



Press and Information

Court of Justice of the European Communities

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Judgment in Case C-63/08
Virginie Pontin v T-Comalux SA

Dismissed pregnant workers must enjoy effective judicial protection of their rights under Community law

Where the only remedy available under national legislation to a worker dismissed during pregnancy does not provide adequate time-limits within which to bring proceedings, that legislation introduces less favourable treatment linked to pregnancy and constitutes discrimination against female employees

The Luxembourg Code du travail (Labour Code), which transposes the Pregnant Workers Directive¹, prohibits the dismissal of an employee where she has been medically certified as being pregnant or within twelve weeks of her giving birth. It makes legal action by an employee dismissed during pregnancy, who wishes to bring an action for nullity of the dismissal and for reinstatement within the undertaking concerned, subject to a time-limit of 15 days from the date on which her contract is terminated.

Ms Virginie Pontin worked for the Luxembourg company T-Comalux from November 2005. On 25 January 2007 she was notified of her dismissal with immediate effect 'on grounds of serious misconduct' consisting of 'unauthorised absence for more than three days'. The next day Ms Pontin informed T-Comalux that she was pregnant and that her dismissal was null and void by virtue of the legal protection enjoyed by pregnant workers. As she had not received a reply from the company and considered that she was the victim of wrongful dismissal, on 18 April 2007 she referred the matter to the Tribunal du Travail d'Esch-sur-Alzette (Employment Tribunal of Esch-sur-Alzette, Luxembourg) seeking a declaration that her dismissal was null and void.

The Tribunal du Travail asks the Court of Justice in essence whether Community law precludes national legislation which, on the one hand, makes legal action brought by a pregnant employee who has been dismissed during her pregnancy subject to short time-limits likely to deny her the opportunity to take legal proceedings to safeguard her rights and, on the other hand, denies her the possibility of bringing an action for damages against her employer, which is available to other employees who have been dismissed.

The Court observes that Member States are required to take such measures as are necessary to enable persons who consider themselves wronged to pursue their claims by judicial process in accordance with the principle of judicial protection of an individual's rights under Community law. Thus, pregnant workers or those who have recently given birth or are breastfeeding must be protected from the consequences of dismissal which would be unlawful. National measures must be such as to ensure effective and efficient legal protection, must have a genuine dissuasive effect with regard to the employer and must in any event be commensurate with the injury suffered. It is for the national court, which alone has direct knowledge of the procedural rules governing actions in the field of domestic law, to determine whether those principles are complied with.

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).

The 15-day time-limit

Although the Court recognised that Member States may lay down reasonable time-limits for bringing proceedings, such time-limits must not render impossible or excessively difficult the exercise of rights conferred by Community law. In that regard, the procedural rules relating to an action for nullity and reinstatement of a dismissed employee appear to give rise to problems likely to make exercise of the rights that pregnant women derive from Community law excessively difficult.

The Court considers that the 15-day time-limit is particularly short for obtaining proper advice and, if appropriate, bringing an action for nullity and reinstatement within the undertaking. Furthermore, some of the days included in that period may expire before the pregnant woman receives the letter notifying her of the dismissal, since it would seem that period begins to run, according to the case-law of the Luxembourg courts, from the time the letter of dismissal is posted and not from the time it is received. **If the referring court were, after conducting the necessary legal and factual verifications, to hold that the 15-day limitation period does not comply with the requirement of effective judicial protection of an individual's rights under Community law, such a time-limit would infringe the Pregnant Workers Directive.**

Exclusion of an action for damages

According to the referring court, the only remedy open to a pregnant woman dismissed during pregnancy is an action for nullity and reinstatement within the undertaking, to the exclusion of all other remedies under employment law, such as an action for damages.

Therefore, if it emerges, after verification by the referring court, that the procedural rules relating to the only action available in the event of the dismissal of pregnant workers do not comply with the principle of effective judicial protection of an individual's rights under Community law, such limitation of available remedies introduces less favourable treatment of a woman related to pregnancy and thus constitutes discrimination within the meaning of the Equal Treatment Directive².

If that referring court were to find there had been such an infringement of the principle of equal treatment, within the meaning of the Equal Treatment Directive, it would have to interpret the domestic jurisdictional rules in such a way that, wherever possible, they contribute to the attainment of the objective of ensuring effective judicial protection of a pregnant woman's rights under Community law.

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 Community law or the validity of a Community 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 the same 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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² Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (OJ 1976 L 39, p. 40), as amended by Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 (OJ 2002 L 269, p. 15).