



PRESS RELEASE No 141/23

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Judgment of the Court in Case C-113/22 | TGSS (Refusal of the maternity supplement)

Spain — Discrimination on grounds of sex: fathers of two or more children, forced to go to court in order to benefit from a supplement to their invalidity pension, have the right to additional compensation

An administrative practice of systematically refusing to grant that supplement equally to fathers and thus disregarding the inferences to be drawn from the judgment in 2019, in which the Court of Justice declared the grant of that supplement solely to mothers as discriminatory, makes those fathers subject to twofold discrimination

By judgment of 12 December 2019,¹ the Court of Justice of the European Union found that the pension supplement granted by Spain solely to mothers who are recipients of an invalidity pension, when they have two or more children (biological or adopted), to the exclusion of fathers in a comparable situation, was likely to constitute direct discrimination on grounds of sex, contrary to the directive on equal treatment.²

On the basis of that judgment, a father of two children applied to the Spanish social security agency in November 2020, for recognition of his right to the pension supplement, relating to the absolute permanent invalidity benefit which he had been receiving since November 2018. Since his application was rejected, he brought an action before the first-instance court. By a first judgment, that court recognised his right to the pension supplement at issue, while dismissing the claim for compensation that the father had filed at the same time. Both the father and the Spanish authorities lodged an appeal against that judgment before the High Court of Justice of Galicia (Spain).

That court asks whether a practice of systematically refusing to grant to men – pending the adaptation of the discriminatory Spanish legislation to the judgment of the Court of 12 December 2019 – the pension supplement at issue, which obliges those men to bring legal proceedings, must be considered discrimination separate to the discrimination highlighted in that judgment. It also enquires about the possibility, where an infringement of EU law is established, of granting the father additional compensation and also about the contents of such compensation.

By its judgment delivered today, the Court of Justice notes first of all that, **where discrimination contrary to EU law has been established** and as long as measures reinstating equal treatment have not been adopted, **the national courts and the national administrative authorities must set aside any discriminatory provision of national law, without having to await its removal by the legislature**. Therefore, they must apply to members of the disadvantaged group, in the present case fathers, the same arrangements as those enjoyed by persons in the other category, in the present case mothers.

¹ Judgment of the Court of 12 December 2019, *Instituto Nacional de la Seguridad Social (Pension supplement for mothers)* C-450/18 (see [Press Release No 154/19](#)).

² 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).

Next, the Court finds that the refusal decision, adopted in accordance with an administrative practice of the aforementioned kind, is liable to lead, apart from the discrimination referred to in the judgment of 12 December 2019, to **a new discrimination for male scheme members**, since only men must then assert their right to the pension supplement at issue through judicial proceedings, which, in particular, exposes them to **a longer period in which to obtain that supplement**, and, as the case may be, to **additional expenses**.

As a consequence, **the national court**, hearing an action brought against such a refusal decision, **cannot confine itself to recognising for the male scheme member concerned the right to the pension supplement at issue with retroactive effect**. Indeed, that would not remedy the harm resulting from that new discrimination. The male scheme member must, therefore, also be granted **adequate financial compensation**, such as to make good in full the loss and damage actually sustained as a result of the discrimination. **That compensation must take into account the expenses incurred by the member, including the costs and lawyers' fees**.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text and, as the case may be, the résumé](#) of the judgment is published on the CURIA website on the day of delivery.

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