



## European network of legal experts in gender equality and non-discrimination

### NEWS REPORT

<b>Country:</b>	Spain
<b>Title:</b>	Judgement of the Supreme Court of 18 May 2016 <sup>1</sup> confirms that collective agreements can improve legislation on reduction of working hours for parental reasons
<b>Date:</b>	8 September 2016
<b>Expert:</b>	María Amparo Ballester - Pastor
<b><u>Context</u></b>	
<b>Issue at stake:</b>	Collective agreements can improve legislation on reduction of working hours for parental reasons, even if the improvement was established in the collective agreement before the legislative reform of 2012
<b>Ground of discrimination:</b>	Sex
<b>Source:</b>	National Court decision
<b>Field:</b>	Parental Leave
<b>Applicable law:</b>	Article 37.5 of the Workers' Statute (WS) <sup>2</sup>

### **Content**

**Case development:** In Spain, Article 37.5 of the Workers' Statute (WS) regulates the right to reduced working hours for parental reasons.<sup>3</sup> According to the Article, parents, including adopting and fostering parents, of children younger than twelve can ask for a reduction in working time, in which case their salary is reduced proportionally. This parental right has existed in Spanish legislation, with only minor changes, since the beginning of its democracy. However, the labour law reform that took place with Law 3/2012, of 6 July 2012, substantially altered Article 37.5 of the Statute. Following the reform, the unremunerated reduction of working time that can be asked for based on parental reasons has to be done on a daily basis, which means that the article no longer allows the reduction to be made when related to longer periods of time. This means that the worker will not have the right to accumulate the daily reduction of time over a week and apply it all to only one day (or several days) of that week. The 2012 legislation thus reduced the workers' right to reduced working hours for parental reasons.

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<sup>1</sup> Judgement of the Supreme Court of 18 May 2016, appeal number 198/2015, <http://www.poderjudicial.es/search/doAction?action=contentpdf&databasematch=TS&reference=7726389&inks=%22198%2F2015%22&optimize=20160704&publicinterface=true>, accessed 19 July 2016

<sup>2</sup> The Workers' Statute is currently regulated by the Royal Legislative Decree of 23 October 2015, <https://www.boe.es/buscar/act.php?id=BOE-A-2015-11430&p=20151024&tn=2>, accessed 19 July 2016. The previous version of the article 37.5 of the Workers' Statute that was applicable when the judgement took place is the same than the current one.

<sup>3</sup> A detailed analysis of the changes in Spanish regulation on working time reduction for parental reasons after the labour law reform of 2012 by BALLESTER PASTOR, "Legal Effects of the Economic Crisis on Gender Equality in Spain: Effects on the Right to Reconciliate Work and Family after the 2012 Labour Law Reform", *European Gender Equality Law Review*, 2, 2012, 20-29, [http://ec.europa.eu/justice/gender-equality/files/law\\_reviews/egelr\\_2012-2\\_web\\_final\\_en.pdf](http://ec.europa.eu/justice/gender-equality/files/law_reviews/egelr_2012-2_web_final_en.pdf), accessed 19 July 2016

The Judgement of the Supreme Court of 18 May 2016 solved a conflict that arose when a company intended to apply the working time reduction for parental reasons in the terms established in Article 37.5 after the 2012 legal reform. It is the first time that the Supreme Court has ruled about the application of Article 37.5 WS after the legal reform of 2012. The worker claimed against the company, requesting the application of the collective agreement, which recognized the right to working time reduction for parental reasons in the terms established before the 2012 legal reform. The company alleged that the collective agreement was not applicable in this issue since it simply reproduced the applicable legislation. As a consequence, according to the company's argumentation, the features of the working time reduction for parental reasons should be always the established by the applicable law every time. The Supreme Court ruled against the company and recognized the right to the working time reduction for parental reasons in the terms established in the collective agreement.

**Decision of the Court:** The Judgement of the Supreme Court of 18 May 2016 confirms that collective agreements can improve legislation on reduction of working hours for parental reasons. The Judgement clarifies that the most restrictive legislation of 2012 does not eliminate the better conditions that could have been established by a collective agreement before.

**Internet link source:**

Judgement of the Supreme Court of 18 July 2016, appeal number 198/2015, <http://www.poderjudicial.es/search/doAction?action=contentpdf&databasematch=TS&reference=7726389&links=%22198%2F2015%22&optimize=20160704&publicinterface=true>, accessed 29 July 2016.

Article 37.5 WS, <https://www.boe.es/buscar/act.php?id=BOE-A-2015-11430&p=20151024&tn=2>, accessed 29 July 2016.