage and losses arising therefrom.

2. The court shall rule on the amount of the damage, making a careful determination of it where it is too difficult or costly to prove the exact amount, in order to compensate the victim sufficiently and, so far as possible, fully restore him/her to the position he/she was in prior to the damage, and to contribute to the objective of preventing damage.'

#### **The dispute in the main proceedings and the question referred**

16 On 1 July 2012, Ms Arjona Camacho was employed by Securitas Seguridad España, as a security guard, to work full-time within a juvenile detention centre in Cordoba (Spain). She was dismissed on 24 April 2014.

17 Objecting to her dismissal, Ms Arjona Camacho submitted an application for conciliation with her employer before the centre for mediation, arbitration and conciliation of Cordoba on 6 May 2014. The conciliation was unsuccessful.

18 On 26 May 2014, Ms Arjona Camacho brought an action before the Juzgado de lo Social No 1 de Córdoba (Social Court No 1, Cordoba) contesting her dismissal and claiming that it should be declared invalid.

- 19 In that regard, Ms Arjona Camacho submitted, principally, that her dismissal constituted, in particular, discrimination on grounds of sex. She requested that damages of EUR 6 000 be awarded for the loss and damage sustained.
- 20 The referring court states that it accepts that Ms Arjona Camacho's dismissal constitutes discrimination on grounds of sex and that the judgment which it will deliver following the answer from the Court of Justice will set out the evidence on which that finding is based.
- 21 The referring court adds that its forthcoming judgment will also specify the reasons for its view that the sum of EUR 3 000, by way of damages, is sufficient to compensate Ms Arjona Camacho in full for the loss and damage which she sustained by reason of her dismissal on grounds of sex.
- 22 However, the referring court expresses uncertainty as to whether, pursuant to Article 18 of Directive 2006/54, according to which the loss and damage must be the subject of compensation or reparation in a way which is dissuasive, it must award Ms Arjona Camacho damages which go beyond full compensation for the loss and damage which she sustained, in the form of punitive damages, in order to serve as an example to her former employer and others.
- 23 The referring court states that the concept of 'punitive damages' does not exist in Spanish law.
- 24 In those circumstances the Juzgado de lo Social No 1 de Córdoba (Social Court No 1, Cordoba) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'May Article 18 of Directive 2006/54, which refers to the dissuasive (in addition to real, effective and proportionate) nature of the compensation to be awarded to a victim of discrimination on grounds of sex, be interpreted as meaning that it enables the national court to award the victim reasonable punitive damages that are truly additional, that is to say, an additional amount which, although going beyond the full reparation of the actual loss and damage suffered by the victim, serves as an example to others (in addition to the person responsible for the damage), provided that the amount in question is not disproportionate, that also being the case even when the concept of punitive damages does not form part of the legal tradition of that national court?'

### **Consideration of the question referred**

- 25 By its question, the referring court asks, in essence, whether Article 18 of Directive 2006/54 must be interpreted as meaning that, in order for the loss and damage sustained by a person injured as a result of discrimination on grounds of sex to be the subject of real and effective compensation or reparation in a way which is dissuasive, that person must, over and above damages by way of reparation, be awarded punitive damages.
- 26 Under Article 18, Member States are required to introduce into their national legal systems such measures as are necessary to ensure real and effective compensation or reparation as they so determine for the loss and damage sustained by a person injured as a result of discrimination on grounds of sex, in a way which is dissuasive and proportionate to the damage suffered, that compensation not being restricted by the fixing of a prior upper limit, except in the case of refusal to take that person's job application into consideration.
- 27 That provision reproduces the wording of Article 6(2) of Directive 76/207, as amended by Directive 2002/73.
- 28 As follows from recital 18 in the preamble to Directive 2002/73, that directive amended Article 6 of Directive 76/207 in order to take account of the case-law of the Court and, in particular, of the judgments in *Marshall* (C-271/91, EU:C:1993:335) and in *Draehmpaehl* (C-180/95, EU:C:1997:208).
- 29 In that regard, it is necessary to recall that, in the context of interpreting Article 6 of Directive 76/207, which was repealed and replaced by Directive 2006/54, the Court has stated that the Member States are obliged to take the necessary measures to enable all persons who consider themselves wronged by

