



Vastuvõtmise kuupäev : 28/07/2026

Anonymised version

Translation

C-622/26 – 1

Case C-622/26 [Modeños]ⁱ

Request for a preliminary ruling

Date lodged:

9 June 2026

Referring court:

Tribunal Superior de Justicia de Galicia (Spain)

Date of the decision to refer:

27 May 2026

Appellant:

WH

Respondents:

Instituto Nacional de la Seguridad Social (INSS)

Tesorería General de la Seguridad Social (TGSS)

[...]

[...] **SALA DE LO SOCIAL DEL TRIBUNAL SUPERIOR DE JUSTICIA DE GALICIA (SOCIAL CHAMBER OF THE HIGH COURT OF JUSTICE, GALICIA)** [...]

[Identification of the referring court, the parties and the representatives]

ORDER

[...]

ⁱ The name of the present case is a fictitious name. It does not correspond to the real name of any party to the proceedings.

[Identification of the proceedings, the presiding judge, the parties and their representatives]

FACTS

FIRST. Ms WH brought an action against the Instituto Nacional de la Seguridad Social (National Social Security Institute) ('the INSS'). That action was referred for hearing and adjudication to the Juzgado de lo Social número 2 de los de Vigo (Social Court No 2, Vigo), which dismissed the action by judgment of 16 January 2025.

SECOND. In the aforementioned judgment, the following facts are declared to be established: 'FIRST. Ms WH, born on 1 January 1956, has made contributions to the general social security scheme for a total of 7939 days. Her last employment relationship having ended on 25 October 1991, she went on to receive unemployment benefit from 9 November 1991 to 8 November 1993. The applicant has a son who was born in 1976. SECOND. Ms WH has been registered as a jobseeker since September 2017 and received unemployment benefit from 12 April 2019 to 11 March 2020. THIRD. On 9 November 2023, she applied for a contributory retirement pension, which was refused by administrative decision of the National Social Security Institute of 13 November 2023 on the ground that she did not meet the specific qualifying period requirement, that is to say 730 days of contributions within the 15 years prior to the date of the operative event, that is to say, as at November 2023. FOURTH. The statistical evidence provided by the applicant shows that the employment rate among those aged between 50 and 65 is higher in men than women; that retirement pensions are received by 41% of women and 58% of men, suggesting that the specific qualifying period requirement affects women more, since the difference in retirement pension take-up rates between men and women is greater than the difference in employment rates between them, and that the rate of leaving work to take up caring responsibilities among those aged 50 and over is higher in men than women'.

THIRD. The operative part of the aforementioned decision is worded as follows: 'Having dismissed the action brought by Ms WH, I must and do acquit the National Social Security Institute and the Tesorería General de la Seguridad Social (General Social Security Fund) of all of the claims raised against them'.

FOURTH. The applicant filed an application for reconsideration against that judgment before this High Court of Justice, Galicia. There is no record of the INSS having challenged that application.

FIFTH. Following the report of the Judge-Rapporteur and the deliberation of the Chamber, this court decided, by interlocutory order of 23 April 2026, as follows: 'Given that, in the opinion of this Section of the Social Chamber of the High Court of Justice, Galicia, there are doubts regarding the correct interpretation of the EU legislation applicable to the present case, it is hereby decided to suspend the time limit for delivering judgment and to open for a period of ten days a

process allowing the parties to submit observations on the prospect of a reference for a preliminary ruling on interpretation being made to the Court of Justice of the European Union, under Article 267 of the Treaty on the Functioning of the European Union (formerly Article 234 TE[C]), in connection with the following matters: 1. The first question that might be referred is whether the statistical evidence adduced by the applicant to show that the rate of employment among those aged between 50 and 65 is higher in men than women, that retirement pensions are received by 41% of women and 55% of men, and that the rate of leaving work to take up caring responsibilities among those aged 50 and above is higher in women, is to be regarded as an indication of a particular disadvantage to women such as to give rise to indirect discrimination in connection with the specific qualifying period requirement attached to eligibility for the retirement pension (Article 205(1)(b) of the Recast Text of the General Law on Social Security (TRLGSS)), in the light of the administering body's persistent refusal, despite court orders to this effect, to provide data, broken down by sex, on the pensions which have been refused in the last five years – from 1 January 2019 to 31 December 2023 – for failure to meet the specific qualifying period requirement, the number of those refused to men and to women during that period and the percentage of refusals by sex. And 2. The second question that might be referred is whether a national provision such as Article 205(1)(b) of the TRLGSS, under which eligibility for a retirement pension is contingent upon a specific contribution period of two years in the last 15 years, may be interpreted as constituting a particular disadvantage amounting to indirect discrimination on grounds of sex contrary to 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, and Article 4(1) thereof, which sets out the prohibition of discrimination on grounds of sex, given that, according to the established facts of the judgment [at first instance], the rate of employment among those aged 50 to 65 years of age is higher in men than women, that retirement pensions are received by 41% of women and 58% of men, and that the rate of leaving work to take up caring responsibilities in those aged 50 and above is higher in women, which would support the conclusion that the specific qualifying period requirement is a condition of eligibility for a retirement pension that is more difficult for women to meet than men'.

