PROTECTION AGAINST DISMISSAL FOR PREGNANT WORKERS, WORKERS WHO HAVE RECENTLY GIVEN BIRTH OR ARE BREASTFEEDING UNDER EUROPEAN UNION'S LAW

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Abstract: Pregnant, childbirth or breastfeeding employees are protected against dismissal under national and European Union law. Thus, EU legislation concerning maternity protection at work establishes the prohibition of dismissal of employees who are on maternity leave, maternity risk or on leave for raising and caring for the child. These provisions are included in Directive 92/85 / EEC 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; however, they do not apply in the case of dismissal for reasons arising from judicial reorganization, dissolution, collective redundancy or insolvency of the employer, under the law, or – in other words – reasons not related to the pregnancy of the worker.

Keywords: collective redundancies, dismissal, employer, employment contract/ relationship, worker's safety and health

1. LEGAL FRAME

Starting from the general principle set by Community Charter of the Fundamental Social Rights of Workers, point 19, according to which "Every worker must enjoy satisfactory conditions for the protection of health in his work environment", it was considered that pregnant workers, those who have recently given birth or breastfeeding women are subject to specific risks and that measures must be taken regarding their safety and health. Pregnant workers who have recently given birth or are breastfeeding must in many respects be considered a group exposed to specific risks and whereas measures must be taken with regard to their safety and health. The risk of dismissal on grounds relating to their condition may have detrimental effects on the physical and mental condition of pregnant workers, workers who have recently given birth or are breastfeeding; whereas a ban on dismissal should be laid down. These are the reasons for which Directive

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92/85 / EEC[1] regulates measures to promote the improvement of safety and health at work for pregnant workers, workers who have recently given birth and those who are breastfeeding.

Directive 92/85 / EEC has been adopted also in the light of the following considerations[2]:

- the protection of the safety and health of pregnant workers, women who have recently given birth or are breastfeeding must not disadvantage women in the labor market or act to the detriment of the directives on equal treatment for women and men;
- certain types of activities may present a specific risk of exposure to agents, processes or working conditions which are dangerous for pregnant workers, women who have recently given birth or are breastfeeding. Such risks must be assessed and the results of the assessments communicated to the workers and / or their representatives. If the result of this assessment demonstrates the existence of a risk to the safety or health of workers, a means of protecting them must be provided;
- pregnant workers, workers who have recently given birth or are breastfeeding must not engage in activities which, as a result of assessments, present a risk of exposure to certain agents or to extremely dangerous working conditions which endanger the safety or health of such workers;
- provisions must be drawn up so that pregnant workers, those who have recently given birth or those who are breastfeeding are not obliged to work at night, these provisions being necessary from the point of view of safety and health;
- the vulnerability of pregnant workers, those who have recently given birth or are breastfeeding makes it necessary to grant the right to maternity leave of at least 14 consecutive weeks, distributed before and/ or after birth and to take compulsory maternity leave of at least two weeks, distributed before and/ or after birth;
- because the risk of dismissal for reasons related to their condition may have detrimental effects on the physical and mental condition of pregnant workers, workers who have recently given birth or are breastfeeding, a ban on dismissal must be provided for in such cases;
- work organization measures aimed at protecting the health of pregnant workers, women who have recently given birth or are breastfeeding, have effect only if they are accompanied by the maintenance of rights related to the individual employment contract, including the maintenance of remuneration or the provision of adequate benefits;

[1] Amended by Directive 2007/30 / EC of the European Parliament and of the Council amending Council Directive 89/391 / EEC, its special directives and Directives 83/477 / EEC, 91/383 / EEC, 92/29 / EC EEC and Council Directive 94/33 / EC with a view to simplifying and streamlining implementation reports.

[2] See the preamble to Directive 92/85 / EEC.

- the provisions regarding maternity leave would not have effect if they were not accompanied by the maintenance of the rights related to the employment contract or the granting of an adequate benefit;
- the notion of adequate benefit in the case of maternity leave must be regarded as a technical point of reference for setting the minimum level of protection and must not, in any event, be construed as implying an analogy between pregnancy and illness.

2. FIELD OF APPLICATION

Directive 92/85 / EEC applies to pregnant workers, women who have recently given birth or are breastfeeding. The provisions of Directive 89/391 / EEC, with the exception of art. 2 para. 2, shall apply in full to all categories of workers constituting the scope of Directive 92/85 / EEC, without prejudice to more restrictive and / or special provisions contained in the latter.

