



29.8.2014

NOTICE TO MEMBERS

Subject: Petition No 1378/2013 by Maria Luisa Quintana (Spanish) on personal problems arising from a fixed-term contract

1. Summary of petition

The petitioner indicates that, between 2003 and 2013, she worked as a cleaner at a retirement home in Extremadura under a fixed-term contract.

She maintains that in 2013 she was unfairly dismissed following maternity leave and that this is an infringement of Article 55(5) of the Spanish Statute of Workers' Rights, the text of which corresponds to the provisions of Directives 92/85/EEC and 96/34/EC.

2. Admissibility

Declared admissible on 5 May 2014. Information requested from Commission under Rule 216(6).

3. Commission reply, received on 29 August 2014

The Commission is not competent to examine the potential violation of the Spanish Constitution.

The Charter of Fundamental Rights of the European Union does not apply by itself to the present case, since its Article 51 provides that “The provisions of this Charter are addressed (...) to the Member States only when they are implementing Union law” and the Charter “does not extend the field of application of Union law beyond the powers of the Union”.

Article 10 of Directive 92/85/EEC¹ prohibits the dismissal of pregnant women from the beginning of their pregnancy to the end of maternity leave, ‘save in exceptional cases not connected with their condition which are permitted under national legislation’. This provision was correctly transposed in Spain notably by Article 55, paragraph 5 of the *Estatuto de los Trabajadores*.

In the present case, from what can be inferred from the citizen’s petition, she was not exactly dismissed, but her short-term contract was not renewed and her post was filled by another worker. In this situation, a pregnant worker is protected by Articles 2 and 14 of Directive 2006/54/EC² which prohibits direct and indirect discrimination based on the sex of a person, including any less favourable treatment of a woman related to pregnancy or maternity leave³. This provision was correctly transposed in Spain notably by Article 17 of the *Estatuto de los Trabajadores*⁴.

When the provisions of EU Directives are correctly transposed in national legislation, the person concerned has to take any potential breach by an employer to the national courts, which apply the provisions in individual cases.

The citizen can also seek legal advice from the Spanish ‘Instituto de la Mujer’, either by phone (900 191 010), or by email (juridico@inmujer.es).

Conclusion

The citizen should contact her national authorities (courts or equality body). The Commission cannot intervene in the petitioner's case.

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 L 348/1, of 28.11.1992.

² 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 204/23, of 26.7.2006.

³ Case C-438/99 *Melgar* [2001] ECR I-6915, paragraph 47.

⁴ Statute of Workers’ Rights, adopted by the Real Decreto Legislativo 1/1995, of 24 March 1995, as later amended.