Gender discrimination in the workplace under the case-law of the Court of Justice

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Resolution of the Supreme Court file No 5 Cdo 56/2014

- *‘It is clear from the content of the claim, as well as from the content of the plaintiff's individual petitions, that, among other factual and legal circumstances, it justifies under the invalid dismissal the claim that the employer directly discriminated against the plaintiff on the grounds of her gender, which he was supposed to have committed by the fact that he proceeded differently (discriminatory) in her case and differently in the case of another employee in a similar situation as the plaintiff in the implementation of organizational measures, which should have resulted in an invalid dismissal. The stated fact cannot be overlooked even where it is a labor law dispute and in the present case part of the invalid claims were excluded for separate proceedings (which this part of the claims did not concern). The court shall examine all the reasons claimed by the plaintiff for the invalidity of the notice given, especially where these will be decisive from the point of view of the scope of awarding wage compensation, as is the case in the present case (see ECJ judgment C-271/91 in the case of M.H. Marshall in Southhampton and South West Hampshire Area Health Authority).’*

According to award C-271/91 M.H.Marshall and Southampton and South West Hampshire Area Health Authority of 2.8.1993

‘The interpretation of Article 6 of Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions must be that reparation of the loss and damage sustained by a person injured as a result of discriminatory dismissal may not be limited to an upper limit fixed a priori or by excluding an award of interest to compensate for the loss sustained by the recipient of the compensation as a result of the effluxion of time until the capital sum awarded is actually paid.’

Art. 18 of Directive 2006/54/EC from 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation **(recast):**

- *'Member States shall introduce into their national legal systems such measures as are necessary to ensure real and effective compensation or redress, if Member States so decide on the issue of loss and damage suffered by an injured person as a result of discrimination on grounds of sex, in such a way that which is dissuasive and proportionate to the harm suffered. Such compensation or remedy may not be limited by fixing a ceiling in advance, except in cases where the employer can prove that the only damage the applicant has suffered as a result of discrimination within the meaning of this Directive is the refusal to consider his application for employment.'*

C-407/14 – punitive damages

- In the light of the foregoing, the answer to the question referred is that Article 18 of Directive 2006/54 must be interpreted as meaning that, in order for the loss and damage sustained as a result of discrimination on grounds of sex to be the subject of genuine and effective compensation or reparation in a way which is dissuasive and proportionate, that Article requires Member States which choose the financial form of compensation to introduce in their national legal systems, in accordance with detailed arrangements which they determine, measures providing for payment to the person injured of compensation which covers in full the loss and damage sustained.
- The Supreme Court of the Slovak Republic (hereinafter referred to as the 'Supreme Court of the Slovak Republic') in the Resolution in the plaintiff's case dated 24th of March 2015 (5 Cdo 56/2014), when it stated that '[i]t is indisputable that where the dismissal occurred as a result of discrimination by employer, the remedy for the removal of the illegal situation is a restitution action within the meaning of Article 9(2) of the Anti-Discrimination Act, by which the plaintiff seeks the correction of the illegal situation (discrimination) and the removal of the consequences of the illegal action. In such a case, the action to determine the invalidity of the notice and compensation of wages will have the character of a restitution action within the meaning of Article 9(2) of the Anti-Discrimination Act (...)'.

C-624/19 - Tesco Stores Ltd.

- ‘Article 157 TFEU must be interpreted as having direct effect in proceedings between individuals in which failure to observe the principle of equal pay for male and female workers for ‘work of equal value’, as referred to in that Article, is pleaded.’
- According to the latest judgment of the Court of Justice of the European Union, in the legal case C-624/19 Tesco Stores Ltd., the Court of Justice distinguished between different establishments of the employer, pointing to the same source of working conditions within one employer. ‘In that context, the question whether the workers concerned perform ‘equal work’ or ‘work of equal value’, as referred to in Article 157 TFEU, is a matter of factual assessment by the court. In that regard, it should be noted that it is for the national court, which alone has jurisdiction to find and assess the facts, to determine whether, in the light of the actual nature of the activities carried out by those workers, equal value can be attributed to them (see, to that effect, judgments of 31 May 1995, *Royal Copenhagen*, C-400/93, EU:C:1995:155, paragraph 42, and of 26 June 2001, *Brunnhofer*, C-381/99, EU:C:2001:358, paragraph 49 and the case-law cited).’

C-624/19 - Tesco Stores Ltd.

‘It must be pointed out at the outset that the very wording of Article 157 TFEU cannot support that interpretation. That article states that each Member State is to ensure that the principle of equal pay for male and female workers for equal work or work of equal value is applied. Therefore, it imposes, clearly and precisely, an obligation to achieve a particular result and is mandatory as regards both ‘equal work’ and ‘work of equal value’.

‘Thus, the Court has already held that, since Article 157 TFEU is of such a mandatory nature, the prohibition on discrimination between male and female workers applies not only to the action of public authorities but also extends to all agreements which are intended to regulate paid labour collectively, as well as to contracts between individuals (judgment of 8 May 2019, *Praxair MRC*, C-486/18, EU:C:2019:379, paragraph 67 and the case-law cited).’

Resolution of the Supreme Court file No 4Cdo/89/2020 from 23rd of September 2021

- *'Proper reasoning why the court of first instance decided not to carry out the evidence proposed by the plaintiff was of key importance in the given case, considering the principle of equality of arms. The court of first instance, in spite of the fact that the plaintiff requested to carry out evidence in the direction that the defendant a/ imposes an information obligation, whether during the employment relationship (27 years) the plaintiff was remunerated beyond the normal agreed wage for the performance of his work tasks, ... , if so, when and in what way, he did not carry out the proposed evidence without further justification, despite the fact that the plaintiff claimed that the employment relationship with the named workers was not terminated and objected that the defendant violated the principle of equal treatment'*