SIXTH. Both parties to the proceedings have submitted observations. In its observations, the applicant, favourable to the prospect of a request for a preliminary ruling being made, concludes: 'May this document be deemed to have been lodged and may the submissions in reference to the making of a request for a preliminary ruling by the Chamber to which we address ourselves be deemed to have been made'.

Counsel for the Social Security Administration, acting for and on behalf of the National Social Security Institute), concludes his submissions by saying: 'May this statement of observations be deemed to have been lodged and may the making of a request for a preliminary ruling be declared inappropriate'.

LEGAL GROUNDS

FIRST. Factual circumstances. In the light of the factual background and the facts – not disputed on application for reconsideration – declared to be established in the judgment at first instance, the circumstances to be taken into consideration for the purposes of the submission of a request for a preliminary ruling to the Court of Justice of the European Union are as follows:

1. The applicant, born on 1 January 1956, has made a total of 7,389 days of contributions to the general social security scheme. Her last employment relationship ended on 25 October 1991, after which she received unemployment benefit from 9 November 1991 to 8 November 1993.

The applicant has been registered as a jobseeker since September 2017, and received unemployment benefit from 12 April 2019 to 11 March 2020.

2. By application [to the administrative authority] of 9 November 2023, she sought recognition of her eligibility for a contributory retirement pension, which was refused by decision of 13 November 2023 on the ground that she did not meet the specific qualifying period requirement (two years of contributions within the 15 years prior to the date of the operative event).

3. The action at law having been brought and admitted by Social Court No 2, Vigo, the defendant administering body was required to provide the documents requested in the supplementary petitions set out at the end of the application initiating the action at law. By interlocutory order of 12 June 2024, the Social Court required the INSS: to submit to the court the documents requested by the applicant in the third supplementary petition in the application initiating her action at law (data on the pensions refused in the last five years, that is to say from 1 January 2019 to 31 December 2023, on the ground of failure to fulfil the specific qualifying period requirement, broken down by sex, that is to say, how many pensions were refused to men and how many to women during that period); and, in addition, to provide a calculation of the percentage which those refusals represent in the context of the conditions applicable to each of the two sexes during that period.

The INSS having failed to comply with that order, the court, by measure of organisation of procedure of 11 September 2024, again instructed the INSS to comply with the directions of the aforementioned order.

4. The judgment at first instance dismissed the action, refused to grant the retirement pension on the ground that the applicant did not meet the specific qualifying period requirement, and found that it was not appropriate to apply the ‘parenthesis doctrine’ for the purposes of calculating the specific qualifying period, in the light of the particular circumstances of the case.

5. The applicant filed an application for reconsideration of that judgment, claiming that the judgment should be declared void for failing to recognise that

the specific qualifying period requirement has an adverse effect on women, and, in the alternative, that the judgment should be set aside and the applicant recognised as being entitled to, and paid, the retirement pension, on the ground, inter alia, that the specific qualifying period requirement may be indirectly discriminatory on grounds of sex.

That application for reconsideration was not contested by the INSS.

SECOND. Domestic legislative framework.

– Article 205(1)(b) of Royal Legislative Decree 8/2015 of 30 October 2015 adopting the recast text of the General Law on Social Security (LGSS) provides that ‘the retirement pension provided for in this chapter shall be payable to persons covered by the general scheme who, in addition to meeting the general condition laid down in Article 165(1), meet the following conditions:

... (b) They have completed a minimum contribution period of 15 years, of which at least two shall fall within the 15 years immediately preceding the date on which entitlement is triggered. For the purposes of calculating the number of years of contributions, account shall not be taken of the proportion thereof accounted for by extraordinary payments.

In cases where a person becomes eligible for the retirement pension whilst registered with the social security system or in a status equivalent to registration, and is under no obligation to contribute, the two-year period referred to in the previous paragraph must fall within the 15 years immediately preceding the date on which the obligation to contribute ceased’.

– Royal Decree 84/1996 of 26 January 1996 adopting the General Rules on the registration of undertakings and the recruitment, registration and deregistration of workers with, and changes to the data relating to workers held by, the social security service. It describes a situation treated as equivalent to registration as one of ‘involuntary unemployment following the exhaustion of contributory or non-contributory benefits, provided, in such circumstances, that the person concerned remains registered as unemployed at the job centre’.

For the purposes of their interpretation, it is worth noting that these provisions have been made more flexible by the case-law of the Tribunal Supremo (Supreme Court) in the form of the so-called ‘parenthesis doctrine’, whereby periods during which a working person has not made social security contributions for reasons beyond his or her control, including involuntary unemployment, provided that he or she can demonstrate his or her continued willingness to work by maintaining uninterrupted and up-to-date registration as a jobseeker at the relevant job centre.

THIRD. European Union law.

– 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, in particular, Article 4(1) thereof, which sets out the prohibition on discrimination on grounds of sex.

– 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): Article 2(1)(b) (concept of indirect discrimination); Article 19 (burden of proof).

