JUDGMENT OF THE COURT (Second Chamber)

30 June 2022 (*)

(Reference for a preliminary ruling – Social policy – Equal treatment for men and women in matters of social security – Directive 79/7/EEC – Article 4(1) – Indirect discrimination on ground of sex – National legislation providing that two or more total occupational invalidity pensions acquired under the same statutory social security scheme are incompatible – Compatibility of such pensions where they come under different statutory social security schemes – Finding of indirect discrimination on the basis of statistical data – Determination of the affected groups to be compared – Justification)

In Case C-625/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the Juzgado de lo Social n.º 26 de Barcelona (Social Court No 26, Barcelona, Spain), made by decision of 13 October 2020, received at the Court on 19 November 2020, in the proceedings

KM

v

Instituto Nacional de la Seguridad Social (INSS),

THE COURT (Second Chamber),

composed of A. Prechal (Rapporteur), President of the Chamber, J. Passer, F. Biltgen, N. Wahl and M.L. Arastey Sahún, Judges,

Advocate General: L. Medina,

Registrar: C. Di Bella, Administrator,

having regard to the written procedure and further to the hearing on 12 January 2022,

after considering the observations submitted on behalf of:

– KM, by I. Armenteros Rodríguez, abogado,

– the Instituto Nacional de la Seguridad Social (INSS), by P. García Perea and A.R. Trillo García, letrados,

– the Spanish Government, by J. Rodríguez de la Rúa Puig and M.J. Ruiz Sánchez, acting as Agents,

– the European Commission, by I. Galindo Martín and A. Szmytkowska, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 24 February 2022,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 4 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 KM and the Instituto Nacional de la Seguridad Social (INSS) (National Social Security Institute, Spain) concerning the latter's refusal to recognise the compatibility of two total occupational invalidity pensions awarded to KM under the same statutory social security scheme on the basis of different contribution periods and different injuries.

Legal context

European Union law

3 According to Article 1 of Directive 79/7:

'The purpose of this Directive is the progressive implementation, in the field of social security and other elements of social protection provided for in Article 3, of the principle of equal treatment for men and women in matters of social security, hereinafter referred to as "the principle of equal treatment".'

4 Article 3(1)(a) of that directive states that the directive applies to statutory schemes which provide protection against, inter alia, the risk of 'invalidity'.

5 Article 4(1) of that 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 thereto,

– 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.'

6 Article 1 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) states, inter alia, that that directive contains provisions to implement the principle of equal treatment in relation to occupational social security schemes.

7 Article 2(1)(f) of that directive provides that, for the purposes of that directive, 'occupational social security schemes' means 'schemes not governed by [Directive 79/7] whose purpose is to provide workers, whether employees or self-employed, in an undertaking or group of undertakings, area of economic activity, occupational sector or group of sectors with benefits intended to supplement the benefits provided by statutory social security schemes or to replace them, whether membership of such schemes is compulsory or optional'.

Spanish law

8 Article 9(1) of the Ley General de la Seguridad Social (General Law on Social Security), in the consolidated version approved by Real Decreto Legislativo 8/2015 (Royal Legislative Decree 8/2015) of 30 October 2015 (BOE No 261 of 31 October 2015, p. 103291) ('the LGSS'), states:

'The social security system shall consist of the following schemes:

(a) the general scheme, falling under Title II of this law;

(b) the special schemes referred to in the following article.'

9 Article 10 of the LGSS provides:

‘1. Special schemes are to be established for occupational activities which, by reason of their nature, special conditions of time and place in which they are carried out, or of the type of production process, require the establishment of such schemes in order to ensure the proper application of social security benefits.

2. The following groups shall be deemed to fall within special schemes:

(a) self-employed workers.

…’

10 Article 163 of the LGSS, entitled ‘Incompatibility of pensions’, provides in paragraph 1:

‘Pensions under the general [social security] scheme shall be incompatible with one another where the same recipient receives them, unless expressly provided otherwise by law or regulation. In the event of incompatibility, the recipient who could be entitled to two or more pensions shall opt for one of them.’

