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FLASH REPORT

Country:	Spain
Title:	The Spanish Constitutional Court declares the annulment of a social security precept that established differences between part-time and full-time workers applying the ruling of the CJEU issued in the Villar Laiz case
Date:	14 January 2020
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Context	
Issue at stake:	The Spanish Constitutional Court 91/2019, applies in a judgement of 3 July 2019, the ruling issued by the CJEU in the Villar Laiz case but limits its application only to future matters
Grounds of discrimination:	Gender
Field of application:	Social security
Source:	CJEU, National court decision
Applicable law:	Current Article 247 b. of the General Law of Social Security; ¹ and 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

Content

Case law: The CJEU ruled in its judgement of 8 May 2019, *Villar Laiz*,² that the Spanish social security regulations were contrary to Directive 79/7 because they established an unjustified difference between full-time and part-time workers. According to the CJEU this unjustified difference constituted indirect discrimination based on sex, given that the majority of part-time workers are women. The Spanish precept, which was declared contrary to Directive 79/7 by this ruling of the CJEU was the current Article 247.b of the General Law of Social Security. This precept established that, in order to qualify for the retirement pension, part-time workers' contribution to the social security system was corrected according to a system called 'partiality coefficient'. With the application of this system, the contribution that was considered for the purpose of the retirement pension was less than the time that was considered if the worker was employed full-time. For full-time employees the time the days the worker had contributed to the system of social security were all considered, while in the case of part-time workers a correction was applied. The judgement handed down in the *Villar Laiz* case was not the first in which the

¹ Article 247.b of the current General Law of Social Security (Royal Legislative Decree 8/2015, of 30 October 2015). In 2015, the old General Law of Social Security was amended. Article 247 of the current law of 2015 coincides in content with the previous seventh additional provision of the old General Law of Social Security of 1994 (Royal Legislative Decree 1/1994, of 20 June 1994). The case that gave rise to the judgement of the Constitutional Court occurred when the General Social Security Law of 1994 was still in force, although its conclusions are applicable to article 247 of the current General Social Security Law, as the Constitutional Court itself establishes.

² Judgement of the CJEU of 8 May 2019, *Villar Laiz*, C-161/18.

CJEU established that the contribution calculation system for part-time workers in Spain was discriminatory on the basis of gender. Previously, in the judgement of the CJEU of 22 November 2012 (*Elbal Moreno Case*),³ the CJEU also established that the Spanish social security regulations on determining the contribution time to access the retirement pension contained an unjustified difference between part-time and full-time workers constituting indirect discrimination based on sex. After the ruling in the *Elbal Moreno* case, a modification was made to the Spanish social security system (the current Article 247.b of the General Law of Social Security) so that instead of the previous correction system for part-time workers, a new correction system called "partiality coefficient" was established. However, with this system the contribution calculation mechanism remained still different for full-time and part-time workers. In the judgement of the *Villar Laiz* case, the CJEU established that this second correction system remained unjustified.

Decision of the court: The ruling of the Constitutional Court 91/2019 of 3 July 2019 reached the same conclusion as the CJEU ruling issued in the *Villar Laiz* case and declared that the partiality coefficient was null because it constituted an indirect discrimination on the ground of sex. After the judgement of the Constitutional Court 91/2019 the system for calculating the contribution for full-time and part-time workers was finally the same for both type of workers: the contribution time would be calculated based on each day the worker had been included in the system of social security during the time of employment, without any correction for part time workers.

However, it also established that equal treatment between full-time and part-time workers in this regard would apply only with regard to pensions requested after the judgement of the Constitutional Court itself. It also considered that the equal treatment would be applied to those pensions that were being processed at the time of the judgement of the Constitutional Court. It denied, therefore, the possibility that those who already had it would request the revision of their pensions.

The Constitutional Court judgement 91/2019 could go against the CJEU doctrine that states that a CJEU judgement must be applied to all acts of the Member States (prior to the CJEU's judgement) that were later than the date the Member State had to transpose the breached Directive (for instance, judgement of the CJEU of 19 October 1995, *Richardson Case*).⁴ In the ruling of the CJEU issued in the *Villar* case, the CJEU did not establish that its sentence would apply only to future matters, and neither did the Spanish state request it or justify it during the processing of the preliminary ruling before the CJEU.

Key points of analysis: The judgement of the Spanish Constitutional Court 91/2019 of 3 July 2019 applied the doctrine of the ruling of the CJEU of 8 May 2019, issued in the *Villar Laiz* case, establishing equal treatment of part-time and full-time workers in relation to the calculation of the retirement pension. However, the Constitutional Court has established in this judgement that equal treatment will only apply to pensions that are requested in the future, without the CJEU having authorized the possibility that the effects of its sentence do not apply to already recognised pensions. This content of the judgement of the Constitutional Court could be contrary to the doctrine of the CJEU which states that its sentences must apply to situations already recognised.

³ Judgement of the CJEU of 2 November 2012, *Elbal Moreno Case*, C-385/11.

⁴ Judgement of the CJEU of 19 October 1995, *Richardson Case*, C-137/1994.

Internet link source:

- Judgement of the Constitutional Court 91/2019, of 3 July 2019, <https://hj.tribunalconstitucional.es/HJ/es/Resolucion/Show/25987>;
- General Law of Social Security, Royal Legislative Decree 8/2015, of 30 October 2015, <https://www.boe.es/buscar/act.php?id=BOE-A-2015-11724>.