

Request for a preliminary ruling from the Tribunal Superior de Justicia de Cataluña — Sala Social (Spain) lodged on 19 February 2016 — Jessica Porrás Guisado v Bankia, S.A. and Others

(Case C-103/16)

(2016/C 165/10)

Language of the case: Spanish

Referring court

Tribunal Superior de Justicia de Cataluña — Sala Social

Parties to the main proceedings

Claimant and appellant: Jessica Porrás Guisado

Defendants and respondents: Bankia, S.A., Sección Sindical de Bankia de CCOO, Sección Sindical de Bankia de UGT, Sección Sindical de Bankia de ACCAM, Sección Sindical de Bankia de SATE, Sección Sindical de Bankia de CSICA, Fondo de Garantía Salarial (Fogasa)

Questions referred

1. On a proper construction of Article 10(1) of Directive 92/85,⁽¹⁾ does the notion of ‘exceptional cases not connected with their condition which are permitted under national legislation and/or practice’, constituting an exception to the prohibition of dismissing pregnant workers and workers who have recently given birth or are breastfeeding, correspond to the notion of ‘one or more reasons not related to the individual workers concerned’ referred to in Article 1(1)(a) of Directive 98/59/EEC⁽²⁾ of 20 July 1998, or is it more restricted?
2. In the event of collective redundancy, in order to decide whether exceptional cases exist that justify the dismissal of pregnant workers and workers who have recently given birth or are breastfeeding, in accordance with Article 10(1) of Directive 92/85, is there a requirement that the worker affected cannot be reassigned to another work post or is it sufficient that proof should be given of economic, technical and productive reasons that affect her work post?
3. Is legislation, such as the Spanish legislation, that transposes that prohibition by providing a guarantee by virtue of which, failing any proof of reasons justifying her dismissal, the dismissal is declared void (reparative protection), but does lay down a prohibition of dismissal (preventive protection), compatible with Article 10(1) of Directive 92/85/EEC of 19 October 1992?
4. Is legislation, such as the Spanish legislation, which does not provide for priority for retention in the undertaking in the event of collective redundancy for pregnant workers and workers who have recently given birth or are breastfeeding, compatible with Article 10(1) of Directive 92/85/EEC of 19 October 1992?
5. For the purposes of Article 10(2) of Directive 92/85, is national legislation compatible with this provision if it treats as sufficient a letter of dismissal like that in these proceedings, whereby a worker who is pregnant is dismissed by virtue of the decision to effect a collective termination of contracts, even though that letter makes no reference whatsoever to the existence of any exceptional grounds over and above those which prompted the collective redundancy?

⁽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).