



Press and Information

Court of Justice of the European Union

**PRESS RELEASE No 69/10**

Luxembourg, 1 July 2010

Judgments in Cases C-194/08 and C-471/08  
Susanne Gassmayr v Bundesminister für Wissenschaft und Forschung  
Sanna Maria Parviainen v Finnair Oyj

**Workers given leave from work or transferred to another job because of pregnancy are entitled to their basic monthly pay and the supplementary allowances attached to their occupational status**

*They cannot, on the other hand, claim the allowances and supplements which are intended to compensate for the disadvantages related to the performance of specific tasks in particular circumstances, where they do not actually perform those tasks*

In these two cases concerning references from Austria and Finland for preliminary rulings, the Court of Justice is called on to rule on questions relating to the calculation of the remuneration to be paid to workers during pregnancy or maternity leave, where they are temporarily transferred to another job or granted leave from work.

Susanne Gassmayr worked before her pregnancy as a junior hospital doctor at the University Anaesthesia Clinic of the University of Graz. In addition to her basic pay, she received an allowance for on-call duty at the workplace for extra hours that she worked. She stopped working during her pregnancy, on the basis of a medical certificate stating that continuing to work was likely to endanger her life or health or that of her child, and then took maternity leave.

Since Austrian law excludes the payment of the on-call duty allowance to persons who are not actually performing on-call duty, Ms Gassmayr was refused that allowance during the period when she was not working.

In the other case, Sanna Maria Parviainen worked before her pregnancy as a purser for the airline Finnair. A substantial part of her pay was made up of supplementary allowances attached to her seniority or intended to compensate for the specific disadvantages connected with the organisation of working time in the air transport sector.

On becoming pregnant, she was temporarily transferred to a ground job corresponding to office work, and she occupied that position until her maternity leave began. Following that transfer, her monthly pay was reduced, in particular because she no longer received the allowances for being a purser.

Both women brought judicial proceedings against their employers on the ground that their remuneration had been reduced during their pregnancy or maternity leave. The Verwaltungsgerichtshof (Administrative Court, Austria) and the Helsingin käräjäoikeus (Helsinki District Court, Finland) asked the Court of Justice whether the Pregnant Workers Directive<sup>1</sup> allows employers to refuse to pay those workers certain allowances which they had received before their pregnancies.

The Court finds that, during the temporary transfer to another job or the leave from work during their pregnancy and maternity leave, both Ms Gassmayr and Ms Parviainen were no longer able to perform the duties which had been entrusted to them before their pregnancies. The Court finds that the on-call duty allowance paid to Ms Gassmayr and certain supplementary allowances received

<sup>1</sup> 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).

by Ms Parviainen constitute components of their remuneration which are dependent on the performance of specific functions in particular circumstances and are intended to compensate for the disadvantages related to those functions. The payment of that allowance and those supplementary allowances may therefore be conditional on the pregnant worker actually performing specific duties in return.

The Court none the less states that a pregnant worker who is granted leave from work or temporarily transferred to another job because of her pregnancy must be entitled to **remuneration consisting of her basic monthly pay and the pay components and supplementary allowances relating to her occupational status**, such as those relating to her seniority, length of service and professional qualifications.

Moreover, the remuneration which must be maintained for a pregnant worker temporarily transferred to another job cannot in any event be less than that paid to workers occupying that job. For the duration of the temporary transfer, the pregnant worker is also entitled in principle to the pay components and supplementary allowances relating to that job.

As regards workers on maternity leave, the Court notes that their position is not comparable to that of a worker actually at work. They are not therefore entitled to continue to receive their full pay or to be paid an on-call duty allowance. Moreover, the directive itself provides that the **minimum** remuneration payable to them is equivalent to that which the worker concerned would receive in the event of a break in her activities on grounds connected with her state of health.

Finally, the Court recalls the need to respect the effectiveness of the directive and the aims it pursues, namely the protection of the safety and health of pregnant workers, workers who have recently given birth and those who are breastfeeding, and notes that the Member States are free to maintain, for workers granted leave from work or temporarily transferred to another job during their pregnancy or on maternity leave, their entire remuneration, at a higher level than that guaranteed by the directive.

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**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 European Union 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 judgments in Cases [C-194/08](#) and [C-471/08](#) are published on the CURIA website on the day of delivery.*

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