



## European network of legal experts in gender equality and non-discrimination

### NEWS REPORT

<b>Country:</b>	Spain
<b>Title:</b>	Supreme Court case on unfair dismissal of a female employee undergoing fertility treatment
<b>Date:</b>	19 June 2017
<b>Expert:</b>	María Amparo, Ballester Pastor
<b><u>Context</u></b>	
<b>Issue at stake:</b>	With its judgement of 4 April 2017, the Supreme Court has recognized the right of a female worker to be reinstated in her job after being unfairly dismissed while she was undergoing fertility treatment, even though she was not yet pregnant. This Supreme Court case resembles the judgment of the CJEU of 26 February 2008 (Mayr Case).
<b>Ground of discrimination:</b>	Sex
<b>Source:</b>	National Court Decision (Supreme Court)
<b>Field:</b>	Pregnancy and maternity
<b>Applicable law:</b>	Article 14 of Directive 2006/54; article 14 of the Spanish Constitution (both establishing the prohibition of discrimination on the grounds of gender).

### Content

**Case:** In its judgment of 4 April 2017 (appeal number 3466/2015) the Supreme Court ruled on a case of a female worker who was dismissed when she was going through fertility treatment. The dismissal took place very early on in the process, when the complainant was not yet pregnant and the fertility treatments were still taking place in the laboratory. The employer was aware of the fertility treatment during the time of her dismissal.

The employer held that it was not a discriminatory dismissal but simply an 'unfair dismissal' (or *despido improcedente*). In Spanish legislation, if the dismissal is unfair the employer has to pay a severance payment, but he is not obliged to reinstate the unfairly dismissed worker in their job. However, if the dismissal is declared discriminatory by the Court, the consequence is that the dismissal is declared null and void, which means that the worker has to be reinstated in their job.

**Decision of the Court:** Despite the fact that the woman was not yet pregnant, the Supreme Court considered that the dismissal had to be considered discriminatory following the ruling of the CJEU in its judgement of 26 February 2008 (Mayr Case). Therefore, the female worker had to be reinstated in her previous job.

**Key points of analysis:** If the employer recognizes that the dismissal of a woman in fertility treatment did not have a fair cause, the dismissal will be considered null and void for being discriminatory because of gender.

**Internet link sources:**

Judgement of the Supreme Court of 4 April 2017 (appeal number 3466/2015).  
<http://www.poderjudicial.es/search/contenidos.action?action=contentpdf&datasematch=TS&reference=8003649&links=&optimize=20170502&publicinterface=true>, accessed 5 June 2017.