

## Questions referred

1. Does a contributory retirement pension such as the one provided for under the Spanish Social Security system on the basis of the contributions made by and on behalf of the worker during his working life fall within the concept of 'employment conditions' to which the prohibition of discrimination in Clause 4 of [the Framework Agreement annexed to] Directive 97/81 <sup>(1)</sup> refers?
2. If the first question were to be answered in the affirmative and a contributory retirement pension such as that governed by the Spanish Social Security system were to be regarded as falling within the concept of 'employment conditions' referred to in Clause 4 of [the Framework Agreement annexed to] Directive 97/81, is the prohibition of discrimination laid down in that clause to be interpreted as preventing or precluding national legislation which — as a consequence of the double application of the '*pro rata temporis* principle' — requires a proportionally greater contribution period from a part-time worker than from a full-time worker for the former to qualify, if appropriate, for a contributory retirement pension in an amount reduced in proportion to the part-time nature of his work?
3. As a supplementary question to the previous ones, may rules such as the Spanish rules (contained in the 7th Additional Provision of the General Law on Social Security) governing the method of contribution, access and quantification with regard to the contributory retirement pension for part-time workers be considered to be among the 'aspects and conditions of remuneration' to which the prohibition of discrimination in Article 4 of Directive 2006/54 <sup>(2)</sup>, and Article 157 TFEU (formerly Article 141 EC), refer?
4. As an alternative question to the previous ones, in the event that the Spanish contributory retirement pension were not regarded either as a 'condition of employment' or as 'pay': Is the prohibition of discrimination on ground of sex, either directly or indirectly, laid down in Article 4 of Directive 79/7 <sup>(3)</sup> to be interpreted as preventing or precluding national legislation which — as a consequence of the double application of the '*pro rata temporis* principle' — requires a proportionally greater contribution period from part-time workers (the vast majority of whom are women) than from full-time workers for the former to qualify, if appropriate, for a contributory retirement pension in an amount reduced in proportion to the part-time nature of their work?

<sup>(1)</sup> Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC — Annex: Framework agreement on part-time work (OJ 1998 L 14, p. 9).

<sup>(2)</sup> 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 2006 L 204, p. 23).

<sup>(3)</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).

## Appeal brought on 22 July 2011 by Région Nord-Pas-de-Calais against the judgment of the General Court (Eighth Chamber) delivered on 12 May 2011 in Joined Cases T-267/08 and T-279/08 Région Nord-Pas-de-Calais and Communauté d'Agglomération du Douaisis v Commission.

(Case C-389/11 P)

(2011/C 290/06)

Language of the case: French

### Parties

*Appellant*: Région Nord-Pas-de-Calais (represented by: M. Cliquennois and F. Cavedon, avocats)

*Other parties to the proceedings*: Communauté d'Agglomération du Douaisis, European Commission

### Form of order sought

- Set aside the judgment of the General Court of the European Union of 12 May 2011 in Joined Cases T-267/08 and T-279/08;
- grant the forms of order sought at first instance by the Région Nord-Pas-de-Calais;
- order the European Commission to pay the costs.

### Pleas in law and main arguments

The appellant relies on two grounds in support of its appeal.

First, the Région Nord-Pas-de-Calais claims that the General Court erred in refusing to examine the grounds of complaint against Commission Decision C(2008) 1089 final of 2 April 2008, withdrawn and replaced by Commission Decision C(2010) 4112 final of 23 June 2010, both decisions relating to the same State aid, C 38/2007 (ex NN 45/2007). According to the appellant, the further decision was in fact a response to the written pleadings which the appellant had submitted in its initial action before the General Court, and the appellant was given no opportunity to be heard within a further prior administrative procedure.

Second, the appellant claims an infringement of the rights of the defence and the principle of the right to be heard within the administrative procedure in that the Commission adopted a further decision while absolving itself of the obligation to comply with the essential procedural requirements of that adoption. The Commission altered its analysis on the nature of the State measure at issue and revised the method for the calculation of the reference rates applicable when the State aid in favour of Arbel Fauvet Rail SA was granted.