ECLI:EU:C:2025:261

Provisional text

JUDGMENT OF THE COURT (Sixth Chamber)

10 April 2025 (*)

(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 – Method of calculating the pension for permanent incapacity as a result of an accident at work – Taking into account the actual remuneration on the date of the accident at work – Reduction in working hours to care for children under the age of 12)

In Case C584/23,

REQUEST for a preliminary ruling under Article 267 TFEU from the Juzgado de lo Social nº 3 de Barcelona (Social Court No 3, Barcelona, Spain), made by decision of 18 September 2023, received at the Court on 21 September 2023, in the proceedings

Asepeyo Mutua Colaboradora de la Seguridad Social nº 151,

KT

v

Instituto Nacional de la Seguridad Social (INSS),

Tesorería General de la Seguridad Social (TGSS),

KT,

Alcampo SA, legal sucessor to Supermercados Sabeco SA,

Asepeyo Mutua Colaboradora de la Seguridad Social nº 151,

THE COURT (Sixth Chamber),

composed of A. Kumin, President of the Chamber, F. Biltgen (Rapporteur), President of the First Chamber, and S. Gervasoni, Judge,

Advocate General: R. Norkus,

Registrar: L. Carrasco Marco, Administrator,

having regard to the written procedure and further to the hearing on 12 December 2024,

after considering the observations submitted on behalf of:

– KT, by A. Abrain Cariñena, C. Llena Mollón and S. Torné Martí, abogadas,

– the Tesorería General de la Seguridad Social (TGSS) and the Instituto Nacional de la Seguridad Social (INSS), by M.P. García Perea and A.R. Trillo García, acting as letrados,

– the Spanish Government, by S. Núñez Silva and A. Pérez-Zurita Gutiérrez, acting as Agents,

– the European Commission, by I. Galindo Martín and E. Schmidt, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 8 TFEU, Articles 21 and 23 of the Charter of Fundamental Rights of the European Union ('the Charter'), 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) and Article 5 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 the context of two sets of proceedings, the first between the Asepeyo Mutua Colaboradora de la Seguridad Social nº 151 ('the Asepeyo mutual society'), on the one hand, and the Instituto Nacional de la Seguridad Social (INSS) (National Social Security Institute, Spain) and the Tesorería General de la Seguridad Social (TGSS) (Social Security General Fund, Spain), KT and Alcampo SA, as legal successor to Supermercados Sabeco SA, on the other, and the second between KT, on the one hand, and the INSS, the TGSS, the Asepeyo mutual society and Alcampo, on the other, concerning the determination of the basis for calculating a total permanent incapacity pension, which was paid to KT following an accident at work that took place at a time when she was benefiting from a measure for the reduction in working hours.

Legal context

European Union law

Directive 79/7

3 Article 1 of Directive 79/7 provides:

'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) and (2) of that directive states:

'1. 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;

…

2. This Directive shall not apply to the provisions concerning survivors' benefits nor to those concerning family benefits, except in the case of family benefits granted by way of increases of benefits due in respect of the risks referred to in paragraph [1(a)].'

5 Article 4(1) of that directive reads as follows:

'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.'

Directive 2006/54

6 Article 1 of Directive 2006/54, entitled 'Purpose', 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:

…

(c) occupational social security schemes.

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

7 Article 2 of that directive, entitled 'Definitions', provides in paragraph 1:

'For the purposes of this Directive, the following definitions shall apply:

…

(b) "indirect discrimination": 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;

…

(f) "occupational social security schemes": 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 such 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

The Workers' Statute

8 Article 37 of the Ley del Estatuto de los Trabajadores (the Law on the Workers' Statute), in the version resulting from the Real Decreto Legislativo 2/2015, por el que se aprueba el texto refundido de la Ley del Estatuto de los Trabajadores (Royal Legislative Decree No 2/2015 approving the consolidated text of the Law on the Workers' Statute) of 23 October 2015 (BOE No 255 of 24 October 2015, p. 100224) ('the Workers' Statute'), entitled 'Weekly rest period, public holidays and leave', provides in paragraph 6:

'Any person who, for reasons of legal custody, takes direct care of a child under the age of 12 years or of a person with a disability who is not in gainful employment shall be entitled to a reduction in his or her daily hours of work, with a proportionate reduction in salary, of a minimum of one eighth and a maximum of one half of the duration of those hours.

