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NEWS REPORT

Country:	Greece
Title:	Pregnancy and maternity protection
Date:	3 November 2016
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<u>Context</u>	
Issue at stake:	Prohibition of dismissal during pregnancy and thereafter
Ground of discrimination:	Sex
Source:	National equality body
Field:	Employment
Applicable law:	Articles 33 of the EU Charter of Fundamental Rights; Directive 92/85/EEC; Presidential Decree 176/1997 transposing Directive 92/85/EEC.

Content

Development: Article 10 of Presidential Decree (PD) 176/97¹ transposing Directive 92/85/EEC² prohibits the dismissal of a woman during pregnancy and for 18 months after childbirth or during a longer absence due to illness brought about by pregnancy or childbirth, unless there is a serious ground for the dismissal. Dismissal during the above period must be duly justified in writing and notified to the Labour Inspectorate; otherwise, it is null and void. However, in the private sector, these requirements are often ignored, as reported in the last Gender Equality Special Annual Report of the Greek Ombudsman.³ It is noted there that the number of complaints has decreased due to the financial crisis which discourages workers from claiming their rights. Among the complaints received, a large number concern the private sector, and in particular discrimination against women during the periods of pregnancy and maternity. Such problems are very topical and constantly growing. However, as the Ombudsman is stressing, wronged women are reluctant to claim their rights, as they fear that they will lose their jobs or their rights due to the bleak financial situation. Let us note that recourses to the courts by women working in the private sector are scarce, obviously for the same reason. Therefore, as legal protection is increasingly less sought by victims, it is becoming more and more limited in practice – a problem which is also very topical and constantly growing.

Key points of analysis: Article 10(1) of PD 176/1997 transposing Directive 92/85/EEC prohibits the dismissal of female workers during pregnancy and thereafter by reference to Article 15 of Act 1483/1984. The latter, as subsequently replaced by Article 36(1) of

¹ PD 176/1997 'Measures for the Improvement of the Safety and Health at Work of Pregnant Workers and Workers Who Have Recently Given Birth or are Breastfeeding in Compliance with Directive 92/85/EEC,' OJ A 150/15.07.1997, as amended by Decree 41/2003, OJ A 44/21.02.2003.

² 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 , 28/11/1992 pp. 1-8.

³ See Ombudsman Annual Report 2015 (Special Report 'Gender and Employment Relationships'), available at: <http://www.synigoros.gr/?i=isotita-ton-fylon.el.files.366798>, accessed 1 September 2016.

Act 3996/2011,⁴ reads: 'Termination of the employment relationship of a female worker by her employer both during her pregnancy and 18 months after childbirth or during a longer absence due to illness brought about by pregnancy or childbirth, is prohibited and is null and void, unless there is a serious ground for the termination. The protection against termination applies with regard to the employer by whom the woman is hired, without having previously been employed elsewhere before the expiry of the 18-month period or the longer period provided by this provision, as well as with regard to a new employer who hires the woman and until the above periods are completed. In no case may the possible diminution of the pregnant worker's output due to pregnancy be considered a serious ground'.

Moreover, according to Article 10(2) of PD 176/97, 'the employer must duly justify the termination in writing and notify it to the Labour Inspectorate.' This requirement concerns the whole 18-month period. In the absence of a justification in writing, the termination will be null and void.

These provisions apply to the private and public sectors (Article 1(2) of Decree 176/97).

The application of the above provisions is subject to strict judicial scrutiny and their violation entails sanctions which guarantee real and effective judicial protection. In particular, according to case law, there is a 'serious ground' when one or more facts, objectively and according to good faith, make the continuation of the employment relationship unbearable for the employer, irrespective of any fault of the worker, the particular circumstances being taken into account. Examples include: poor performance of the worker's duties or non-compliance with the employer's instructions provided that this is not due to her situation,⁵ or the closing down of the business.⁶ Moreover, when the dismissal is judicially declared null and void, it is deemed as never having happened: the worker retains her post, no reinstatement being necessary; she is awarded full back pay (the whole pay which she would have received had she not been dismissed, without a ceiling), plus legal interest and possibly moral damages.⁷

Therefore, the protection provided by Greek law is in accordance with Directive 92/85 and even exceeds the requirements of the Directive as to the length of the period of protection against dismissal, while the sanctions are liable to have a real deterrent effect on the employer and are adequate in relation to the damage sustained.⁸

However, it often happens in the private sector, in particular since the onset of the financial crisis, that employers, as soon as they take cognisance of the pregnancy compel pregnant women to resign by adverse treatment or harassment; or impose on them a prejudicial modification of their working conditions (e.g. a modification of working time or a change of workplace); or dismiss them without notifying them of the dismissal, while they declare to the Ministry of Labour and the Agency of Manpower Employment (OAED) which is competent for registering the unemployed and paying unemployment benefits, that they have resigned of their own will. The above are reported in the recently published Ombudsman's report. The Ombudsman notes that the complaints for such adverse treatment mostly come from female employees of small and medium-sized undertakings (i.e. undertakings employing up to ten workers). The Ombudsman considers that this is probably due to the fact that these undertakings are heavily hit by the financial crisis, as their receipts are constantly shrinking while their financial obligations are constantly growing; consequently, they see maternity rights as an additional burden. Quite often employers admit that they give priority to their tax and other financial obligations, while they consider that maternity protection is of lesser

⁴ OJ A 170/5.08.2011.

⁵ Supreme Civil and Penal Court (Civil Section) Nos. 308/2011, 622/2008.

⁶ Thessaloniki Court of Appeal No. 47/1991.

⁷ SCPC, Civil Section 797/2013: the serious ground invoked proved untrue; the dismissal was null and void.

⁸ See leading CJEU case 14/83 S. *von Colson and E. Kamann* [1984] ECR I-1891, Paragraphs 22-24.

importance.⁹ However, the Ombudsman sees the tip of the iceberg only; moreover, such cases do not seem to have reached the courts, as the employer's behaviour is very difficult to prove (the EU rule on the burden of proof, although transposed into Greek law, is not applied by Greek courts), while the spectre of unemployment, which is much higher for women than for men, in conjunction with rising litigation costs, make women reluctant to claim their rights.

Internet link sources:

Presidential Decree (PD) 176/1997 'Measures for the Improvement of the Safety and Health at Work of Pregnant Workers and Workers Who Have Recently Given Birth or are Breastfeeding in Compliance with Directive 92/85/EEC,' OJ A 150/15.07.1997, as amended by Decree 41/2003, OJ A 44/21.02.2003, *via* Official Journal website (in Greek) at: <http://www.et.gr>, accessed 2 November 2016.

Ombudsman Annual Report 2014 (Special Report '*Gender and Employment Relationships*'), p. 138 available at: <http://www.synigoros.gr/resources/docs/ee2014-13-fylo.pdf>; Ombudsman Annual Report 2015 (Special Report '*Gender and Employment Relationships*'), pp. 117-121: available at: <http://www.synigoros.gr/?i=isotita-ton-fylon.el.files.366798>, both accessed 2 November 2016.

⁹ See Ombudsman Annual Report 2014 (Special Report '*Gender and Employment Relationships*'), p. 138 available at: <http://www.synigoros.gr/resources/docs/ee2014-13-fylo.pdf>; Ombudsman Annual Report 2015 (Special Report '*Gender and Employment Relationships*'), pp. 117-121: available at: <http://www.synigoros.gr/?i=isotita-ton-fylon.el.files.366798>, both accessed 30 August 2016.