



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

### NEWS REPORT

<b>Country:</b>	Spain
<b>Title:</b>	Spanish legislation on unemployment benefit for part-time workers is modified to apply the judgment of the CJEU of 9 November 2017, C-98/15 (Espadas Recio Case)
<b>Date:</b>	05 October 2018
<b>Expert:</b>	María Amparo Ballester Pastor
<b><u>Context</u></b>	
<b>Issue at stake:</b>	Royal Decree 950/2018, of 27 July 2018, has applied the judgment of the CJEU of 9 November 2017, C-98/15 (Espadas Recio Case) and has, accordingly, modified the social security legislation so part-time workers have the right to the unemployment benefit taking into consideration the days that they have contributed to the social security system, and not only the days that they have effectively worked.
<b>Ground of discrimination:</b>	Sex
<b>Source:</b>	Legislation
<b>Field:</b>	Part-time work and indirect gender discrimination
<b>Applicable law:</b>	Article 3 (4) of the Royal Decree 625/1985, of 2 April 1985, on unemployment benefit

### **Content**

Royal Decree 950/2018, of 27 July 2018, has applied the judgment of the CJEU of 9 November 2017, C-98/15 (Espadas Recio Case) and, accordingly, has modified the social security legislation so part-time workers have the right to the unemployment benefit taking into consideration the days that they have contributed to the social security system, and not only the days that they have effectively worked.

A summary of the judgment of the CJUE of 9 November 2017 could help to better understand the scope of the amended regulation: According to the old Article 210 (1) of the General Law of Social Security (*Ley General de Seguridad Social* –LGSS–) the duration of the unemployment benefit is based on the number of days for which contributions were paid in the preceding six years. Currently the content of this article is in Article 269.2 of the LGSS. However, Article 3(4) of Royal Decree 625/1985 stipulates that, when contributions relate to part-time work or actual work in cases of a reduction in working hours, every day worked shall be calculated as a day in respect of which contributions have been paid, whatever the length of the working day. In its judgment, the CJEU considered that, by excluding the days not worked for calculating the unemployment benefit, Article 3(4) of Royal Decree 625/1985 established a difference in treatment to the detriment of 'vertical' part-time workers (part-time work is called 'vertical' when the person performing it concentrates his working hours on certain working days of the week and it is opposed,

to 'horizontal', which happens when the part-time worker performing its work on every working day of the week). Given that 'vertical' part-time workers were adversely affected by this national measure, and given that 70 to 80% of 'vertical' part-time workers are women, Article 3 (4) of the Royal Decree 625/1985 is discriminatory against women (indirect discrimination). The CJUE considered, then, that Article 3 (4) of the Royal Decree 625/1985 is against Article 4 (1) of the 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. Spain has taken more than eight months to modify the social security legislation in accordance with the judgment of the CJEU of 9 November 2017. The new legislation has simply established that the duration of the unemployment benefit must be based on the number of days for which contributions were paid in the preceding six years, which is the system applied to full-time workers.

It is not the first time that a preliminary ruling is set to the CJUE in relation to the time that has to be considered for the access to social security benefits by part-time workers. In the judgment of 22 November 2012, C-385/11 (Elbal Moreno Case), the CJUE considered that the rules established by the Spanish legislation for part-time workers to access pensions were discriminatory. The Court reached that conclusion because LGSS established that in the case of part-time workers only the hours worked and not the whole contribution period provided a retirement pension. After this judgment Spanish legislation was modified by the Royal Decree 11/2013 of 2 August, which established the partiality coefficient (*coeficiente de parcialidad*), a system that basically reduces the required time to obtain the pensions for part-time workers but that still does not make part-time workers equal to full-time workers by considering all the time contributed. The "partiality coefficient" could be discriminatory since it still does not establish equal treatment for full-time and part-time workers. In fact, a preliminary ruling has been submitted to the CJUE at the request by the Superior Court of Castilla-León (Valladolid) on 18 January 2018.

**Key points of analysis:** Royal Decree 950/2018, of 27 July 2018, has applied the judgment of the CJEU of 9 November 2017, C-98/15 (Espadas Recio Case) and, accordingly, has modified the social security legislation so part-time workers have the right to the unemployment benefit taking into consideration the days that they have contributed to the social security system, and not only the days that they have effectively worked.

#### **Internet link sources:**

Article 269 (2) of the General Law of Social Security (*Ley General de Seguridad Social*), [www.boe.es/buscar/act.php?id=BOE-A-2015-11724](http://www.boe.es/buscar/act.php?id=BOE-A-2015-11724), accessed 14 August 2018.

Article 3 (4) of the Royal Decree 625/1985, of 2 April 1985, on unemployment benefit, [www.boe.es/buscar/act.php?id=BOE-A-1985-8124](http://www.boe.es/buscar/act.php?id=BOE-A-1985-8124), accessed 14 August 2018.

Royal Decree 950/2018, of 27 July 2018, that modifies Article 3(4) of the Royal Decree 625/1985, of 2 April 1985, [www.boe.es/diario\\_boe/txt.php?id=BOE-A-2018-10652](http://www.boe.es/diario_boe/txt.php?id=BOE-A-2018-10652), accessed 14 August 2018.