



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

FLASH REPORT

Country:	Spain
Title:	The Supreme Court rules in favour of a University policy aimed at breaking the glass ceiling by prioritising departments with lower percentages of female professors to be granted senior professor positions to female candidates
Date:	14 January 2020
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<u>Context</u>	
Issue at stake:	The Supreme Court of has ruled in favour of an affirmative action by a university to grant senior professor positions to departments that have a lower percentage of women in these positions
Grounds of discrimination:	Gender
Field of application:	Employment
Source:	National court decision
Applicable law:	Article 157.4 of the Treaty on the Functioning of the European Union; Article 14 of the Spanish Constitution; Article 103.3 of the Spanish Constitution

Content

Case development: The ruling of the Supreme Court of 16 October 2019, clarifies a question regarding the possible discriminatory effect of an affirmative action measure to combat the glass ceiling at a university. The affirmative action measure was established by the Autonomous University of Madrid. Universities in Spain are free to establish the number of senior professors' positions (the highest level in the academic career) in each department in accordance with their resources and strategies. Universities usually establish limitations on the amount of senior professor positions, and aim to share them equally across the departments. The selection for these positions depends on certain objective criteria established by the university itself. The Autonomous University of Madrid, in case the position of senior professor concerns an internal promotion (as is the case in this Supreme Court ruling) the factors that are taken into account in the accreditation procedure are research experience, teaching experience and seniority. In 2016, the University added a fourth criterion by which it gives preference to those departments with less female than male senior professors, to be granted a new position of senior professor. The department with the least female senior professors, will be granted the first position for female senior professor. This measure of affirmative action was declared justified and in accordance with Spanish Law by the Supreme Court in its ruling of 16 October 2019.

Decision of the court: The Supreme Court judgement of 16 October 2019 established that a university norm that establishes priority in the creation of senior professor positions for those departments that have a low percentage of female senior professors is valid. The norm of the Autonomous University of Madrid that established this preference was

challenged by a series of claimants who alleged that this measure meant an unjustified difference between women and men because it was disproportionate. In their opinion the measure would violate Article 14 of the Spanish Constitution, which establishes the principle of non-discrimination between women and men. The claimants also claimed that the measure was contrary to Article 103.3 of the Spanish Constitution, which states that access to the Spanish Public Service must be done according to criteria of capacity and merit. The judgement of the Supreme Court of 16 October 2019 established that the affirmative action measure was consistent with Spanish law because it was justified and proportionate. The Supreme Court established that the preference was not established for the hiring of women with preference to men, but simply for the creation of new positions in those departments where there were fewer women senior professors. Subsequently, at the time of accessing the specific post, female candidates would not have greater privileges than male candidates, so that only the merits of each would serve to assign the place to one person or another.

Key points of analysis: The Supreme Court has established that the affirmative action measure that facilitates the creation of senior professors' positions in those university departments with a low percentage of female senior professors is legitimate, justified and proportionate, since it does not establish an absolute and unconditional preference for hiring women.

Internet link source: Judgement of the Supreme Court of 16 October 2019, appeal number 2013/2018, <http://www.poderjudicial.es/search/indexAN.jsp#>.