

SUMMARY

Case C-432/16, Gender discrimination

***Carolina Minayo Luque – v –
Quitxalla Stars, S.L., and Fondo de Garantía Salarial,
reference lodged by the Tribunal Superior de Justicia de
Cataluña (Spain) lodged on 2 August 2016</p>***

On a proper construction of Article 10(1) of Directive 92/85/EEC, must the concept of ‘exceptional cases not connected with their condition which are permitted under national legislation and/or practice’, constituting an exception to the prohibition of dismissing pregnant workers, be understood to have been complied with by merely providing proof of the objective economic, technical, organisational or productive reasons, as defined in Article 51(1) of the Workers’ Statute, referred to in Article 52(c) of that statute?

In the event of an objective individual dismissal for economic, technical, organisational or productive reasons, is there a requirement, in order to decide whether exceptional cases exist that justify the dismissal of pregnant workers and workers who have recently given birth or are breastfeeding, in accordance with Article 10(1) of Directive 92/85/EEC, that the worker affected cannot be reassigned to another work post, or that there are no other workers in similar posts who may be affected, or is it sufficient that proof should be given of economic, technical and productive reasons that affect her work post?

Is legislation, such as the Spanish legislation transposing the prohibition on the dismissal of pregnant workers and workers who have recently given birth or are breastfeeding by providing a guarantee by virtue of which, failing any proof of reasons justifying her dismissal, the dismissal is declared void (reparative protection), but does not lay down a prohibition of dismissal (preventive protection), compatible with Article 10(1) of Directive 92/85/EEC, which lays down that prohibition?

Is national legislation, such as the Spanish legislation, which does not provide for priority for retention in the undertaking, in the event of objective individual dismissal for economic, technical, organisational or productive reasons, for pregnant workers and workers who have recently given birth or are breastfeeding, compatible with Article 10(1) of Directive

92/85/EEC?

For the purposes of Article 10(2) of Directive 92/85/EEC, is national legislation compatible with this provision if it treats as sufficient a letter of dismissal, like that in the present proceedings, which makes no reference whatsoever to the existence of any exceptional grounds, nor to the criteria which justify selecting the worker, notwithstanding her state of pregnancy?

Creator: European Court of Justice (ECJ)

Verdict at:

Case number: C-432/16