…

The reductions in hours of work referred to in the preceding paragraph constitute an individual right enjoyed by male and female workers. …'

Decree on accidents at work

9 Article 60 of the Reglamento de aplicación del texto refundido de la legislación de accidentes del trabajo (implementing regulation of the consolidated text of the legislation on accidents at work), in the version resulting from the Decreto por el que se aprueba el texto refundido de la legislación de accidentes del trabajo y Reglamento para su aplicación (Decree approving the consolidated text on accidents at work and its implementing regulation) of 22 June 1956 (BOE No 197 of 15 July 1956) ('the Decree on accidents at work'), is worded as follows:

'The basic salary for the allowance or the pension in cases where the worker receives his or her remuneration per unit of time shall be determined in accordance with the following rules:

…

2. The basic annual salary for the pension, or income, in the event of permanent incapacity or death is calculated as follows:

(a) Daily salary. The amount received for a normal working day by the worker on the date of the accident is multiplied by 365 days of the year.

…'

The General Law on Social Security

10 Article 237 of the Ley General de la Seguridad Social (General Law on Social Security), in the version resulting from the Real Decreto Legislativo 8/2015, por el que se aprueba el texto refundido de la Ley General de la Seguridad Social (Royal Legislative Decree No 8/2015 approving the consolidated text of the General Law on Social Security) of 30 October 2015 (BOE No 261 of 31 October 2015, p. 103291) ('the General Law on Social Security'), provided, at the time of the facts in the main proceedings:

'1. Periods of leave of a maximum duration of three years to which workers are entitled under Article 46(3) of the [Workers' Statute], to care for each child or child placed with a permanent foster family or in foster care for the purposes of adoption, shall be considered as an actual contribution period for the

purposes of the corresponding social security benefits in relation to retirement, permanent incapacity, death and survivorship, maternity and paternity.

…

3. The contributions paid during the first two years of the period of reduced working hours to care for children provided for in the first subparagraph of Article 37(6) of the [Workers' Statute] shall be increased up to 100% of the amount which would have corresponded to non-reduced working hours for the purposes of the benefits referred to in paragraph 1. …

The contributions paid during the periods of reduced working hours provided for in the last subparagraph of Article 37(4) and the third subparagraph of Article 37(6) of the [Workers' Statute] shall be increased by up to 100% of the amount which would have corresponded to non-reduced working hours, for the purposes of benefits in relation to retirement, permanent incapacity, death and survivorship, childbirth and childcare, risks linked to pregnancy, breastfeeding and temporary incapacity.'

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

11 KT was employed by Alcampo as a cashier and, since 2 January 2008, benefited from a measure for the reduction in normal working hours to which workers with legal custody of a child under the age of 12 are entitled. Consequently, her normal working hours, which were 39.5 hours per week, were reduced, first, between 2 January 2008 and 30 November 2017, by 50%, subsequently, between 1 and 31 December 2017, to 30 hours per week and, finally, from 1 January 2018, to 20 hours per week. That measure for the reduction in working hours, which was accompanied by a proportional reduction in salary, was to end on 6 October 2019.

12 On 13 April 2019, KT suffered an accident at work, which caused a contusion of the hip and the left knee, as a result of which, from 29 October 2019, she was temporarily unable to work. On 14 June 2019, her employer dismissed her, thereby terminating the employment relationship. As a result of complications, KT had to undergo surgery on 1 February 2021, consisting of the fitting of a total left knee prosthesis.

13 By decision of the INSS of 2 August 2021, it was acknowledged that KT was suffering from total permanent incapacity as a result of an accident at work, for which she was awarded a total permanent incapacity pension calculated on the basis of her actual salary at the date of the accident, that is to say, 50% of the amount corresponding to a full-time position, the amount of which was set at EUR 8 341.44 per annum.

14 After the INSS rejected her complaint against its decision of 2 August 2021, KT brought an action, on 30 March 2022, against that decision before the Juzgado de lo Social nº 3 de Barcelona (Social Court No 3, Barcelona, Spain), which is the referring court, claiming that the basis of the calculation for her total permanent incapacity pension is set at EUR 16 236 per annum, on the basis of a salary corresponding to a full-time position, without taking into account the measure for the reduction in working hours which she benefited from on the date of the accident.

15 Before that court, KT claims that Article 60 of the Decree on accidents at work, pursuant to which the permanent incapacity pension as a result of an accident at work is determined on the basis of the worker's actual remuneration on the date of the accident, gives rise to indirect discrimination on ground of sex for workers who, on that date, benefited from a measure for the reduction in working hours to care for a minor child and a proportionate reduction in their salary. Such a measure for the reduction in working hours predominantly benefits female workers so that those workers are particularly disadvantaged, compared to male workers, in the calculation of their rights to a permanent incapacity pension.

