

Is Directive 2000/78/EC ⁽²⁾, and in particular Articles 3(1) and 5 thereof, to be interpreted as meaning that there is discrimination on the ground of disability where a woman — who suffers from a disability which prevents her from giving birth, whose genetic child has been born through a surrogacy arrangement, and who is responsible for the care of her genetic child from birth — is refused paid leave from employment equivalent to maternity leave and/or adoptive leave?

4. If the answer to the third question is in the negative, is Directive 2000/78/EC compatible with the above provisions of the primary law of the European Union?
5. Is the United Nations Convention on the Rights of Persons with Disabilities capable of being relied on for the purposes of interpreting, and/or of challenging the validity, of Directive 2000/78/EC?
6. If the answer to the fifth question is in the affirmative, is Directive 2000/78/EC, and in particular Articles 3 and 5 thereof, compatible with Articles 5, 6, 27(1)(b) and 28(2)(b) of the United Nations Convention on the Rights of Persons with Disabilities?

⁽¹⁾ 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 L 204, p. 23

⁽²⁾ Council Directive 2000/78/EC OF 27 November 2000 establishing a general framework for equal treatment in employment and occupation

Reference for a preliminary ruling from the Varhoven administrativen sad (Bulgaria) lodged on 6 August 2012 — Valimar OOD v Nachalnik na Mitnitsa — Varna

(Case C-374/12)

(2012/C 311/07)

Language of the case: Bulgarian

Referring court

Varhoven administrativen sad

Parties to the main proceedings

Appellant: Valimar OOD

Respondent: Nachalnik na Mitnitsa — Varna

Questions referred

1. Is Article 11(9) and the first sentence of Article 11(10) of Council Regulation (EC) No 384/1996 ⁽¹⁾ of 22 December 1995 on protection against dumped imports from countries not members of the European Community (now Council Regulation (EC) No 1225/2009 ⁽²⁾ of 30 November 2009)

(‘the Basic Regulation’) in conjunction with Article 2(8) and (9) of that regulation to be interpreted as meaning that, if no change in circumstances is proved for the purpose of Article 11(9), those provisions take precedence over any implicit powers of the institutions arising from Article 11(3) of the Basic Regulation for determining the export price, including — as in the case of Council Regulation (EC) No 1279/2007 ⁽³⁾ — the implicit power of the institutions to assess the reliability of the export prices of Severstal-Metiz in the future by making a comparison with the minimum prices according to the price undertaking and the selling prices in third countries? Is the reply to that question affected if, as in the case of Severstal-Metiz and Council Regulation (EC) No 1279/2007, the institutions decide, when exercising their powers in connection with assessing the stability of the change in circumstances regarding the existence of dumping in accordance with Article 11(3) of the Basic Regulation, to vary the anti-dumping measure (reduce the duty rate)?

2. Does it follow from the reply to the first question that, in the circumstances which are described in the part of Council Regulation (EC) No 1279/2007 relating to the determination of the export price of Severstal-Metiz, and in view of the fact that in that regulation a change for the purpose of Article 11(9) of the Basic Regulation was not expressly proved which would justify the application of a new methodology, the Commission ought to have applied the method for determining the export price which was used in the context of the original investigation, in the present case in accordance with Article 2(8) of the Basic Regulation?
3. Taking into consideration the replies to the first and second questions: Was that part of Council Regulation (EC) No 1279/2007 which concerns the determination and imposition of individual anti-dumping measures in relation to imports of steel ropes and cables manufactured by Severstal-Metiz adopted contrary to Article 11(9) and (10) in conjunction with Article 2(8) of the Basic Regulation or on an invalid legal basis and, as such, is Council Regulation (EC) No 1279/2007 to be regarded as invalid in that part?

⁽¹⁾ Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community (OJ 1996 L 56, p. 1).

⁽²⁾ Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (OJ 2009 L 343, p. 51).

⁽³⁾ Council Regulation (EC) No 1279/2007 of 30 October 2007 imposing a definitive anti-dumping duty on certain iron or steel ropes and cables originating in the Russian Federation, and repealing the anti-dumping measures on imports of certain iron or steel ropes and cables originating in Thailand and Turkey (OJ 2007 L 285, p. 1).