FOURTH. Application of the legislation and questions referred for a preliminary ruling.

In applying the legislation set out above to the present case, this Chamber has encountered two questions.

FIRST QUESTION: The first question is whether the circumstances of the case may be regarded as exhibiting sufficient evidentiary indications of the existence of a particular disadvantage capable of constituting indirect discrimination on grounds of sex. For the purposes of establishing the existence of such a disadvantage, the court to which we are addressing ourselves has allowed the use of statistical evidence provided that the statistics cover enough individuals, do not illustrate purely fortuitous or short-term phenomena and, in general, appear to be significant (judgment of the Court of Justice of the European Union of 9 February 1999, *Seymour-Smith & Pérez*, C-167/97, ECLI:EU:C:1999:60).

Given the difficulties that providing complex statistics often presents for members of the public, the court to which we are addressing ourselves has stated that Article 19 of Directive 2006/54/EC ‘must be interpreted as not requiring the party who considers him or herself wronged by such discrimination to submit, in order to establish a *prima facie* case of discrimination, specific statistics or facts pertaining to the workers concerned by the national legislation at issue if that party does not have access to those statistics or facts or can access them only with difficulty’ (judgment of the Court of Justice of the European Union of 3 October 2019, *Schuch-Ghannadan*, C-274/18, ECLI:EU:C:2019:828).

In the present case, the applicant adduced general statistics showing that the employment rate among those aged between 50 and 65 is higher in men than women and that retirement pensions are received by 41% of women and 58% of men, suggesting that the specific qualifying period requirement affects women more, since the difference in retirement pension take-up rates between men and women is greater than the difference in employment rates between them. These are facts which the judgment at first instance expressly declared to be established and are a matter of public knowledge.

What is more, the applicant asked the court to order the INSS to adduce statistics specifically designed to show that the specific qualifying period requirement affects women more than men. The court held that evidence to be admissible and ordered the INSS to adduce it, which it failed to do, prompting a further such order, with which the INSS also failed to comply.

In those circumstances, this Chamber's first question is whether the evidence adduced by the applicant may be regarded as sufficient proof of the existence of a particular disadvantage capable of constituting indirect discrimination on grounds of sex.

SECOND QUESTION: In the event that the foregoing question is answered in the affirmative, this Chamber's second question is whether the arguments put forward by the INSS may be considered sufficient justification to rebut the indications of discrimination. The only justification which it offers in its pleadings in connection with the submission of a request for a preliminary ruling is that the case-law doctrine of 'parenthesis' relaxes the specific qualifying period requirement, and that the conditions under which that requirement may be relaxed pursuant to that doctrine are not met in this instance.

This Chamber has doubts as to whether the relaxation mechanism introduced by the case-law doctrine of 'parenthesis' is sufficient, from the point of view of proportionality, to rebut the presence of discrimination, since it does not preclude the emergence in every case of a particular disadvantage to women as regards eligibility for a retirement pension, and in particular, it does not serve to remedy the particular disadvantage suffered by the applicant in the present case.

FIFTH. In the light of all the foregoing, it is hereby decided to submit the request for a preliminary ruling on interpretation set out in the operative part of this order, in accordance with Article 267 of the Treaty on the Functioning of the European Union (formerly Article 234 of the Treaty establishing the European Community).

OPERATIVE PART

IT IS HEREBY DECIDED to refer the following questions to the Court of Justice of the European Union for a preliminary ruling:

First. Under the rules on the burden of proving discrimination on grounds of sex contained in EU law, inter alia in Article 19 of Directive 2006/54/EC, may the applicant be considered to have satisfied the burden of proving a sufficient indication of a particular disadvantage to women capable of constituting indirect discrimination in connection with the application of the specific qualifying period requirement to which eligibility for a retirement pension under the Spanish social security system is subject (Article 205(1)(b) of the TRLGSS), in the light of the fact that she has adduced evidence such as to show that the employment rate among those aged between 50 and 65 is higher in men than women, that retirement pensions are received by 41% of women and 55% of men, and that the rate of leaving work to take up caring responsibilities among those aged 50 and above is higher in women, and in the light of the evidence so adduced in conjunction with the administering body's persistent refusal, despite court orders to this effect, to provide data, broken down by sex, on the pensions which have been refused in the last five years – from 1 January 2019 to 31 December 2023 – for failure to meet the specific qualifying period requirement, the number of those

refused to men and to women during that period, and the percentage of refusals by sex?

Second. In the event that the first question is answered in the affirmative, is a provision of national law such as Article 205(1)(b) of the LGSS, which requires the completion of a specific qualifying period of two years in the last 15 years as a condition of eligibility for a retirement pension, contrary to Article 4 of Directive 79/7EEC, because it constitutes indirect discrimination on grounds of sex, in so far as it is a condition of eligibility for a retirement pension which is more difficult for women to meet than men, and, in particular, may the case-law mechanism known as the parenthesis doctrine be considered an adequate remedy for that disadvantage?

[...]

[Stay of proceedings and final procedural formulae]