16 For its part, the INSS contends before the referring court that if KT's accident at work had occurred in the first two years of the period during which she had benefited from a measure for the reduction in working hours, the incapacity pension would have been determined on the basis of a corresponding remuneration for a full-time position. It is only from the third year that it was necessary to take into account, for the purpose of the calculation of the permanent incapacity pension as result of an accident at work, the remuneration that the worker actually received at the time of the operative event. In any event, it was entirely justified to determine the amount of a social security benefit in accordance with the worker's actual remuneration, even in the case of a measure for the reduction in working hours to care for a child.

17 The referring court has doubts as to the compatibility with EU law of the national legislation concerning the calculation of the permanent incapacity pension for workers as a result of an accident at work. Since that pension was determined on the basis of the salary actually received by the worker on the date the accident occurred, in respect of a worker to whom a measure for the reduction in working hours has been granted to allow that worker to care for a child, it is a salary reduced by an equivalent amount which is taken into account for the purposes of that calculation. Those doubts concern whether that rule in matters of social security, although apparently neutral, gives rise to indirect discrimination on ground of sex, in so far as, statistically, a considerably higher percentage of women than men are put at a disadvantage by the calculation method set out therein.

18 The referring court notes that, in the judgment of 16 July 2009, *Gómez-Limón Sánchez-Camacho* (C537/07, EU:C:2009:462, paragraph 62), the Court held that Directive 79/9 does not require Member States to grant advantages in respect of social security to persons who have brought up children or to provide social security benefit entitlements where employment has been interrupted in order to bring up children. However, that judgment does not remove all doubt as to the interpretation of EU law.

19 First, the Court has not examined whether the national legislation at issue in the case that resulted in that judgment gave rise to indirect discrimination on ground of sex, to the detriment of female workers.

20 Second, the Court also did not examine the existence of discrimination established on the basis of statistical data. The TGSS's statistical data show that, of the 224 513 workers who benefited, without interruption, between the years 2020 and 2022, from the right to the reduction in working hours under Article 37(6) of the Workers' Statute, 202 403 (90.15%) were women and 22 110 (9.85%) were men.

21 Third, account must be taken, however, of the fact that during the first two years during which the worker concerned benefits from a measure for the reduction in working hours, the contributions paid are taken into account at 100%, as if that worker had been employed full-time, since that advantage constitutes a contributory social security benefit.

22 In those circumstances, the Juzgado de lo Social nº 3 de Barcelona (Social Court No 3, Barcelona) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Is the Spanish rule on calculating the basic amount of benefits for permanent invalidity resulting from an accident at work, established in Article 60 of the [Decree on accidents at work], contrary to the EU rules established in Article 4 of [Directive 79/7] and Article 5 of [Directive 2006/54], in so far as this would constitute a case of indirect discrimination on [ground] of sex, since it is mostly women who reduce their working hours to care for children and therefore the benefit entitlement is clearly lower [to that granted to men]?

(2) Bearing in mind that the Spanish rule establishing the method used to calculate benefits for permanent invalidity resulting from an accident at work – Article 60(2) of the [Decree on accidents at work] – takes account of the salary actually received at the time of the accident, and that the Spanish public

social security system establishes, as a contributory family benefit – Article 237(3) of the [General Social Security Law] – that, during the first two years of the period when working hours are reduced to care for a child, as provided for in Article 37(6) of the [Workers' Statute], [the contributions] are [fictitiously] increased to 100% [of the contribution basis], and that, according to statistical data, 90% of the persons applying for a reduction [in their] working hours to care for a child are women, are the [abovementioned] Spanish rules contrary to Article 8 [TFEU], Articles 21 and 23 of the [Charter], Article 4 of [Directive 79/7] and Article 5 of [Directive 2006/54], and do they constitute indirect discrimination on [ground] of sex?'

Consideration of the questions referred

23 By its two questions, the referring court, in essence, asks the Court to interpret Article 8 TFEU, Articles 21 and 23 of the Charter, Article 4 of Directive 79/7 and Article 5 of Directive 2006/54.

24 As regards, first, the applicability of Directives 79/7 and 2006/54 to the dispute in the main proceedings, it is apparent from the file before the Court that the permanent incapacity pension as a result of an accident at work is provided for in a provision of national law – namely Article 195(1) of the General Social Security Law – is granted to any person declared permanently incapacitated who satisfies the conditions for affiliation to the Spanish social security system, independently of any prior contribution period, and ensures protection against the risk of an accident at work and invalidity.

25 Such a benefit comes under Directive 79/7, since it forms part of a statutory scheme providing protection against two of the risks listed in Article 3(1) of that directive – namely accidents at work and invalidity – and is directly and effectively linked to protection against those risks. By contrast, Directive 2006/54 which, in accordance with point (c) of the second paragraph of Article 1 thereof, read in conjunction with Article 2(1)(f) thereof, does not apply to statutory regimes governed by Directive 79/7, is not applicable to the main proceedings.