Directive 92/85 / EEC cannot have the effect of reducing the level of protection afforded to pregnant workers, those who have recently given birth or are breastfeeding in relation to the situation in each Member State at the time of its adoption. Member States have the right to draw up different safeguards, subject to the minimum conditions laid down in the Directive.

Directive 92/85 / EEC defines the following terms as follows:

a) *pregnant worker* means any pregnant worker who informs her employer of her condition, in accordance with national laws and / or practices;

b) *worker who has recently given birth* means any worker who has recently given birth, within the meaning of national legislation and / or practice, and who informs her employer of her condition, in accordance with such legislation and / or practice;

c) *breastfeeding* worker means any breastfeeding worker, within the meaning of national law and practice, and who informs her employer of her condition, in accordance with such legislation and / or practice.

3. EMPLOYER'S OBLIGATION TO EVALUATE THE RISKS AND WORKERS' INFORMATION

For all activities that may present a specific risk of exposure to agencies, processes or working conditions, listed in Annex I to the Directive 92/85[3], the

[3] The agencies, processes and working conditions provided for in Annex 1 are: A. Agents:

1. Physical agents, if these are considered as agents that cause damage to the fetus and can cause detachment of the placenta, in particular: a) shocks, vibrations or movements; b) manual handling of weights, involving risks, especially in the dorso-lumbar area; c) noise; d) ionizing radiation (*); e) non-ionizing radiation; f) extreme temperature limits; g) movements and working

employer must assess the nature, degree and duration of exposure of workers in the company and / or unit, either directly or through the protection and prevention services referred to in Article 7 of Directive 89/391 / EEC, in order to assess any risk to the safety or health of workers and any possible effect on pregnancy or lactation and to decide on the measures to be taken.

Pregnant workers who have recently given birth or are breastfeeding who may be in one of the above situations and / or their representatives shall be informed by the employer of the results of the assessment and of all measures relating to health and safety at work.

The Commission, in consultation with the Member States and with the support of the Advisory Committee on Safety, Hygiene and Health Protection at Work, shall establish guidelines for the assessment of chemical, physical and biological agents and industrial processes considered dangerous to the safety or health of pregnant workers, who have recently given birth or are breastfeeding. These guidelines should also take into account work movements and positions, physical and mental fatigue and other types of physical and mental exertion related to the work of the workers concerned.

The purpose of these guidelines is to serve as a basis for the above-mentioned evaluation. To this end, Member States should make these guidelines known to all employers and workers and / or their representatives in that Member State.

4. PROTECTIVE MEASURES

If the results of the risk assessment initiated by the employer show a risk to the safety or health of the workers or an impact on pregnancy or lactation, the employer shall take the necessary measures to ensure that, by a temporary change in the working conditions and / or working hours of the worker concerned, exposing this worker to the highlighted risks is avoided.

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positions, movements – inside or outside the unit –, mental and physical fatigue and other physical efforts related to the activity of the workers, within the meaning of art. 2 of the Directive.

2. Biological agents: Biological agents from risk groups 2, 3 and 4, within the meaning of art. (2) let. (d) points (2), (3) and (4) of Directive 90/679 / EEC (1), in so far as it is known that these agents or the therapeutic measures required for their existence endanger the health of the pregnant woman and the child to be born and to the extent that they do not yet appear in Annex II.

3. Chemical agents – the following chemical agents, in so far as they are known to endanger the health of the pregnant woman and the unborn child and in so far as they do not yet appear in Annex II: a) substances labeled R 40, R 45, R 46 and R 47 in accordance with Directive 67/548 / EEC, in so far as they do not yet appear in Annex II; b) the chemical agents listed in Annex I to Directive 90/394 / EEC; c) mercury and its derivatives; d) antifungal drugs; e) carbon monoxide; f) dangerous chemical agents with cutaneous absorption route.

B. Processes: the industrial processes listed in Annex I to Directive 90/394 / EEC.

C. Working conditions: underground mining activities.

If the modification of the working conditions and / or the work schedule is not technically or objectively possible or cannot be reasonably requested, for well-founded reasons, the employer will take measures to change the workplace of the respective worker.

If the change of job is not technically possible and / or cannot reasonably be requested, for duly substantiated reasons, the workers concerned must be granted, in accordance with national legislation and / or practice, leave to the entire period necessary to protect their safety or health[4].

