



Press and Information

Court of Justice of the European Union

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Judgment in Case C-41/17

Isabel González Castro v Mutua Umivale, Prosegur España SL and Instituto Nacional de la Seguridad Social (INSS)

**Pregnant workers, workers who have recently given birth or are breastfeeding who work shifts, some of which are at night, must be regarded as performing night work and enjoy specific protection against the risks that night work is liable to pose**

Ms Isabel González Castro works as a security guard for Prosegur España SL. In November 2014, she gave birth to a boy who was breastfed. Since March 2015, Ms González Castro has performed her duties in a shopping centre, on the basis of a variable rotating pattern of eight-hour shifts, some of which are worked at night. She sought the suspension of her contract and the grant of the allowance provided for under Spanish legislation. To that end, she requested the Mutua Umivale (a non-profit private mutual insurance company providing cover for risks relating to accidents at work and occupational diseases) to issue her with a medical certificate indicating the existence of a risk to breastfeeding posed by her work. Her application having been refused, Ms González Castro lodged a complaint which was rejected. She brought an appeal against that rejection before the Tribunal Superior de Justicia de Galicia (High Court of Justice of Galicia, Spain).

Directive 92/85 on the safety and health of pregnant workers and workers who have recently given birth or are breastfeeding<sup>1</sup> provides, in particular, that those workers must not be obliged to perform night work during their pregnancy and for a period following childbirth, subject to submission of a medical certificate stating that this is necessary for their safety or health. Directive 2006/54 on equal treatment of men and women in matters of employment and occupation<sup>2</sup> provides, for its part, for a reversal of the burden of proof. Accordingly, when a person considers himself wronged because the principle of equal treatment has not been applied to him and establishes, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination, it is for the respondent to prove that there has been no breach of the principle of equal treatment.

It is in that context that the Tribunal Superior de Justicia de Galicia decided to refer questions to the Court of Justice. It asks, first, for an interpretation of the concept of 'night work', within the meaning of Directive 92/85, where that night work is combined with shift work. That court considers, second, that it is possible that the risk assessment of Ms González Castro's work was not properly carried out and that there is, in fact, a risk to her health or safety. It also seeks to know whether, in that context, it is appropriate to apply the rules reversing the burden of proof laid down in Directive 2006/54 and, if so, whether it is for the worker concerned or the respondent, namely the employer or the organisation responsible for the payment of the allowance in respect of risk during breastfeeding, to demonstrate that the adjustment of the working conditions or the move of the worker concerned to another job, are not technically or objectively feasible or cannot reasonably be required.

<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 (OJ 1992 L 348, p. 1).

<sup>2</sup> Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) (OJ 2006 L 204, p. 23).

**By its judgment delivered today, the Court rules, in the first place, that Directive 92/85 applies to a situation where the worker concerned does shift work during which only part of her duties are performed at night.** The Court observes, first, that Directive 92/85 does not contain any details as regards the exact scope of the concept of ‘night work’. It notes that it follows from the general provisions of Directive 2003/88 on the organisation of working time<sup>3</sup> that a worker who does shift work in the context of which only part of her duties are performed at night must be regarded as performing work during ‘night time’ and must therefore be classified as a ‘night worker’. The Court finds the specific provisions of Directive 92/85 must not be interpreted either less favourably than the general provisions of Directive 2003/88, or in a way contrary to the purpose of Directive 92/85, which is to strengthen the protection enjoyed by pregnant workers and workers who have recently given birth or are breastfeeding. The Court adds that, to benefit from that protection in the context of night work, the worker concerned must submit a medical certificate stating that this is necessary for her safety or health. It will be for the Tribunal Superior de Justicia de Galicia to determine whether that is the case in the present case.

**In the second place, the Court finds that the rules of reversal of the burden of proof laid down in Directive 2006/54 apply to a situation such as that of Ms González Castro, provided that the worker concerned adduces factual evidence to suggest that the risk assessment of her work did not include a specific assessment taking into account her individual situation and thus permitting the presumption that there is direct discrimination on the grounds of sex, within the meaning of that directive.** The Court points out, in that regard, that since Directive 92/85 provides that pregnant workers, workers who have recently given birth or are breastfeeding who perform night work enjoy strengthened and specific protection against the specific risk that the performance of such work may pose, the risk assessment of the work of those workers cannot be subject to less stringent requirements than those that apply under the general scheme established by that directive which sets out the actions to be taken in relation to all activities liable to involve a specific risk to those workers. The Court adds that that assessment must include a specific assessment taking into account the individual situation of the worker concerned in order to ascertain whether her health or safety, or that of her child, is exposed to a risk. If there is no such assessment, the situation amounts to less favourable treatment of a woman related to pregnancy or maternity leave, within the meaning of Directive 92/85, and constitutes direct discrimination on grounds of sex, within the meaning of Directive 2006/54, enabling the reversal of the burden of proof. The Court observes that it appears that the risk assessment of Ms González Castro’s work did not include such an assessment and that she was discriminated against. It is for the Tribunal Superior de Justicia de Galicia to verify whether that is indeed the case. If so, it will be for the respondent to provide evidence to the contrary.

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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 judgment is published on the CURIA website on the day of delivery.

Press contact: Holly Gallagher ☎ (+352) 4303 3355

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<sup>3</sup> Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time (OJ 2003 L 299, p. 9).