

SUMMARY

ECJ 19 June 2014, case C-507/12 (Jessy Saint Prix - v - Secretary of State for Work and Pensions, with AIRE Centre intervening), Other forms of free movement

Facts

Ms Saint Prix is a French national. She worked in the UK for one year in 2006/2007. Following that year, she enrolled on a university course. Whilst enrolled, she became pregnant. She withdrew from the university course, found a job, but had to give up that job when the work became too strenuous for her. On 18 March 2008, eleven weeks before her expected date of confinement, she applied for income support pursuant to the UK Social Security Contributions and Benefits Act 1992 and the Income Support (General) Regulations 1987. Those regulations exclude “a person from abroad” from entitlement. However, according to § 21 AA(4) of the regulations “a claimant is not a person from abroad if he is”, *inter alia*, a worker or self-employed person for the purposes of Directive 2009/38 on the right of EU citizens and their family members to move and reside freely within the territory of the Member State (the ‘Directive’) [*now replaced by Directive 492/2011, Editor*], or a person within the meaning of Article 7(3) of the Directive. That provision states that an EU citizen who is no longer a worker or self-employed person shall retain the status of worker or self-employed person if, *inter alia*, he or she “is temporarily unable to work as the result of an illness or accident”.

It was common ground that Ms Saint Prix would have been eligible for income support had the authorities not considered her to be “a person from abroad”. After she gave birth, she remained in the UK and three months later she resumed work.

National proceedings

Ms Saint Prix's application for income support was rejected. She appealed. The First Tier Tribunal upheld her appeal, but the Upper Tribunal overturned that decision, which was confirmed by the Court of Appeal. Ms Saint Prix brought the matter before the Supreme Court. It asked the ECJ whether a pregnant woman who temporarily gives up work because of her pregnancy is to be considered a "worker" for the purposes of freedom of movement for workers as laid down in Article 45 TFEU and of the right of residence as conferred by Article 7 of the Directive.

ECJ's findings

Article 7(3) of the Directive does not expressly envisage the case of a woman who is in a particular situation because of the physical constraints of the late stages of her pregnancy and the aftermath of childbirth. In that regard, the ECJ has consistently held that pregnancy must be clearly distinguished from illness. It follows that a woman who temporarily gives up work because of the late stage of her pregnancy cannot be regarded as a person "temporarily unable to work as the result of an illness" within the meaning of Article 7(3) of the Directive (§ 27-30).

According to the ECJ's settled case law, the concept of 'worker' within the meaning of Article 45 TFEU, in so far as it defines the scope of a fundamental freedom, must be interpreted broadly. Freedom of movement for workers entails the right for nationals of Member States to move freely within the territory of other Member States and to stay there for the purposes of seeking employment. It follows that classification as a worker under Article 45 TFEU, and the rights deriving from such status, do not necessarily depend on the actual or continuing existence of an employment relationship (§ 31 - 37).

The fact that the physical restraints of the late stages of pregnancy and childbirth require a woman to give up work during the period needed for recovery does not, in principle, deprive her of the status of 'worker' within the meaning of Article 45 TFEU. The fact that she was not actually available on the employment market of the host Member State for a few months does not mean that she had ceased to belong to that market during the period, provided she returns to work or finds another job within a reasonable period after confinement. In order to determine whether the period that has elapsed between childbirth and starting work again may be regarded as reasonable, the national court concerned should take account of all the specific circumstances of the case in accordance with the Maternity Directive 92/85 (§ 39-45).

Ruling

Article 45 TFEU must be interpreted as meaning that a woman who gives up work, or seeking work, because of the physical constraints of the late stages of pregnancy and the aftermath of childbirth retains the status of 'worker', within the meaning of that article, provided she returns to work or finds another job within a reasonable period after the birth of her child.

Creator: European Court of Justice (ECJ)

Verdict at: 2014-06-19

Case number: C-507/12