11 Under the twenty-sixth transitional provision of the LGSS, applicable to the dispute in the main proceedings:

‘1. Occupational invalidity, irrespective of the determining cause, shall be classified according the following scale:

(a) partial occupational invalidity in respect of the usual occupation;

(b) total occupational invalidity in respect of the usual occupation;

(c) general occupational invalidity for all types of work;

(d) incapacity requiring the assistance of a third party.

2. In the event of accidents, whether or not work-related, “usual occupation” shall mean the occupation normally carried out by the worker at the time of the accident. In the event of illness or disease, whether or not work-related, “usual occupation” means the occupation in which the worker was principally engaged during the period prior to the onset of the invalidity determined by the applicable rules.

…

4. Total occupational invalidity in respect of the usual occupation means incapacity preventing the worker from performing all the tasks of that usual occupation or his or her essential duties, it being understood that he or she may take up a different occupation.

…’

12 Article 34 of Decreto 2530/1970, por el que se regula el régimen especial de la Seguridad Social de los trabajadores por cuenta propia o autónomos (Decree No 2530/1970 governing the special social security scheme for self-employed persons) of 20 August 1970 (BOE No 221 of 15 September 1970, p. 15148), states:

‘The pensions which this special scheme grants to its beneficiaries shall be incompatible with each another, unless expressly provided otherwise. Any person entitled to two or more pensions must opt for one of them.’

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

13 By decision of 2 March 1999, the INSS acknowledged that the applicant in the main proceedings, who was affiliated to the general social security scheme (‘the RGSS’), had a total occupational invalidity in respect of her usual occupation as an administrative assistant as a result of a non-occupational disease

related to an ischemic stroke, and granted her a pension under the RGSS, calculated on the basis of the contributions paid for the period from May 1989 to April 1994.

14 By decision of 20 March 2018, the INSS acknowledged that the applicant in the main proceedings, who, in the meantime, had taken up employment as a nursery assistant, had a total occupational invalidity also in respect of her new usual occupation as a result of a non-occupational accident in which she had fractured a femur, and granted her the corresponding pension under the RGSS, calculated on the basis of the contributions paid for the period from February 2015 to January 2017. However, the INSS considered that, under Article 163 of the LGSS, that pension was incompatible with the pension granted previously, with the result that the applicant in the main proceedings was entitled to only one of them.

15 On 23 January 2019, the INSS rejected the applicant's complaint that she had lodged against that decision.

16 On 12 March 2019, the applicant in the main proceedings brought an action before the referring court seeking recognition of the compatibility of the invalidity pension relating to her occupation as a nursery assistant with the pension relating to her former occupation as an administrative assistant, in order to be able to combine those two pensions. To that end, she claimed, in essence, that Article 163 of the LGSS, on the basis of which the INSS declared the two pensions to be incompatible, is inapplicable, because it gives rise to indirect discrimination on ground of sex and is therefore contrary to EU law.

17 The referring court states, first of all, that the applicant in the main proceedings has demonstrated that she made sufficient contributions to qualify for the two pensions in question.

18 The referring court goes on to state that the Spanish social security system consists of several schemes, the most significant of which are the RGSS, which covers employees in general, and the special scheme for self-employed persons ('the RETA'), which covers self-employed persons in general, and that those two schemes provide, inter alia, total occupational invalidity benefits to recipients who are no longer in a position to work on health grounds.

19 According to the referring court, although Article 163 of the LGSS precludes the combination of two total occupational invalidity pensions recognised under the RGSS, it nevertheless follows from the case-law of the Tribunal Supremo (Supreme Court, Spain) that that provision, interpreted *a contrario*, allows such a combination where those pensions derive from different schemes, namely, as a general rule, the RGSS and the RETA, including on the basis of the same injuries. The rationale for that interpretation is that each of those schemes pursues a specific purpose, namely, for the RGSS, that of compensating for the fact that it is impossible to pursue an activity as an employee, and, for the RETA, that of compensating for the fact that it is impossible to pursue an activity as a self-employed person.

