Press and Information

Court of Justice of the European Union

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Judgment in Case C-103/16
Jessica Porras Guisado v Bankia S.A., Fondo de Garantía Salarial and Others

Pregnant workers may be dismissed on grounds of a collective redundancy

In such cases, the employer must provide the dismissed pregnant worker with the reasons justifying the redundancy as well as the objective criteria chosen to identify the workers to be dismissed

On the 9th January 2013, the Spanish company Bankia opened a period of consultation with its workers' representatives with a view to carrying out a collective redundancy. On 8 February 2013, the special negotiating body reached an agreement establishing the criteria to be applied in selecting the workers to be made redundant as well as the criteria for establishing priority status for retention in the company.

On 13 November 2013, Bankia notified a worker, who was pregnant at the time, of her dismissal by letter, in accordance with the agreement drawn up by the special negotiating body. That letter stated, among other things, that in the specific case of the province where she worked it was necessary to significantly reduce the number of staff and that, as a result of the assessment process carried out in the undertaking during the consultation period, she had obtained a score that was among the lowest in the province.

The worker in question challenged her dismissal before the Juzgado de lo Social No 1 de Mataró (Social Court No 1, Mataró, Spain), which ruled in favour of Bankia. She then appealed against that judgment to the Tribunal Superior de Justicia de Cataluña (High Court of Justice of Catalonia, Spain). That court seeks from the Court of Justice an interpretation of the prohibition on dismissing pregnant workers, provided for in Directive 92/85 on the safety and health at work of pregnant workers,[1] in the context of a collective redundancy procedure within the meaning of Directive 98/59 on collective redundancies.[2]

Effectively, Directive 92/85 prohibits the dismissal of workers during the period from the beginning of their pregnancy to the end of their maternity leave, save in exceptional cases not connected with their condition which are permitted under national legislation and/or practice.

By today's judgment, the Court rules that Directive 92/85 does not preclude national legislation which allows an employer to dismiss a pregnant worker in the context of a collective redundancy. The Court notes, first of all, that a dismissal decision taken for reasons essentially connected with the worker's pregnancy is incompatible with the prohibition on dismissal laid down in that Directive. By contrast, a dismissal decision taken during the period from the beginning of pregnancy to the end of the maternity leave for reasons unconnected with the worker's pregnancy is not contrary to Directive 92/85 if the employer gives substantiated grounds for the dismissal in writing and the dismissal of the person concerned is permitted under the relevant national legislation and/or practice. It follows that **reasons not related to the individual workers concerned, which may be relied on in respect of collective redundancies within the**

[1] Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) (OJ 1992 L 348 p.1).
[2] Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies (OJ 1998 L 225, p. 16).

meaning of Directive 98/59, fall within the exceptional cases not related to the condition of pregnant workers within the meaning of Directive 92/85.

The Court then states that **Directive 92/85 does not preclude national legislation which allows an employer to dismiss a pregnant worker in the context of a collective redundancy procedure without giving her grounds other than those justifying the collective redundancy, provided that the objective criteria chosen to identify the workers to be made redundant are cited.** To that end, the two Directives combined only require that the employer (i) sets out in writing the reasons not related to the pregnant worker for making a collective redundancy (namely, economic or technical reasons or reasons relating to the undertaking's organisation or production) and (ii) informs the pregnant worker of the objective criteria chosen to identify the workers to be made redundant.

In response to another question from the Tribunal Superior de Justicia de Cataluña, **the Court also holds that Directive 92/85 precludes national legislation which does not prohibit, in principle, the dismissal of a worker who is pregnant, has recently given birth or is breastfeeding, as a preventative measure, but which provides, by way of reparation, only for such a dismissal to be declared void when it is unlawful.** The Court notes that Directive 92/85 makes an express distinction between protection against dismissal itself, as a preventative measure, and protection, by way of compensation, from the consequences of dismissal. Therefore, Member States are required to establish such double protection. Preventive protection is of particular importance in the context of Directive 92/85 in view of the harmful effects which the risk of dismissal may have on the physical and mental state of workers who are pregnant, have recently given birth or are breastfeeding, including the particularly serious risk that a pregnant woman may be prompted to terminate her pregnancy voluntarily. The prohibition of dismissal in that directive addresses that concern. Thus, the Court considers that **protection by way of reparation**, even if it leads to the reintegration of the dismissed worker and the payment of wages not received because of dismissal, **cannot replace preventative protection.** As a result, **Member States cannot confine themselves to providing, by way of reparation, only for such a dismissal to be declared void when it is not justified.**

In response to two other questions from the Spanish court, **the Court rules that Directive 92/85 does not preclude national legislation which in the context of a collective redundancy makes no provision for pregnant workers and workers who have recently given birth or who are breastfeeding to be afforded, prior to that dismissal, priority status in relation to either being retained or redeployed.** Directive 92/85 does not require Member States to provide for such a priority status. **Nevertheless, since the directive contains only minimum requirements, Member States are free to grant higher protection to pregnant workers and workers who have recently given birth or are breastfeeding.**

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of EU law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The full text of the judgment is published on the CURIA website on the day of delivery.

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