Employers must take the necessary measures to avoid exposing these categories of workers to risks that could have repercussions on pregnancy or breastfeeding, by temporarily improving working conditions and / or working hours or by changing jobs or providing a leave in accordance with national law, with the granting of adequate remuneration or allowance.

5. PROHIBITION OF EXPOSURE TO RISKS

In addition to the general provisions on the protection of workers, in particular those on occupational exposure limit values, the categories of workers falling within the scope of the Directive benefit from the following protection measures:

a. pregnant workers may not, under any circumstances, be required to carry out activities for which the assessment has highlighted the risk of exposure to the agencies and the working conditions set out in Section A of Annex II[5], which may endanger the safety or health of such workers;

b. breastfeeding workers may in no case be required to carry out activities for which the assessment has highlighted the risk of exposure to the agencies and the working conditions set out in Annex II, Section B[6], which may endanger the safety or health of these workers.

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[4] R.C. Radu, *Dreptul Uniunii Europene privind relațiile de muncă*, Craiova, Aius Publishing, 2013, p. 219.

[5] The agencies and working conditions set out in Section A of Annex II are:

1. Agents:

a) Physical agents: activity in the hyperbaric atmosphere, for example, pressure vessels and scuba diving.

b) Biological agents: toxoplasma; rubella virus, unless it is shown that pregnant workers are adequately protected against these agents by immunization;

c) Chemical agents: lead and its derivatives, insofar as they can be absorbed by the human body.

2. Working conditions: underground mining activities.

[6] The agencies and working conditions set out in Section B of Annex II are:

1. Agents: a) Chemical agents: lead and its derivatives, insofar as these agents can be absorbed by the human body.

6. NIGHT WORK

Pregnant workers, workers who have recently given birth or are breastfeeding may not be required to work at night during pregnancy and in the postnatal period, which shall be determined by the national authority responsible for safety and health, subject to presentation, in accordance with the procedures laid down by the Member States, a medical certificate attesting that that period is necessary for the safety or health of the worker concerned.

Member States shall take the necessary measures to ensure that the workers concerned are not obliged to work night shifts, which shall include, in accordance with national laws and practices, the possibility of:

a) transfer to a day job or

b) granting of a leave or the extension of the maternity leave, in case such a transfer is not technically and / or objectively possible or cannot be reasonably requested for well-founded reasons.

7. RIGHT TO MATERNITY LEAVE AND EXEMPTIONS FOR PRENATAL CONSULTATIONS

According to Directive 92/85 / EEC, pregnant workers who have recently given birth or are breastfeeding must have maternity leave of at least 14 consecutive weeks, distributed before and / or after childbirth, in accordance with national laws and / or practices, of which at least two weeks compulsory leave, distributed before and / or after child's birth.

Another protective stipulation is the obligation of the Member States to take the necessary measures to ensure that pregnant workers are entitled, in accordance with national laws and / or practice, to paid free periods to carry out prenatal consultations, if they take place during the working hours.

8. PROHIBITION OF DISMISSAL

Member States must take the necessary measures to prohibit the dismissal of pregnant workers who have recently given birth or are breastfeeding from the beginning of pregnancy until the end of the abovementioned maternity leave, except in special cases unrelated to their condition, allowed by national laws and / or practices and, where applicable, for which the competent authority has given its consent.

If such a worker is dismissed during maternity leave, the employer must provide well-founded reasons for the dismissal in writing.

2. Working conditions: underground mining activities.

Member States are obliged to take the necessary measures to protect the workers concerned against the consequences of dismissal during maternity leave which, pursuant to the provisions of Art. 10 point 1 of Directive 92/85 / EEC, is illegal.

The only action available to a woman who has been dismissed during pregnancy is an action for a declaration of invalidity and reinstatement, to the exclusion of any other action in the field of labor law, as well as an action for damages.

There is no doubt that the prohibition on dismissal while the employee is pregnant is intended, to the detriment of the employer's interests, to ensure the protection of the employee, who is vulnerable during this period so that such a measure cannot seriously harm the health of the employee's mother or child.

Of course, the violation of this prohibition will lead to the sanction of the absolute nullity of the measure taken by the employer[7]. Indeed, even if the worker's employment relationship is not suspended by law in the event of pregnancy, as in the case of incapacity for work or maternity leave, the employer cannot order any measure that would lead to the termination of the individual employment contract[8]. During pregnancy, dismissal is prohibited provided that the employee has informed the employer of her condition. However, the dismissal ban operates at the time of the dismissal decision and not at the time when the dismissal becomes effective[9].