20 The referring court is inclined to take the view that the application of such a rule leads to indirect discrimination on ground of sex, prohibited by Article 4 of Directive 79/7 and Article 5 of Directive 2006/54, in so far as, even if that rule makes no distinction on the basis of sex and is, therefore, apparently neutral in that regard, it could nevertheless have a greater impact on women. 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, a difficulty which arises from the fact that society has traditionally given them the role of housewives.

21 Consequently, since the combination of benefits is possible only in respect of benefits acquired under different schemes, and since the proportion of men affiliated to the RETA is considerably higher than the proportion of women, that combination is easier for men to obtain than it is for women.

22 Lastly, the referring court considers that the arguments put forward by the INSS to justify the incompatibility of the two pensions at issue in the main proceedings are not convincing. It thus questions the validity of the argument that there can be only one total occupational invalidity pension to compensate for the loss of income due to a person being unable to continue to pursue his or her usual occupation since there can be only one usual occupation at any given time. That same argument would

have to lead to a prohibition on combining two total occupational invalidity pensions obtained under different schemes.

23 In those circumstances, the Juzgado de lo Social n.º 26 de Barcelona (Social Court No 26, Barcelona, Spain) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Is the Spanish rule on compatibility of benefits established in Article 163(1) of the [LGSS], as interpreted by case-law, which prevents two total occupational invalidity benefits awarded under the same Social Security scheme being deemed compatible, while benefits awarded under different schemes are deemed compatible, even if, in both cases, entitlement has been earned by virtue of separate contributions, contrary to the [EU] rules established in Article 4 of [Directive 79/7], and Article 5 of [Directive 2006/54], given that the Spanish legislation may give rise to indirect discrimination on grounds of sex or gender, having regard to gender distribution in the different Spanish Social Security schemes?

(2) If the answer to the first question is in the negative, could the Spanish legislation be contrary to EU legislation if the two benefits relate to different injuries or illnesses?’

24 The Court put a number of questions to the INSS and to the Spanish Government, which replied by letters lodged on 3 and 7 December 2021 respectively.

Consideration of the questions referred for a preliminary ruling

The first question

25 In order to clarify, as a preliminary point, the scope of the first question, it should be noted that the referring court is uncertain whether the Spanish social security legislation is compatible with Article 4 of Directive 79/7 and Article 5 of Directive 2006/54 as regards the conditions governing the possibility, provided for by that legislation as interpreted by the Tribunal Supremo (Supreme Court), of combining two total occupational invalidity pensions in a situation in which the affiliated worker has satisfied the conditions for the grant of those pensions on the basis of contribution periods in different schemes.

26 In that regard, as regards the applicability of the directives referred to by the referring court, it is apparent from the file submitted to the Court that the total occupational invalidity pensions in question in the main proceedings which the applicant in the main proceedings wishes to combine are granted under the social security scheme provided for by the LGSS and are aimed at protecting affiliated persons against the loss of income arising from the inability to carry out their usual occupation.

27 Such pensions fall within the scope of Directive 79/7, since they form part of a statutory scheme providing protection against one of the risks listed in Article 3(1) of that directive, namely invalidity, and are directly and effectively linked to protection against that risk (see, to that effect, judgment of 12 December 2019, *Instituto Nacional de la Seguridad Social (Pension supplement for mothers)*, C-450/18, EU:C:2019:1075, paragraph 35).

28 However, as the INSS, the Spanish Government and the European Commission have submitted, Directive 2006/54 is not applicable to the dispute in the main proceedings. It is apparent from point (c) of the second paragraph of Article 1 of Directive 2006/54, read in conjunction with Article 2(1)(f) thereof, that that directive does not apply to statutory schemes governed by Directive 79/7 (judgment of 12 December 2019, *Instituto Nacional de la Seguridad Social (Pension supplement for mothers)*, C-450/18, EU:C:2019:1075, paragraph 34).

29 In those circumstances, it must be held that, by its first question, the referring court asks, in essence, whether Article 4(1) of Directive 79/7 must be interpreted as precluding national legislation which prevents workers affiliated to social security from receiving a combination of two total occupational invalidity pensions where those pensions come under the same social security scheme, while permitting such a combination where those pensions come under different social security schemes.

