



**GENDER
EQUALITY AND
SOCIAL SECURITY
- RECENT CJEU
CASE LAW**



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Topics

CJEU case law

Gender equality

Social security

Social protection – e.g. of parents



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Provisions interpreted by CJEU

- TFEU - Article 157
 1. Each Member State shall ensure that the principle of equal pay for male and female workers for equal work or work of equal value is applied.
 2. For the purpose of this Article, 'pay' means the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which the worker receives directly or indirectly, in respect of his employment, from his employer. Equal pay without discrimination based on sex means:
 - a) that pay for the same work at piece rates shall be calculated on the basis of the same unit of measurement; 26.10.2012 Official EN Journal of the European Union C 326/117
 - b) that pay for work at time rates shall be the same for the same job.



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Secondary law

- 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
- 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 (recast)
- Council Directive 2010/18/EU of 8 March 2010 implementing the revised Framework Agreement on parental leave concluded by BUSINESSSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC (Text with EEA relevance)
 - Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU



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Directive 79/7

- Article 2 **Personal scope** This Directive shall apply to the working population — including self-employed persons, workers and self-employed persons whose activity is interrupted by illness, accident or involuntary unemployment and persons seeking employment — and to retired or invalidated workers and self-employed persons.
- Article 3 **Material scope** This Directive shall apply to:
 - (a) statutory schemes which provide protection against the following risks:
 - sickness,
 - invalidity,
 - old age,
 - accidents at work and occupational diseases,
 - unemployment;



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Directive 79/7

- Article 4
 - 1. 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.



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Directive 79/7

- Article 7 - exemptions
- 1. This Directive shall be without prejudice to the right of Member States to exclude from its scope:
 - (a) the **determination of pensionable age** for the purposes of granting old-age and retirement pensions and the possible consequences thereof for other benefits;
 - (b) **advantages** in respect of old-age pension schemes granted to **persons who have brought up children**; the acquisition of benefit entitlements following periods of interruption of employment due to the bringing up of children;
 - (c) the granting of old-age or invalidity benefit entitlements by virtue of the derived **entitlements of a wife**;
 - (d) the granting of increases of long-term invalidity, old-age, accidents at work and occupational disease benefits for a **dependent wife**;
- 2. Member States shall periodically examine in order to ascertain, whether there is justification for maintaining the exclusions concerned.



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Case law on gender and social security

Not just few cases – some of them very important

Pensions

- Participation in the scheme
- Pensionable age

Maternity

Parental leave (old directive)



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Indirect discrimination - pensions

Case C-161/18, *Violeta Villar Láiz v Instituto Nacional de la Seguridad Social (INSS) and Tesorería General de la Seguridad Social (TGSS)*

Double reduction of pensions for part-time workers – first reduction – pro-rata temporis, second reduction – part-time workers

Such national legislation goes beyond what is necessary to attain the objective of protecting a social security system that relies on contributions.



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Pensionable age as evergreen

Case C-171/18, *Safeway Ltd v Andrew Richard Newton and Safeway Pension Trustees Ltd.*, Grand Chamber

Safeway Limited, the principal employer of a pension scheme in the UK, announced the equalisation of the pensionable age under their pension scheme - retirement age would henceforth be 65 for all members

CJEU: no support in case-law for a power of a pension scheme to equalise with retroactive effect the conditions of its members to those applicable to the previously disadvantaged group.

measures seeking to eliminate discrimination must do so in compliance with EU law requirements, and cannot be used to circumvent them

measures which retroactively equalised the retirement age of men and women against EU law



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Pension supplement

Case	Case C-450/18, WA v Instituto Nacional de la Seguridad Social
Supplement	supplement to the contributory social security retirement pension, widow's pension, or permanent disability pension for women who have had two or more biological or adopted children – not applicable to fathers
Pension	the Court: pension supplements have the legal nature of a contributory State pension - falls within the scope of Directive 79/7/EEC -
Direct	direct discrimination of men found - pension supplement at issue did not fall within the scope of the exemption allowed by the Directive 79/7



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Early retirement and maternity supplement

Case C-130/20, *Instituto Nacional de la Seguridad Social (INSS) v YJ*

the applicant had two children during her employment period - denied the pension maternity supplement because she had requested the early retirement.

Court: concept of 'discrimination on ground of sex' can apply only to cases of discrimination between male workers, on the one hand, and female workers, on the other.

criterion does not rely to the sex of the worker concerned, but to the detailed rules for that worker's entitlement to retirement

situation at issue in the main proceedings does not fall within the scope of Directive 79/7



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Pensions - contributions

Case C-223/19, *YS v NK*

men, who are the primary recipients of higher pensions compared to women, are indirectly discriminated against when they are obliged to contribute more to secure the pension revenue

The legislation at hand affects more men than women, as well as more old than young people.

the mere fact that new legislation is adopted in respect of people under a certain age cannot give rise to indirect discrimination on the grounds of age.

Articles 16, 17, 20 and 21 of the Charter - the scope of the Charter applies only when MS implement EU law.

No infringement of any article of the Charter found



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Pensions of domestic workers

- Case C-843/19, *Instituto Nacional de la Seguridad Social (INSS) v BT*
- The applicant made contributions to a Spanish social security scheme for domestic workers for an extended period of time during her employment. She requested early retirement at the age of 63.
- Court: budgetary considerations alone cannot justify discrimination.
- Indirect discrimination at stake – domestic workers mainly women
- objective of ensuring the long-term funding of retirement benefits may be considered legitimate and thus justify the difference in treatment
- legislation was put in place in a coherent and systematic manner and does not appear to go beyond what is necessary to achieve the objectives pursued.



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Parental leave – contributions?

Case C-129/20, *XI v Caisse pour l'avenir des enfants*

refusal to grant a right to parental leave to take care of her twins on the ground that she was not in paid employment on the day on which they were born

According to parental leave directive - Member States may make the grant of parental leave subject to the condition of a prior period of work that may not exceed one year

the requirement of employment at the time of the birth is incompatible with the objectives of the revised Framework Agreement, namely, to promote equality between men and women and to enable working parents to better reconcile their professional, private, and family life.

revised Framework Agreement precludes national legislation, which requires employment at the time of the birth to be able to take up parental leave



Pregnant women – protected self-employed

Case C-544/18, *The Commissioners for Her Majesty's Revenue & Customs v Henrika Daknevičute*, Judgment of 19 September 2019



Directive 2004/38/EC - right to residence list of conditions is not exhaustive



pregnant self-employed EU citizen can retain her self-employed status during pregnancy and maternity if she ceases the self-employed activity in circumstances where there are physical constraints in the late stages of pregnancy and the aftermath of childbirth, so long as she returns to the same or another self-employed activity or employment within a reasonable period after the birth of her child.



Conclusions

In recent period quite some cases on social security

With cases of „non-traditional“ families will be more complicated?

No excess, CJEU is holding its established case law

Important:

Domestic workers

Pensionable age

Consequences for right to reside



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