

SPANISH CONSTITUTIONAL COURT

Cabinet of the President
Press Office

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THE SPANISH CONSTITUTIONAL COURT (TC) ANNULS A DISMISSAL OF A CNI PREGNANT EMPLOYEE ON DISCRIMINATORY GROUNDS

The Plenary Meeting of the Spanish Constitutional Court (TC) has granted constitutional protection to a female civil servant working for the CNI ("*Centro Nacional de Inteligencia*" [Spanish Intelligence Service] who was dismissed as "*not suitable*". The appellant claims that the dismissal was due to her pregnancy and reports that the Administration did not justify the reasons for her alleged unsuitability. Chamber Two of the TC considers that the appellant's right of non-discrimination has been breached (Article 14 of the Spanish Constitution (CE)) and decides to overrule both the administrative resolution ordering her dismissal and the two judgments and decision delivered by the Spanish National Court, upholding the dismissal.

The plaintiff had joined the CNI as provisional statutory staff in 2004; according to the Staff Regulations of the CNI, after a period of six years, the CNI was obliged to definitively employ or dismiss her, before the end of year six, on the grounds of unsuitability.

According to the documents provided by the appellant in the course of the proceedings, during her years of service the CNI's appraisal of her work was always positive. In September 2010, however, when she was five months' pregnant, she was dismissed.

According to the Administration, there are two reports, dated 16 December 2009 and 15 July 2010, from the Intelligence Support Office "*disclosing negative aspects*" related to performance of the appellant's duties. Those reports are what justify her dismissal, although the CNI "*never provided these reports (...) due to their confidential nature*".

The judgment delivered by the TC, where judge Juan José González Rivas acted as the reporting judge, states that "*the Administration's lack of evidence is not justified by an alleged confidentiality of appraisal reports on performance of the appellant's tasks, whereby jurisdictional control enjoys impunity*": After referring specifically to the need to preserve national security, and thus, any information "*covered by official secrets legislation*" the judgment considers that the Administration "*could have provided a justified and sufficient explanation on any negative facts or aspects of performance of her duties which were relevant to the decision not to employ the plaintiff as permanent statutory staff*".

The Chamber declares that, according to consolidated case-law of the TC, the signs of discriminatory treatment provided by the plaintiff meant that the Administration had to prove the absence of discrimination in its dismissal.

Madrid, 28 February 2014.