30 It must be noted that, whilst 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 of 14 April 2015, *Cachaldora Fernández*, C-527/13, EU:C:2015:215, paragraph 25).

31 Accordingly, EU law does not, in principle, preclude a Member State from excluding, in its social security legislation, the possibility of receiving two or more total occupational invalidity pensions at the same time, or from allowing such a combination under certain conditions. However, such legislation must comply with Directive 79/7, in particular Article 4(1) of that directive, under which the principle of equal treatment means that there is to be no discrimination whatsoever on ground of sex either directly, or indirectly, as regards, inter alia, the calculation of benefits.

32 In that regard, it must be noted, as the referring court has pointed out, that the national legislation referred to in paragraph 29 of the present judgment applies without distinction to male and female workers affiliated to the different Spanish social security schemes and who have satisfied, in principle, the conditions for the grant of at least two total occupational invalidity pensions, with the result that that national legislation does not constitute direct discrimination.

33 As regards the question of whether that national legislation constitutes indirect discrimination, that concept must, in the context of Directive 79/7, be understood as meaning that there is discrimination based indirectly on sex in a situation 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 (see, to that effect, judgment of 8 May 2019, *Villar Láiz*, C-161/18, EU:C:2019:382, paragraph 37).

34 In the present case, the referring court is inclined to take the view that the national legislation at issue constitutes indirect discrimination. As has been stated in paragraphs 20 and 21 of the present judgment, the referring court observes that although, according to the statistical data available to it, the persons affiliated to the RGSS are divided in a fairly balanced manner between the two sexes, women account for only approximately 36% of those affiliated to the RETA, and that those two schemes cover the vast majority of workers affiliated to the Spanish social security system. Men are thus better placed than women to qualify for several total occupational invalidity pensions under separate schemes and to be able to combine those pensions.

35 In that regard, it must be noted, in the first place, that the national legislation at issue in the main proceedings establishes, among the workers entitled to several total occupational invalidity pensions, a difference in treatment on the basis of an apparently neutral criterion according to which those workers are authorised to combine such pensions only where those pensions come under different social security schemes.

36 It appears that such a difference in treatment favours workers who may combine two or more pensions that come under different social security schemes as regards the calculation of the overall amount of those pensions, and that it is, conversely, liable to place at a disadvantage workers who, having obtained such pensions under the same social security scheme, may not combine them.

37 The INSS and the Spanish Government state that the pensions which come under each social security scheme differ, inter alia, in terms of their methods of contribution and calculation and in terms of their aims, and state, in addition, that those factors demonstrate that workers who may combine two or more pensions are not in a situation comparable to that of workers who do not have that option. However, the abovementioned factors do not appear to call into question the finding that the possibility of combining two or more pensions enables, in principle, the workers concerned to receive an overall benefit which is higher than the single pension to which they would otherwise have been entitled, nor do those factors demonstrate, moreover, that their situations are not comparable, particularly since the pensions under the RGSS and the RETA are both intended to compensate for the loss of income arising from the worker’s total incapacity to carry out, as an employee or as a self-employed person, his or her usual occupation, which, however, it is for the referring court to verify.

38 In the second place, in order to assess whether the national legislation at issue in the main proceedings is such as to place female workers at a particular disadvantage as compared with male workers, it should be noted that the existence of such a particular disadvantage might be established, in particular, if it were proved that such legislation is to the disadvantage of a significantly greater proportion of persons of one sex as compared with persons of the other sex (see, to that effect, judgment of 21 January 2021, *INSS*, C-843/19, EU:C:2021:55, paragraph 25).

39 That could be the case if it were to be established that the national legislation at issue in the main proceedings has the consequence of depriving a significantly greater proportion of female workers, as compared with male workers, of the possibility of combining two or more total occupational invalidity pensions.

