



## **The method used in Spain to determine the basis for the calculation of the duration of unemployment benefit for ‘vertical’ part-time workers is contrary to EU law**

*Since women make up the majority of this category of workers, the method constitutes a difference in treatment to the detriment of women*

Ms María Begoña Espadas Recio, who comes under the category of ‘vertical’ part-time workers<sup>1</sup> worked as a cleaner for more than 12 and a half years continuously. After her contract of employment was terminated, Ms Espadas Recio applied for unemployment benefit. The Servicio Público de Empleo Estatal (Public Employment Service, Spain, ‘SPEE’) granted her 420 days’ unemployment benefit instead of the 720 days she believed she was entitled to. In deciding on that period, the SPEE relied on Spanish legislation which provides that, in the case of part-time work, although the duration of the unemployment benefit is based on the number of days for which contributions were paid in the preceding six years, account is to be taken only of the days actually worked (in this case 1 387 and not the six years of contributions in their totality). Taking the view that the six previous years had been fully covered by contributions, Ms Espadas Recio brought an appeal before the Juzgado de lo Social no 33 de Barcelona (Social Court No 33, Barcelona, Spain). In Ms Espadas Recio’s view, excluding the days not worked for the purpose of calculating her unemployment benefit establishes a difference in treatment to the detriment of ‘vertical’ part-time workers.

The Spanish court notes that this category of worker is in fact doubly penalised, given that, first, the lower monthly salary owing to part-time work leads to a proportionally lower amount of unemployment benefit and, second, the duration of that benefit is reduced because only the days worked are taken into account, even though the contribution period is longer. The Spanish court adds that it is established that the legislation in question affects a much larger proportion of women than men. It therefore asks the Court of Justice whether the Directive on equal treatment for men and women in matters of social security<sup>2</sup> precludes the Spanish legislation at issue, when it is established that the majority of vertical part-time workers are women who are adversely affected by that legislation.

**By today’s judgment, the Court declares that the directive does preclude legislation which, in the case of ‘vertical’ part-time work, excludes days not worked from the calculation of days in respect of which contributions have been paid, and therefore reduces the unemployment benefit payment period, when it is established that the majority of vertical part-time workers are women who are adversely affected by that legislation.**

The Court notes, first, that the statistical data provided by the Spanish court is not contested. Next it notes that ‘vertical’ part-time workers falling within the scope of the national measure at issue in the main proceedings are all adversely affected by it and that no worker in that category could derive any advantage from the application of such a measure.

<sup>1</sup> Part-time work is called ‘vertical’ when the person performing it concentrates his working hours on certain working days of the week, and ‘horizontal’ when the person performing it works on every working day of the week.

<sup>2</sup> 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).

**The Court considers that, given that 70 to 80% of vertical part-time workers are women, it is clear that a much greater proportion of women than of men are adversely affected by the national measure at issue. It concludes that that measure constitutes a difference in treatment to the detriment of women.**

The Spanish Government claims that the principle of 'contribution to the social security system' justifies the existence of the difference in treatment found. According to that Government, since the right to unemployment benefits and the duration of that benefit are based solely on the period during which an employee has worked or was registered in the social security system, it is necessary, in order to observe the principle of proportionality, for account to be taken only of the days actually worked. While noting that ultimately it is for the national courts to assess whether that aim is actually what is pursued by the national legislature, **the Court notes that the national measure at issue does not appear to be appropriate for ensuring the correlation that must exist between the contributions paid by the worker and the rights to which he is entitled in respect of unemployment benefit.** Indeed, the Spanish legislation at issue means that a 'vertical' part-time worker who paid contributions for each day of every month of the year receives unemployment benefit for a shorter period than a full-time worker who paid the same contributions.

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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 EU 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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*Press contact: Holly Gallagher ☎ (+352) 4303 3355*

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