Indeed, the CJEU, in the question referred by a Danish court concerning the interpretation of Article 10 of Directive no. 95/85, held that it must be interpreted as precluding the dismissal of a worker for the cause of pregnancy, even if she failed to inform the employer of her pregnancy, of which she was aware at the time of concluding the contract[10].

In another case, the European Court of Justice ruled, in summary, that according to Articles 10 and 12 of the same directive, Member States must, in essence, take the necessary measures to prohibit the dismissal of workers for the period from the beginning of the pregnancy until the end of the maternity leave[11].

9. THE CASE OF THE EMPLOYER'S INSOLVENCY

The situation of pregnant worker, worker who have recently given birth or is breastfeeding in a collective procedure that visits the assets of her employer – such as the declaration of insolvency – is difficult because the issue of the recovery of

[7] High Court of Cassation and Justice of Romania, Civil Section, Dec. no. 2436/2004, in "Buletinul Jurisprudenței", *Culegere de decizii pe anul 2004*, Bucharest, All Beck Publishing, 2005, pp. 223–224.

[8] Bucharest Court of Appeal, VII[th] Civil Section, for cases regarding labor and social insurance disputes, dec. 5303/R/2010, in "Revista Română de Dreptul Muncii", no. 3/2011, p. 140.

[9] Bucharest Court of Appeal, Civil Section, for cases regarding labor and social insurance disputes, Dec. nr.5724/R/2012, in "Revista Română de Dreptul Muncii", no. 1/2013, p. 137.

[10] CJEU, C-232/09, Dita Danosa versus LKB Līzings SIA, available at https://eur-lex.europa.eu/legal-content/RO/TXT/?uri=CELEX%3A62009CJ0232.

[11] CJEU, C-63/08 of 29 October 2009, Virginie Pontin versus T-Comalux SA, available at https://curia.europa.eu/juris/liste.jsf?num=C-63/08.

her wage claims is on the one hand, and on the other hand, the insolvency of the employer entails almost always the loss of her job[12].

For the purposes of Directive nr. 2008/94/CE, an employer shall be deemed to be in a state of insolvency where a request has been made for the opening of collective proceedings based on insolvency of the employer, as provided for under the laws, regulations and administrative provisions of a Member State, and involving the partial or total divestment of the employer's assets and the appointment of a liquidator or a person performing a similar task, and the authority which is competent pursuant to the said provisions has either:

a) decided to open the proceedings or

b) established that the employer's undertaking or business has been definitively closed down and that the available assets are insufficient to warrant the opening of the proceedings.

Member States shall take the measures necessary to ensure that guarantee institutions guarantee payment of employees' outstanding claims resulting from contracts of employment or employment relationships, including, where provided for by national law, severance pay on termination of employment relationships[13].

The claims taken over by the guarantee institution shall be the outstanding pay claims relating to a period prior to and/or, as applicable, after a given date determined by the Member States.

Member States have the possibility to limit the payment obligation provided for in Art. 3 of the Directive for guarantee institutions. Where Member States exercise this right, they shall specify the length of the period for which unpaid claims are to be paid by the guarantee institution. However, this may not be less than the period covered by the salary rights for the last three months of the employment relationship preceding or succeeding the date fixed by the Member State concerned.

Member States may include this minimum period of 3 months in a reference period which may not be less than 6 months.

Member States which provide for a reference period of at least 18 months may limit the length of the period for which unpaid claims are to be paid by the guarantee institution at 8 weeks. In this case, for the calculation of the minimum period, the periods that are most favorable to the employee are used.

Member States may set ceilings for payments made by guarantee institutions. These ceilings can not be below a socially compatible level with the social objective of the Directive.

Where Member States make use of this possibility, they shall inform the Commission of the methods used to establish the ceiling.

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[12] See C. Gîlcă, *Reorganizarea întreprinderilor. Analiza dispoziţiilor noului Cod al muncii în raport cu legislaţia şi jurisprudenţa europeană*, Rosetti Publishing, Bucharest, 2005, pp. 201–205.

[13] Art. 3 par. 1 of Directive 2008/94/EC on the protection of employees in the event of the insolvency of their employer, published in O.J. L 283, 28.10.2008, pp. 36–42.

