



31 October 2012

## PRESS SUMMARY

**Jessy Saint-Prix (Appellant) v Secretary of State for Work and Pensions (Respondent) [2012] UKSC 49**

*On appeal from [2011] EWCA Civ 806*

**JUSTICES:** Lord Neuberger (President), Lady Hale, Lord Mance, Lord Kerr, Lord Reed

### BACKGROUND TO THE APPEALS

The issue in this appeal is whether the appellant retained her right to reside in the United Kingdom as a ‘worker’ pursuant to Article 7 of Directive 2004/38/EC (‘the Directive’) during the period when she temporarily ceased to be employed by reason of the late stages of her pregnancy and early aftermath of childbirth.

The appellant is a Frenchwoman who came to the UK in 2006. She worked in various jobs, mostly as a teaching assistant, enjoying the right of residence as a ‘worker’ conferred by Article 7 of the Directive. By 12 March 2008 she was six months pregnant and she ceased taking agency positions working in nursery schools because the demands of this work were too strenuous. After a short period looking for lighter work she made a claim for income support on the advice of her doctor. It was refused by the respondent on the basis that she no longer held the status of worker, and was therefore a ‘person from abroad’ who did not qualify for the benefit. Had she retained her right to reside as a worker under the Directive, she would have been entitled to income support under UK domestic law, which does not require a pregnant woman within 11 weeks of her expected date of confinement and for 15 weeks after the birth to be available for work. The appellant’s baby was born on 21 May 2008 and she returned to work three months later.

Under Article 7(3) of the Directive, an EU citizen who is no longer working retains the status of worker in certain specified circumstances, including illness or accident, but these circumstances do not include ceasing to work by reason of late pregnancy or the immediate aftermath of childbirth. The appellant argued that under EU law a broad interpretation was given to the term ‘worker’, which did not necessarily depend on the actual or continuing existence of an employment relationship, and that it would be a substantial deterrent to the free movement of female workers, and amount to direct discrimination on grounds of sex, if they lost the right to reside around the time of giving birth. The respondent asserted, however, that Article 7 was intended to be a codification of the existing EU law on ‘workers’ and women in the appellant’s position fell outside it. Any discrimination was on grounds of nationality, was indirect and was justified.

The appellant’s appeals against the respondent’s refusal of income support were dismissed by the Upper Tribunal and the Court of Appeal. An appeal was made to the Supreme Court. The Supreme Court is obliged to refer questions of EU law to the Court of Justice for the European Union (‘the CJEU’) if the application of the Directive in the circumstances of this case is not clear.

## **JUDGMENT**

The Supreme Court unanimously decides to refer two questions to the CJEU. The terms of the reference are set out by Lady Hale.

## **REASONS FOR THE JUDGMENT**

The Supreme Court is not persuaded that the case of either appellant or respondent is clearly right and is therefore under a duty to refer the questions in issue to the CJEU. It considers it likely that the Directive codified the law as it then stood but that did not necessarily preclude further elaboration of the concept of ‘worker’ to fit situations which had not been envisaged. Pregnancy and the immediate aftermath of childbirth (as opposed to leaving the workplace to look after children) are a special case, affecting only women, who will suffer comparative disadvantage in the workplace unless special account is taken of them. Equal treatment of men and women is one of the fundamental general principles of EU law and may lead to the development of the concept of ‘worker’ by the CJEU to meet this particular situation.

The following questions are therefore referred to the CJEU:

1. Is the right of residence conferred upon a ‘worker’ in Article 7 of the Citizenship Directive to be interpreted as applying only to those (i) in an existing employment relationship, (ii) (at least in some circumstances) seeking work, or (iii) covered by the extensions in Article 7(3), or is the Article to be interpreted as not precluding the recognition of further persons who remain ‘workers’ for this purpose?
2. (i) If the latter, does it extend to a woman who reasonably gives up work, or seeking work, because of the physical constraints of the late stages of pregnancy (and the aftermath of childbirth)?  
(ii) If so, is she entitled to the benefit of the national law’s definition of when it is reasonable for her to do so?

## **NOTE**

**This summary is provided to assist in understanding the Court’s decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:**

[www.supremecourt.gov.uk/decided-cases/index.html](http://www.supremecourt.gov.uk/decided-cases/index.html)