- discrimination, contrary to that directive, to pursue their claims by judicial process. Such an obligation implies that the measures in question should be sufficiently effective to achieve the objective pursued by the directive and should be capable of being effectively relied upon by the persons concerned before national courts (see judgments in *Marshall*, C-271/91, EU:C:1993:335, paragraph 22, and *Paquay*, C-460/06, EU:C:2007:601, paragraph 43).
- 30 According to the Court's case-law, Article 6 of Directive 76/207 does not prescribe a specific measure to be taken by Member States in the event of a breach of the prohibition of discrimination, but leaves them free to choose between the different solutions suitable for achieving the objective of the directive, depending on the different situations which may arise (see judgments in *von Colson and Kamann*, 14/83, EU:C:1984:153, paragraph 18; *Marshall*, C-271/91, EU:C:1993:335, paragraph 23; and *Paquay*, C-460/06, EU:C:2007:601, paragraph 44).
- 31 However, the measures appropriate to restore genuine equality of opportunity must guarantee real and effective judicial protection and have a genuine deterrent effect on the employer (see judgments in *von Colson and Kamann*, 14/83, EU:C:1984:153, paragraphs 23 and 24; *Draehmpaehl*, C-180/95, EU:C:1997:208, paragraph 25; and *Paquay*, C-460/06, EU:C:2007:601, paragraph 45).
- 32 *Such requirements necessarily entail that the particular circumstances of each breach of the principle of equal treatment should be taken into account. In the event of discriminatory dismissal, a situation of equality could not be restored without either reinstating the victim of discrimination or, in the alternative, granting financial compensation for the loss and damage sustained (judgment in Marshall, C-271/91, EU:C:1993:335, paragraph 25).*
- 33 Finally, according to the Court's case-law, where financial compensation is the measure adopted in order to achieve the objective of restoring genuine equality of opportunity, it must be adequate, in that it must enable the loss and damage actually sustained as a result of the discriminatory dismissal to be made good in full in accordance with the applicable national rules (see judgments in *Marshall*, C-271/91, EU:C:1993:335, paragraph 26, and *Paquay*, C-460/06, EU:C:2007:601, paragraph 46).
- 34 Consequently, it followed from Article 6 of Directive 76/207, both in its original version and as amended, and from the case-law of the Court referred to in paragraphs 29 to 33 of the present judgment, that the genuine deterrent effect sought by Article 6 did not involve awarding, to the person injured as a result of discrimination on grounds of sex, punitive damages which go beyond full compensation for the loss and damage actually sustained and which constitute a punitive measure.
- 35 That finding is supported by the alternative nature, in the case of discriminatory dismissal, of the compensation for loss and damage granted in punitive form, as indicated in paragraph 32 of the present judgment.
- 36 As the Advocate General noted in point 32 of his Opinion, there has been no substantive change in EU law which might lead to an interpretation of Article 18 of Directive 2006/54 differing, in that regard, from that of Article 6 of Directive 76/207.
- 37 Therefore, it is appropriate to hold that, like Article 6 of Directive 76/207, and in order for the loss and damage sustained as a result of discrimination on grounds of sex to be the subject of genuine and effective compensation or reparation in a way which is dissuasive and proportionate, Article 18 of Directive 2006/54 requires Member States which choose the financial form of compensation to introduce in their national legal systems, in accordance with detailed arrangements which they determine, measures providing for payment to the person injured of compensation which covers in full the loss and damage sustained, but does not provide for the payment of punitive damages.
- 38 Moreover, Article 25 of Directive 2006/54 provides that Member States are to lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to that directive, and are to take all measures necessary to ensure that they are applied. That article also provides that the penalties, which 'may comprise the payment of compensation to the victim', must be effective, proportionate and dissuasive.

- 39 Consequently, although Article 18 of Directive 2006/54 seeks to impose compensation or reparation for the loss and damage sustained by the person injured, it follows from the wording of Article 25 of that directive that that article grants Member States the option of adopting measures which seek to penalise discrimination on grounds of sex in the form of compensation paid to the victim.
- 40 Thus, Article 25 of Directive 2006/54 allows, but does not require, Member States to take measures providing for the payment of punitive damages to the person who has suffered discrimination on grounds of sex.
- 41 Likewise, Article 27(1) of Directive 2006/54 states that Member States may introduce or maintain provisions which are more favourable to the protection of the principle of equal treatment than those laid down in that directive.
- 42 In the present case, the referring court points out that the concept of ‘punitive damages’ does not exist in Spanish law.
- 43 In those circumstances, in the absence of a provision of national law making possible the payment of punitive damages to a person injured by discrimination on grounds of sex, Article 25 of Directive 2006/54 does not provide that a national court can on its own require the person responsible for the discrimination to pay such damages.
- 44 It should be added that, on the assumption that a Member State decides to adopt measures allowing the award of punitive damages to the person who has suffered discrimination, it is for the national legal system of each Member State to set the criteria for determining the extent of the penalty, provided that the principles of equivalence and effectiveness are respected (see, by analogy, judgments in *Manfredi and Others*, C-295/04 to C-298/04, EU:C:2006:461, paragraph 92; *Donau Chemie and Others*, C-536/11, EU:C:2013:366, paragraphs 25 to 27; and *Hirrmann*, C-174/12, EU:C:2013:856, paragraph 40).
- 45 In the light of the foregoing, the answer to the question referred is that Article 18 of Directive 2006/54 must be interpreted as meaning that, in order for the loss and damage sustained as a result of discrimination on grounds of sex to be the subject of genuine and effective compensation or reparation in a way which is dissuasive and proportionate, that article requires Member States which choose the financial form of compensation to introduce in their national legal systems, in accordance with detailed arrangements which they determine, measures providing for payment to the person injured of compensation which covers in full the loss and damage sustained.

### Costs

- 46 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 (Fourth Chamber) hereby rules:

**Article 18 of Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation must be interpreted as meaning that, in order for the loss and damage sustained as a result of discrimination on grounds of sex to be the subject of genuine and effective compensation or reparation in a way which is dissuasive and proportionate, that article requires Member States which choose the financial form of compensation to introduce in their national legal systems, in accordance with detailed arrangements which they determine, measures providing for payment to the person injured of compensation which covers in full the loss and damage sustained.**

[Signatures]

\* [Language of the case: Spanish.](#)