10. THE CASE OF COLLECTIVE REDUNDANCY

The concept of "collective redundancies" refers to redundancies made by an employer for one or more reasons, unrelated to the person of the worker, provided that certain quantitative and temporal conditions are met[14].

When a pregnant worker who has recently given birth or is breastfeeding is dismissed in a collective redundancy procedure, she belongs to both the group of workers protected under Directive 92/85 and the group of workers protected under Directive 98/59 on the approximation of the laws of the Member States relating to collective redundancies[15]. On that basis, it must therefore enjoy at the same time the rights provided for in those directives, which are complementary.

Under Article 10 (1) of Directive 92/85, Member States are to take the necessary measures to prohibit the dismissal of workers between the beginning of pregnancy and the end of maternity leave, except in special cases unrelated to their status, as permitted by law and / or national practices and, where applicable, for which the competent authority has agreed.

In view of the risk that a possible dismissal would affect the physical and mental condition of pregnant workers who have recently given birth or are breastfeeding, including the particularly serious risk of urging the pregnant worker to terminate her pregnancy voluntarily, the European Union legislature provided, in pursuant to Article 10 of Directive 92/85, a special form of protection for women, stipulating a prohibition on dismissal from the beginning of pregnancy until the end of maternity leave, except in exceptional cases unrelated to their condition and provided that the employer justify in writing the reasons for such dismissal[16].

Thus, where the decision to dismiss was taken for reasons which are essentially connected with the pregnancy of the worker concerned, it is incompatible with the prohibition on dismissal laid down in Article 10 of that directive[17].

By contrast, a decision to dismiss taken between the beginning of pregnancy and the end of maternity leave, on grounds unrelated to the worker's pregnancy, is not contrary to Article 10, provided that the employer submits well-founded grounds for dismissal and that such dismissal be permitted by the relevant national legislation and / or practice in accordance with Article 10 (1) and (2) of Directive 92/85[18].

It follows that the reason or reasons unrelated to the person of the worker for whom the collective redundancies are made within the meaning of Article 1 (1) of Directive 98/59 fall within the scope of special cases unrelated to the status of workers within the meaning of Article 10 (1) 1 of Directive 92/85.

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[14] See CJEU, Case C-323/08 of 10 December 2009, Rodríguez Mayor and Others, paragraph 35, available at https://curia.europa.eu/juris/liste.jsf?language=en&jur=C,T,F&num=C-323/08&td=ALL.

[15] Published in O.J. L 225, 12.8.1998, pp. 16–21.

[16] See, to that effect, CJEU, Case C-232/09, Danosa, 2010, paragraphs 60 and 61, cited above.

[17] *Ibidem*, paragraph 62.

[18] *Ibidem*, paragraph 63.

As a short conclusion, pregnant workers can be fired as a result of a collective redundancy. In such a case, the employer must provide the pregnant worker with the reasons justifying the dismissal, as well as the objective criteria used to designate the workers to be dismissed.

The European Court of Justice considered that Directive 92/85 does not preclude national legislation which allows a pregnant worker to be dismissed as a result of collective redundancies. The Court first recalls that a dismissal decision taken on the grounds that is essentially related to the pregnancy of the worker concerned is incompatible with the prohibition of dismissal provided for in that directive.

The Court also stated that Directive 92/85 does not preclude national legislation which allows the employer to dismiss a pregnant worker in a collective redundancy without providing any other reasons than those justifying such collective redundancy, in so far as the objective criteria used are indicated to designate workers to be dismissed. To that end, the two combined directives require only the employer: (i) to state in writing the reasons unrelated to the person of the pregnant worker for whom he is taking the collective redundancy (in particular economic, technical or organizational or production reasons) and (ii) indicate to the worker concerned the objective criteria used to designate the workers to be made redundant[19].

The Court of Justice also pointed out that Directive 92/85 expressly distinguishes between, on the one hand, protection against dismissal itself, as a precautionary measure, and, on the other hand, protection against the consequences of dismissal, as a remedy. Member States are therefore required to establish this double protection. Preventive protection is of particular importance in the context of Directive 92/85, given the risk of a possible dismissal affecting the physical and mental condition of pregnant workers who have recently given birth or are breastfeeding, including the particularly serious risk of urging the pregnant worker to terminate the pregnancy voluntarily.