40 In a situation where, as in the present case, statistical evidence is available to the national court, the Court of Justice has held (i) that it is for that national court to take into account all those workers subject to the national legislation in which the difference in treatment has its origin, and (ii) that the best approach to the comparison is to compare the respective proportion of workers who are and are not affected by the alleged difference in treatment among the women in the workforce who come within the scope of that legislation with the same proportion of men in the workforce coming within that scope (judgment of 21 January 2021, *INSS*, C-843/19, EU:C:2021:55, paragraph 26).

41 In that context, it is for the national court to assess to what extent the statistical evidence adduced before it is valid and whether it can be taken into account, that is to say, whether, for example, it illustrates purely fortuitous or short-term phenomena, and whether it is sufficiently significant (judgment of 21 January 2021, *INSS*, C-843/19, EU:C:2021:55, paragraph 27).

42 It is apparent from the file before the Court that the parties and interested persons who have submitted observations are divided as to which type of data must be used in order to determine, in accordance with the methodology referred to in paragraph 40 of the present judgment, the proportions of persons affected by the difference in treatment. They disagree, in particular, on whether the data relied on by the referring court, referred to in paragraph 34 of the present judgment, concerning the respective rates of affiliation of male and female workers to the RGSS and the RETA, make it possible to establish the proportions of persons affected, and the INSS and the Spanish Government state, inter alia, that there is no direct correlation between affiliation to a given scheme and the grant of entitlement to a pension.

43 As regards the relevance of the data provided by the referring court, it should be noted that the national legislation at issue in the main proceedings does not apply to all workers affiliated to the different Spanish social security schemes but only to those who, in principle, have satisfied the conditions for the grant of at least two total occupational invalidity pensions, as the Advocate General, in essence, also stated in point 65 of her Opinion.

44 Only workers in the latter category may be refused or allowed the combination of two or more total occupational invalidity pensions, depending on whether those pensions come under the same or separate social security schemes.

45 For the purposes of determining whether the national legislation at issue in the main proceedings entails indirect discrimination, workers who may not combine two or more pensions simply because they have not satisfied the conditions for the grant of each of those pensions, and who, however, are necessarily among the workers covered by the statistical data used by the referring court concerning the rates of affiliation to the various social security schemes, cannot therefore be taken into account (see, by analogy, judgment of 21 January 2021, *INSS*, C-843/19, EU:C:2021:55, paragraph 30).

46 Therefore, in order to determine whether national legislation such as that at issue in the main proceedings is liable to constitute indirect discrimination contrary to Article 4(1) of Directive 79/7, it is necessary, first of all, to take into consideration all the workers subject to that legislation, namely all the workers who, in principle, have obtained the right to more than one total occupational invalidity pension. Next, it is necessary to establish, among the group of workers thus defined, first, the proportion of male workers prevented from combining those pensions as compared with the male workers who may combine such pensions and, second, the same proportion in the case of female

workers. Finally, those proportions must be compared with each other in order to assess whether there is any significant difference between the proportion of male and female workers negatively affected.

47 That methodology is, moreover, neutral in relation to the fact, emphasised by the INSS and the Spanish Government, that male workers are more at risk than female workers of becoming incapacitated for work and, consequently, of having to claim total occupational invalidity pensions. The sole purpose of the comparison to be made is to establish whether, within the respective categories of male and female workers in respect of whom that risk has already materialised, the difference in treatment arising from the national legislation at issue in the main proceedings adversely affects a significantly greater proportion of women than men, as the Advocate General, in essence, also stated in point 66 of her Opinion.

48 As regards the suitable data for the implementation of such a comparison, the INSS provided, on 3 December 2021, at the Court's request, additional statistical data, as defined in that request, concerning the number of male and female workers suffering from at least two incapacities for work and who were entitled, as at 10 November 2021, in principle, to total occupational invalidity pensions under at least two social security schemes or under the RGSS alone.

49 In that regard, it must be noted that the national legislation at issue applies to all workers who have satisfied, in principle, the conditions for the grant of at least two occupational invalidity pensions. It is therefore liable to have a negative effect on all workers who have obtained the right to at least two invalidity pensions under the same social security scheme, irrespective of that scheme.

