



**COUNCIL OF
THE EUROPEAN UNION**

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INFORMATION NOTE

from : the Legal Service

to : the Permanent Representatives Committee (Part One)

Subject : **Case before the Court of Justice of the European Union**

- Case C-363/12, Ms Z

Referral to the Court of Justice for a preliminary ruling by the Equality Tribunal (Ireland)

1. The Registrar of the Court of Justice of the European Union notified the General Secretariat of the Council on 20 September 2012 that the Equality Tribunal (Ireland) requested the Court of Justice to give a preliminary ruling on the validity and interpretation of Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, and in particular Articles 4 et 14 thereof, and of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, and in particular Articles 3(1) and 5 thereof.
2. The reference to the Court of Justice is made in the course of proceedings between Ms Z against a Government department and the Board of management of a Community school.

3. The following questions are submitted to the Court of Justice:

a) Is Directive 2006/54/EC, and in particular Articles 4 and 14 thereof, to be interpreted as meaning that there is discrimination on the ground of sex where a woman, whose genetic child has been born through a surrogacy arrangement, and who is responsible for the care of her genetic child from birth - is refused paid leave from employment equivalent to maternity leave and/or adoptive leave, having regard to the following provisions of the primary law of the European Union:

- i) Article 3 of the Treaty on European Union,
- ii) Articles 8 and 157 of the Treaty on the Functioning of the European Union, and/or
- iii) Articles 21, 23, 33 and 34 of the Charter of Fundamental Rights of the European Union.

If the answer to the first question is in the negative, is Directive 2006/54/EC compatible with the above provisions of the primary law of the European Union?

b) Is Directive 2000/78/EC, and in particular Articles 3(1) and 5 thereof, to be interpreted as meaning that there is discrimination on the ground of disability where a woman who suffers from a disability which prevents her from giving birth, whose genetic child has been born through a surrogacy arrangement, and who is responsible for the care of her genetic child from birth - is refused paid leave from employment equivalent to maternity leave and/or adoptive leave, having regard to the following provisions of the primary law of the European Union:

- i) Article 10 of the Treaty on the Functioning of the European Union, and/or
- ii) Articles 21, 26 and 34 of the Charter of Fundamental Rights of the European Union.

If the answer to the second question is in the negative, is Directive 2000/78/EC compatible with the above provisions of the primary law of the European Union?

c) Is the United Nations Convention on the Rights of Persons with Disabilities capable of being relied on for the purposes of interpreting, and/of of challenging the validity, of Directive 2000/78/EC?

If the answer to the third question is in the affirmative, is Directive 2000/78/EC, and in particular Articles 3 and 5 thereof, compatible with Articles 5, 6, 27(1)(b) and 28(2)(b) of the United Nations Convention on the Rights of Persons with Disabilities?

4. The Council is, according to Article 23 of the Statute of the Court of Justice, entitled to submit observations within two months of receipt of the notification, in a case governed by Article 267 of the Treaty on the Functioning of the European Union if the act, the validity of which is in dispute, originated from the Council.
5. The validity of Directive 2006/54/EC and of Directive 2000/78/EC being in dispute, the Council should make use of this right. In line with practice, the Agents of the Council will restrict their observations to the defence of the validity of the act and will not intervene on its interpretation.
6. The Director General of the Legal Service of the Council has appointed and Mr. Hans Grahn and Ms Rita Liudvinaviciute-Cordeiro, legal advisors in the said service, as the Council's agents in this case.