The ban on dismissal in the directive addresses these concerns. Thus, the Court considers that protection by way of reparation, even if it leads to the reinstatement of the dismissed worker and to the payment of unpaid wages as a result of dismissal, cannot replace preventive protection. Consequently, Member States cannot confine themselves to providing exclusively, as a remedy, for the nullity of such dismissal where it is not justified.

In answering two questions asked by a Spanish court of law, the European Court of Justice stated that Directive 92/85 does not preclude national rules which, in the context of collective redundancies, do not provide for any priority for retention of employment or for redistribution prior to such redundancy, for pregnant workers, women who have recently given birth or are breastfeeding. Thus, Directive 92/85 does not require Member States to lay down such priorities.

[19] CJEU, C-103/16 of February 22, 2018, Jessica Porras Guisado/Bankia S.A., available on-line at https://eur-lex.europa.eu/legal-content/RO/TXT/HTML/?uri=CELEX:62016CJ0103&from=EN.

However, as the Directive contains only minimum provisions, Member States may provide for higher protection for pregnant workers, women who have recently given birth or are breastfeeding[20].

Despite increasing developments, there are still differences between the provisions in force in the Member States concerning the arrangements and procedure for collective redundancies and the measures intended to mitigate the consequences of redundancies for workers, especially for pregnant workers, women who have recently given birth or are breastfeeding. These differences may have a direct effect on the functioning of the internal market.

11. RIGHTS RELATED TO THE EMPLOYMENT CONTRACT

In all cases of pregnant workers, those who have recently given birth or are breastfeeding and who are not on maternity leave[21], they must be guaranteed, in accordance with national laws and practices, rights related to the employment contract, including the maintenance of remuneration and / or the right of the workers concerned to receive an adequate benefit.

In the case of maternity leave[22], the workers in question must be provided with: a) the rights related to the employment contract; b) maintaining a remuneration and / or the right to benefit from an adequate pay. That pay is considered to be adequate if it guarantees an income at least equivalent to that which the worker concerned would receive in the event of termination of employment on grounds relating to her state of health, within a limit laid down by national law.

Member States may make entitlement to adequate remuneration or benefit conditional on the worker concerned fulfilling the legal conditions for granting such benefits under national law, but these conditions may not in any case include previous periods of employment longer than 12 months prior to the expected date of child's birth.

12. DEFENDING RIGHTS

Member States must introduce into their national legal systems the measures necessary to enable any worker who considers herself unjustified by failing to comply with the obligations arising from the Directive to exercise her rights in court or, in accordance with national laws and / or practices, by recourse to other competent authorities[23].

[20] See https://www.juridice.ro/564556/cjue-c-103-16-jessica-porras-guisado-bankia-s-a-fondo-de-garantia-salarial-si-altii-lucratoarele-gravide-pot-fi-concediate-ca-urmare-a-unei-concedieri-colective.html.

[21] Art. 5, 6 and 7 of Directive 92/85/EEC.

[22] Mentioned in art. 8 of Directive 92/85 / EEC.

[23] Art. 12 of Directive 92/85/EEC.

13. CONCLUSIONS

Article 10 (1) of 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 Special Directive within the meaning of Article 16 (1) of Directive 89/391 / EEC] must be interpreted as not precluding national rules permitting the dismissal of a pregnant worker as a result of collective redundancies within the meaning of Article 1 (1) let. (a) of Council Directive 98/59 / EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies[24].

Article 10 (2) of Directive 92/85 must be interpreted as not precluding national legislation which allows the employer to dismiss a pregnant worker in the event of collective redundancy, without giving her any other reasons than those justifying such collective redundancy, in so far as the objective criteria which have been used to designate the workers to be dismissed are indicated.

Article 10 (1) of Directive 92/85 must be interpreted as meaning that that provision precludes national legislation which does not, in principle, preclude the preventive dismissal of a pregnant worker who has recently given birth or is breastfeeding and which provides excluding the nullity of this dismissal when it is illegal, as reparation.

Article 10 (1) of Directive 92/85 must be interpreted as not precluding national legislation which, in the context of collective redundancies within the meaning of Directive 98/59, does not provide for any priority in maintaining employment or redistribution priority, applicable prior to this dismissal, for pregnant women who have recently given birth or are breastfeeding, without excluding the possibility for Member States to guarantee greater protection to pregnant workers who have recently given birth or are breastfeeding.

[24] CJEU, Case 103/15, Jessica Porras Guisado v. Bankia SA, paragraph 75, cited above.