50 It is true that the data referred to in paragraph 48 of the present judgment appear to enable a reliable estimate to be made, at the reference date, of the total number of male and female workers favoured by the national legislation at issue in the main proceedings, namely the 7 723 male workers and the 3 460 females workers who could, on that date, in principle, combine at least two total occupational invalidity pensions.

51 However, as the Commission correctly observed at the hearing, those data are limited, for workers who may not combine the pensions to which they have become entitled, to listing the 4 047 male workers and the 3 388 female workers who are affiliated solely to the RGSS. Accordingly, those data do not indicate the total number of workers disadvantaged by the national legislation at issue in the main proceedings on the reference date and therefore do not, in themselves, make it possible to establish the proportions of male and female workers disadvantaged by that legislation in accordance with what has been set out in paragraphs 40 and 46 of the present judgment, in particular as regards workers affiliated solely to the RETA, to whom, under Article 34 of Decree 2530/1970 governing the special social security scheme for self-employed persons, the same rule applies as that set by Article 163(1) of the LGSS for those affiliated to the RGSS.

52 In that context, it should be noted that, in view of the large number of persons affiliated to the RETA, it cannot be ruled out that the taking into account of the figures for workers who have, in principle, become entitled to at least two occupational invalidity pensions under that scheme alone may have an impact on the calculation, on the basis of all the relevant data, of the respective proportions of male and female workers adversely affected by the national legislation at issue in the main proceedings in accordance with the methodology set out in paragraphs 40 and 46 of the present judgment.

53 Thus, although data such as those referred to in paragraph 48 of the present judgment are, in principle, relevant for the purposes of determining those proportions and thus for establishing whether the national legislation at issue in the main proceedings is liable to place female workers at a particular disadvantage as compared with male workers, it must be ensured that the data ultimately used for that purpose are sufficiently reliable and complete in order to establish those proportions correctly.

54 It is for the referring court to carry out the necessary checks and to assess, if necessary, whether any difference between the proportions of male and female workers adversely affected by the national legislation at issue in the main proceedings is significant, given that a lesser but persistent and relatively constant disparity over a long period between male and female workers might also reveal an apparent indirect discrimination on ground of sex (see, to that effect, judgment of 9 February 1999, *Seymour-Smith and Perez*, C-167/97, EU:C:1999:60, paragraph 61).

55 Furthermore, the Court has already held that the appreciation of the facts from which it may be presumed that there has been indirect discrimination is the task of the national judicial authority, in accordance with national law or national practices which may provide, in particular, that indirect discrimination may be established by any means, including on the basis of statistical evidence (see, to that effect, judgment of 3 October 2019, *Schuch-Ghannadan*, C-274/18, EU:C:2019:828, paragraph 46 and the case-law cited).

56 In the third place, if, at the end of that assessment, the referring court were to reach the conclusion that the national legislation at issue in the main proceedings places female workers at a particular disadvantage as compared with male workers, that legislation would constitute indirect discrimination based on sex, contrary to Article 4(1) of Directive 79/7, unless it were justified by objective factors unrelated to any discrimination on grounds of sex. That is the case if that legislation reflects a legitimate social policy objective, is appropriate to achieve that objective and is necessary in order to do so, it being understood that it can be considered appropriate to achieve the stated aim only if it genuinely reflects a concern to attain that aim and is pursued in a consistent and systematic manner (judgment of 24 February 2022, *TGSS (Domestic worker unemployment)*, C-389/20, EU:C:2022:120, paragraph 48).

57 In that regard, the Court has held that, in choosing the measures capable of achieving the aims of their social and employment policy, the Member States have a broad margin of discretion (judgment of 24 September 2020, *YS (Occupational pensions of managerial staff)*, C-223/19, EU:C:2020:753, paragraph 57).