26 Thus, only Directive 79/7 is relevant for the purposes of the response to the questions referred.

27 As regards, first, the provisions of primary EU law mentioned in the wording of the questions referred, it should be noted that Article 8 TFEU provides that, in all its activities, the European Union is to aim to eliminate inequalities and to promote equality between men and women, whereas Articles 21 and 23 of the Charter enshrine, respectively, the principle of non-discrimination and the principle of equality between women and men.

28 Since the principles of equal treatment of men and women and non-discrimination on ground of sex are enshrined, in matters of social security, in Article 4 of Directive 79/7, it is necessary, in the absence of any clarification as regards the reasons which led the referring court also to ask about the interpretation of Article 8 TFEU and Articles 21 and 23 of the Charter, to examine the questions referred solely in the light of that directive.

29 In those circumstances, it must be considered that, by its two questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 4(1) of Directive 79/7 must be interpreted as precluding national legislation of a Member State which provides that a permanent incapacity pension as a result of an accident at work is calculated on the basis of the salary actually received by the worker on the date of the accident, including a worker who benefited, on that date, from a measure for the reduction in working hours to care for a child, in a situation where the group of workers who benefit from such a measure are predominantly female.

30 In that regard, 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 30 June 2022, *INSS (Combination of total occupational invalidity pensions)*, C625/20, EU:C:2022:508, paragraph 30 and the case-law cited).

31 Accordingly, EU law does not, in principle, preclude a Member State from deciding to determine the permanent incapacity pension resulting from an accident at work by taking into account the salary actually received by the worker on the date of the accident. 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 (see, to that effect, judgment of 30 June 2022, *INSS (Combination of total occupational invalidity pensions)*, C625/20, EU:C:2022:508, paragraph 31).

32 It is not in dispute that national legislation such as that at issue in the main proceedings does not establish any direct discrimination on ground of sex, since it applies without distinction to male and female workers. It is therefore necessary to examine whether such national legislation may give rise to indirect discrimination on ground of that criterion.

33 In accordance with the Court's case-law, in the context of Directive 79/7, indirect discrimination on ground of sex must be understood as the application of an apparently neutral provision, criterion or practice that 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 (judgment of 30 June 2022, *INSS (Combination of total occupational invalidity pensions)*, C625/20, EU:C:2022:508, paragraph 33 and the case-law cited).

34 The existence of such a particular disadvantage might be established, inter alia, if it were proved that national legislation is to the disadvantage of a significantly greater proportion of persons of one sex as compared with persons of the other sex (judgment of 30 June 2022, *INSS (Combination of total occupational invalidity pensions)*, C625/20, EU:C:2022:508, paragraph 38 and the case-law cited).

35 In a situation where, as in the present case, statistical evidence is available to the national court, the Court has previously held that the best approach to the comparison of such evidence is to compare, on the one hand, the proportion of workers who are affected by the rule at issue within the male workforce and, on the other hand, the same proportion within the female workforce (see, to that effect, judgment of 30 June 2022, *INSS (Combination of total occupational invalidity pensions)*, C625/20, EU:C:2022:508, paragraph 40 and the case-law cited).

36 In that context, it is for the national court to assess the reliability of the statistical evidence adduced before it and to determine 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 (see, to that effect, judgment of 30 June 2022, *INSS (Combination of total occupational invalidity pensions)*, C625/20, EU:C:2022:508, paragraph 41 and the case-law cited).

37 More generally, although, in the procedure laid down by Article 267 TFEU providing for cooperation between national courts and the Court of Justice, the national court alone has jurisdiction to determine and assess the facts in the case before it, it is nevertheless for the Court of Justice to provide that national court with all the elements of interpretation of EU law which may be of assistance in adjudicating in the case pending before it (see, to that effect, judgments of 25 February 2025, *Alphabet and Others*, C233/23, EU:C:2025:110, paragraph 34, and of 27 February 2025, *Apothekerkammer Nordrhein*, C517/23, EU:C:2025:122, paragraph 56).

38 In the present case, it is apparent from the order for reference that, in accordance with Article 60(2) of the Decree on accidents at work, the permanent incapacity pension as a result of an accident at work is calculated taking into account the salary actually received by the worker on the date of the accident. It

follows that, in the event that, on that date, that worker benefited from a measure for the reduction in working hours, in accordance with Article 37(6) of the Workers' Statute, his or her permanent incapacity pension must be calculated with reference to the salary received for those reduced working hours and not with reference to the salary corresponding to a full-time position. As is apparent from paragraphs 17 and 20 above, the referring court has doubts as to whether such a provision of national law gives rise to indirect discrimination on ground of sex.

