



17.5.2024

NOTICE TO MEMBERS

Subject: Petition No 0897/2023 by Juan Ignacio Navas Marqués (Spanish) on discrimination regarding the retirement age of airline flight crew

1. Summary of petition

The petitioner states that Article 205 of Royal Decree 8/2015, approving the revised text of the General Social Security Act, sets out the categories of workers who are entitled to a retirement pension, together with the corresponding conditions. Under Article 206, the minimum age for accessing a retirement pension may be lowered by Royal Decree for occupational groups or activities whose work is particularly strenuous, toxic, dangerous or unhealthy and leads to high morbidity or mortality levels, provided that the other conditions are met. On the basis of that article, Royal Decree 1559/1986 reduces the retirement age for flight personnel involved in aerial work. Due to the particular conditions involved in aviation work and the premature ageing they cause, the chosen formula reduces the normal retirement age by means of ‘reduction coefficients’ for the period of time actually worked. Article 2 of the same Royal Decree provides that the required minimum age will be reduced by a period equivalent to the coefficient applied to the time actually worked: (a) 0.40 for pilots and co-pilots; (b) 0.30 for aircraft mechanics, aerial photography operator navigators, technological equipment operators, aerial photographers and aerial camera operators. The ministry will carry out the necessary assimilations of occupational categories to apply the coefficients laid down. However, cabin crew – previously referred to as ‘flight attendants’ – are excluded from this Royal Decree, despite the fact that their work takes place in dangerous conditions and may be regarded as strenuous. This constitutes serious discrimination. The existing data reveal that the percentage of men and women working as cabin crew in the airlines referred to is far from being ‘equal’. Therefore, this discrimination against cabin crew – whereby the pensionable age reduction coefficients are not applied to them – has a particularly severe impact on female workers and represents indirect discrimination on grounds of sex (Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006, which defines indirect discrimination as a practice that puts persons of one sex at a particular disadvantage).

2. Admissibility

Declared admissible on 8 December 2023. Information requested from Commission under Rule 227(6).

3. Commission reply, received on 17 May 2024

The petitioners inform that Spanish pension legislation reduces the retirement age for flight personnel due to the particular conditions involved in aviation work and the premature ageing they cause. However, cabin crew personnel are excluded from this preferential treatment, despite the fact that their work takes place in dangerous conditions and may be regarded as strenuous. The petitioner considers excluding the cabin crew personnel from reduced retirement age, as stipulated by Royal Decree 1559/1986, as discriminatory.

The petitioner argues that the provision reducing retirement age for pilots, but not for cabin crew personnel, is indirectly discriminatory against women because most cabin crew staff are women. He claims that therefore the provision violates the prohibition of indirect sex discrimination provided for in Directive 2006/54 on sex equality in employment¹ and Directive 79/7 on sex equality in social security².

According to Article 153, paragraph 4 of the Treaty on the Functioning of the European Union, Member States have the right to define the fundamental principles of their social security system. The European Union only supports and complements the activities of Member States, primarily through facilitating mutual learning, analysis and policy guidance with regards to social protection.

In the absence of EU law regulating the definition of arduous or hazardous professions under national pension legislation and the retirement age of persons exercising these professions, identifying and regulating professions with special retirement regime remains exclusively national competence.

When a Directive has been transposed into national law, such as the mentioned Directive 2006/54 and Directive 79/7 in Spain, persons who believe to have been discriminated against are encouraged to bring a complaint before the national authorities, including national courts, who are competent to enforce the rights of citizens deriving from the Directive. This is particularly the case regarding complaints of indirect discrimination, since their examination requires an analysis of facts and an evaluation of the possible justification and proportionality of the measures that the national courts are best placed to do.

We notice, however, that there have been several cases before the Spanish courts on this matter. Therefore, the Commission will investigate this matter further, in order to determine if it is necessary and appropriate for it to intervene.

Conclusion

Regarding the alleged indirect sex discrimination, in possible violation of Directive 2006/54 (regarding occupational pensions) and/or Directive 79/7 (regarding statutory pensions), the

¹ 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), OJ L 204, 26.7.2006, p. 23–36.

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 L 6, 10.1.1979, p. 24

Commission will investigate this matter further, in order to determine if it is necessary and appropriate to intervene. The Commission will inform the European Parliament about its findings.