58 While it is ultimately for the national court, which has sole jurisdiction to assess the facts and interpret the national legislation, to determine whether and to what extent the legislative provision in question is justified by such an objective reason, the Court of Justice, which is called on to provide answers of use to the national court in the context of a reference for a preliminary ruling, may provide guidance based on the documents in the file of the case in the main proceedings and on the written and oral observations which have been submitted to it, in order to enable the national court to give judgment (judgment of 24 September 2020, *YS (Occupational pensions of managerial staff)*, C-223/19, EU:C:2020:753, paragraph 58).

59 In the present case, the INSS and the Spanish Government submit, in essence, that the national legislation at issue in the main proceedings is justified in the light of the objective of preserving the viability of the social security system. They argue, first, that the possibility of combining at least two total occupational invalidity pensions obtained under a single scheme, which cover the same risk of loss of occupational income, has significant consequences for the funding of that scheme and, second, that the possibility of combining pensions that come under different schemes has a reduced budgetary effect, and those pensions also cover different risks.

60 As regards whether such an objective constitutes a legitimate social policy objective, although budgetary considerations cannot justify discrimination against one of the sexes, the objectives of ensuring the long-term funding of occupational invalidity pensions may, by contrast, and having regard to the broad discretion of the Member States, be considered to constitute legitimate social policy objectives wholly unrelated to any discrimination based on sex (see, to that effect, judgment of 21 January 2021, *INSS*, C-843/19, EU:C:2021:55, paragraph 38).

61 As regards the suitability of the national legislation at issue in the main proceedings for the attainment of the objective relied on, it is true that such legislation, in so far as it excludes or restricts the benefit of a number of total occupational invalidity pensions, in particular in situations in which such a combination is likely to result in the persons concerned being granted an overall amount which exceeds the loss of income which those pensions are supposed to offset, appears appropriate to contribute to the preservation of the finances of the social security scheme and to ensure rational allocation of the funds concerned.

62 That said, the Commission submitted, without being contradicted on that point, that, irrespective of whether the worker receives pensions that come under a single scheme or different schemes, the expenditure relating to those pensions continues to be borne by the social security budget.

63 Furthermore, it must be noted, as has been held in paragraphs 36 and 37 of the present judgment, that, despite the differences which may exist between pensions that come under different social security schemes as regards the methods of calculating and contributing to them, and their purposes, the possibility of combining several pensions obtained under different schemes does appear to confer a financial advantage on the workers concerned and may entail additional public expenditure.

64 Thus, the budgetary consequences of combining several total occupational invalidity pensions do not appear to differ appreciably depending on whether such a combination is granted for pensions obtained under the same scheme or under different schemes, particularly where, as in the present case, the worker concerned has acquired the right to both his or her two pensions on the basis of different contribution periods.

65 It follows that, subject to verification by the referring court, the national legislation at issue in the main proceedings is not implemented in a consistent and systematic manner, with the result that it cannot be regarded as being appropriate for attaining the objective relied on.

66 In the light of all of the foregoing considerations, the answer to the first question is that Article 4(1) of Directive 79/7 must be interpreted as precluding national legislation which prevents workers affiliated to social security from receiving a combination of two total occupational invalidity pensions where those pensions come under the same social security scheme, while permitting such a combination where those pensions come under different social security schemes, where that legislation places female workers at a particular disadvantage as compared with male workers, in particular in so far as that legislation permits a significantly higher proportion of male workers, determined on the basis of all male workers subject to that legislation, as compared with the corresponding proportion of female workers, to benefit from that combination and where that legislation is not justified by objective factors unrelated to any discrimination on ground of sex.

The second question

67 In the light of the answer given to the first question, there is no need to answer the second question.

Costs

68 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 (Second Chamber) hereby rules:

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 national legislation which prevents workers affiliated to social security from receiving a combination of two total occupational invalidity pensions where those pensions come under the same social security scheme, while permitting such a combination where those pensions come under different social security schemes, where that legislation places female workers at a particular disadvantage as compared with male workers, in particular in so far as that legislation permits a significantly higher proportion of male workers, determined on the basis of all male workers subject to that legislation, as compared with the corresponding proportion of female workers, to benefit from that combination and where that legislation is not justified by objective factors unrelated to any discrimination on ground of sex.

[Signatures]

* Language of the case: Spanish.