39 The referring court's doubts are based on the dual premiss, first, that the calculation rule laid down in Article 60(2) of the Decree on accidents at work puts the group of workers who have benefited from a measure for the reduction in working hours to care for a child at a particular disadvantage and, second, that that group is overwhelmingly made up of female workers. The request for a preliminary ruling states, in that regard, that more than 90% of the workers who benefited, without interruption, between the years 2020 and 2022, from such a measure for the reduction in working hours were female.

40 Subject to the checks which are for the referring court to carry out, it must be noted that, in that regard, first, as the Commission pointed out in its written observations, the provision of national law at issue in the main proceedings seems likely to have the adverse consequences referred to in paragraph 39 above for all workers who have benefited from a measure for the reduction in working hours, whatever the reason, and not only for those who have benefited from such a measure to care for a child.

41 Second, a calculation rule such as that laid down in Article 60(2) of the Decree on accidents at work has adverse consequences only for workers who are incapacitated as a result of an accident at work which occurred during the period in which working hours were reduced.

42 Third, the INSS and the Spanish Government submitted at the hearing before the Court that, under Article 237(3) of the General Law on Social Security, the contributions paid for a worker benefiting from a measure for the reduction in working hours to care for a child had, at the time of the facts in the main proceedings, during the first two years, increased by up to 100% of the amount of the contribution corresponding to the full-time salary, so that the permanent incapacity benefit resulting from an accident at work which occurred during that period is equal to that to which he or she would have been entitled if in full-time work, which it is nevertheless for the referring court to verify. Consequently, the application of the calculation rule laid down in Article 60(2) of the Decree on accidents at work had adverse consequences for the workers referred to in the previous paragraph only from the third year of the period in which working hours were reduced.

43 It is clear, in that regard, from the Court's case-law, that the acquisition of entitlement to social security benefits following periods of interruption of employment due to the bringing up of children is a matter for the Member States to regulate. Directive 79/7 in no way obliges the Member States to grant advantages in respect of social security to persons who have brought up children or to provide benefit entitlements where employment has been interrupted in order to bring up children (see, to that effect, judgment of 16 July 2009, *Gómez-Limón Sánchez-Camacho*, C537/07, EU:C:2009:462, paragraphs 61 and 62).

44 In those circumstances, the statistical data referred to by the referring court does not make it possible to establish that a group of workers who are particularly disadvantaged by the national legislation at issue in the main proceedings is predominantly composed of women who have benefited from a measure for the reduction in working hours to care for a child (see, by analogy, judgment of 14 April 2015, *Cachaldora Fernández*, C527/13, EU:C:2015:215, paragraph 32).

45 The general statistical data referred to in paragraph 20 above relate to the total number of workers who have benefited, without interruption, between the years 2020 to 2022, from a measure for the reduction in working hours in accordance with Article 37(6) of the Workers' Statute and to their distribution

between female and male workers. Thus, those statistical data do not target all workers specifically disadvantaged by the calculation rule laid down in Article 60(2) of the Decree on accidents at work, nor do they make it possible to establish, a fortiori, the respective proportions of male and female workers who would be put at a disadvantage by the application of that provision of national law, in accordance with the method referred to in paragraph 35 above.

46 Consequently, Article 60(2) of the Decree on accidents at work cannot, on the basis of the information described in that request for a preliminary ruling, be considered as putting a specific category of workers, which is predominantly made up of women, at a particular disadvantage.

47 In the event that the referring court were to find evidence that the national legislation at issue in the main proceedings puts female workers at a particular disadvantage, it would still have to determine whether it pursues a legitimate aim and whether it is necessary and proportionate to that aim.

48 In the light of the foregoing, the answer to the questions referred is that Article 4(1) of Directive 79/7 must be interpreted as not precluding legislation of a Member State which provides that a permanent incapacity pension as a result of an accident at work is calculated on the basis of the salary actually received by the worker on the date of the accident, including a worker who benefited, on that date, from a measure for the reduction in working hours to care for a child, in a situation where the group of workers who benefit from such a measure are predominantly female.

Costs

49 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 (Sixth 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 not precluding legislation of a Member State which provides that a permanent incapacity pension as a result of an accident at work is calculated on the basis of the salary actually received by the worker on the date of the accident, including a worker who benefited, on that date, from a measure for the reduction in working hours to care for a child, in a situation where the group of workers who benefit from such a measure are predominantly female.

[Signatures]

* Language of the case: Spanish.