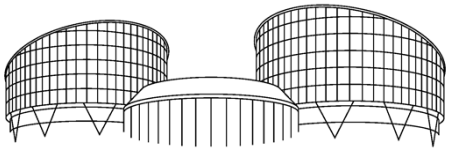

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF NAPOTNIK v. ROMANIA

(Application no. 33139/13)

JUDGMENT

Art 1 P12 • Prohibition of discrimination • Justified necessity of recalling applicant from diplomatic posting abroad after announcing pregnancy • Art 14 case-law standards applicable to Art 1 P12 • Unjustified differences in treatment on grounds of pregnancy constitute direct discrimination • Applicant's recall necessary for ensuring and maintaining functional capacity of diplomatic mission and protecting the rights of Romanian nationals in need of consular assistance • Change in applicant's work conditions not equivalent to loss of employment and not expressly prohibited by domestic and international standards • Measure not disciplinary and having no long-term setbacks to applicant's career

STRASBOURG

20 October 2020

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Napotnik v. Romania,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Yonko Grozev, *President,*
Iulia Antoanella Motoc,
Carlo Ranzoni,
Stéphanie Mourou-Vikström,
Georges Ravarani,
Jolien Schukking,
Péter Paczolay, *judges,*
and Andrea Tamietti, *Section Registrar,*

Having regard to:

the application against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Romanian national, Ms Oana-Cornelia Napotnik ("the applicant"), on 8 May 2013;

the decision to give notice to the Romanian Government ("the Government") of the application;

the parties' observations;

Having deliberated in private on 24 March, 1 September and 29 September 2020,

Delivers the following judgment, which was adopted on that last date:

INTRODUCTION

1. The application concerns the immediate termination of the applicant's diplomatic posting in Ljubljana, Slovenia, allegedly because of her pregnancy.

THE FACTS

2. The applicant was born in 1972 and lives in Bucharest. She was represented by S.C.A. Ionescu and Sava, a law firm in Bucharest.

3. The Government were represented by their Agent, most recently Ms O.F. Ezer, of the Ministry of Foreign Affairs.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

I. THE APPLICANT'S WORK IN THE CONSULAR SECTION OF THE ROMANIAN EMBASSY IN LJUBLJANA

5. The applicant is a Romanian diplomat. On 1 October 2002 she started working for the Ministry of Foreign Affairs (hereinafter "the MFA").

6. The applicant sat a competitive examination for a four-year post as a consular officer at the Romanian embassy in Ljubljana. Following the examination, she was nominated for the post by an order of the Minister of Foreign Affairs issued on 9 February 2007. At the time, she held the diplomatic rank of third secretary. Her diplomatic posting started on 2 March 2007, and since 1 January 2006 the post had been held by diplomats sent on temporary assignments.

7. When the applicant arrived to take up her post, the embassy's diplomatic staff consisted of the ambassador and two junior diplomats: the applicant, who was in charge of consular duties (about 70% of her work), and another individual, whose main tasks were diplomatic and political cooperation and who had received no consular training. The diplomatic staff also included an economic officer, sent from the Ministry of Economy.

8. The applicant's consular work consisted mainly in providing help to Romanian nationals who found themselves in emergency situations in Slovenia, notably in police detention, without identity papers, or hospitalised.

A. The first pregnancy

9. In April 2007 the applicant married a Slovenian official. A few months later she became pregnant with their first child. In November 2007 she was absent from work for a few days because of health problems linked to her pregnancy. On 27 November her obstetrician ordered that she should have bed rest. On the next day she informed the ambassador about her medical condition. She also asked to take her annual leave in the period from December to January 2008.

10. On 6 December 2007 the ambassador sent an internal report on the applicant's absence from work to the MFA, accompanied by a note written in the following terms:

> "please find attached a communication from the embassy in Ljubljana which presents the act of insubordination [*actul de indisciplină*] committed by Mrs Oana Napotnik ..."

11. The ambassador described in detail the applicant's absence from work and asked for a replacement to be sent for the month of December, when requests for consular assistance were high. As no replacement was sent from the MFA, the consular section was closed during the applicant's absence and requests for assistance were redirected to the embassies of Zagreb, Vienna or Budapest. The applicant resumed work in February 2008.

12. The applicant returned to work during her leave, on 14 and 17 December 2007, in order to deal with urgent consular matters.

13. In December 2007 the applicant was promoted to second secretary, upon being recommended for this position by her superiors.

14. The applicant, who gave birth to her child on 16 June 2008, was on maternity leave from 2 June 2008 until 19 October 2008. She then took annual leave until 5 December 2008.

15. The consular section of the embassy was closed from 2 until 15 June 2008, when a replacement was found for the applicant; that person was on a temporary assignment.

16. Between 17 and 19 July 2008, after the start of the applicant's maternity leave, the MFA organised an audit at the Ljubljana embassy. According to the ensuing report, deficiencies were found in the consular activity at the embassy. In particular, it was found that consular requests and official documents had been improperly recorded in the embassy records. Some original documents issued by the consular section had not been archived or had simply been lost. Some documents had been recorded on the wrong date or had not been signed by the relevant parties. The audit team made recommendations, without proposing sanctions. The relevant parts of the report read as follows:

> "Several deficiencies have been identified in the consular activity, despite the low volume of work. One of the reasons is linked to the parameters of Mrs Oana Napotnik's professional activity, including the fact that during the first half of 2008, owing to her pregnancy, she was absent from work for long periods of time."

17. On 27 February 2009 the applicant sent an answer to the MFA, pointing out in particular that the audit team had generalised some particular situations where errors had been made, and that she had been made responsible for the conduct of the diplomats who had preceded her and those who had replaced her during her absence. She also found it regrettable that she had not been invited to talk to the inspectors while the audit team had been in Ljubljana.

B. The second pregnancy

18. The applicant returned to work on 5 December 2008. The ambassador considered that, as the applicant had worked very little that year, it would be more appropriate to postpone her annual work performance evaluation by six months. On 14 January 2009 the ambassador informed the MFA of that decision.

19. On 19 January 2009 the applicant informed the ambassador that she was pregnant and was due to give birth in the second half of July 2009.

20. On the same day the ambassador concluded the applicant's annual performance evaluation for 2008. The overall assessment read as follows:

> "Although the overall assessment is that 'the performance met the job requirements', in Mrs Oana Napotnik's case, bearing in mind the short period of time which she spent working in 2008, because of her maternity leave and because of frequent absences due to medical appointments from February to June, these circumstances mean that she is not best suited for consular activity, which has a

certain specificity, particularly since Mrs Napotnik is the head of the consular section."

21. The applicant was informed of this report on 23 January 2009. She disagreed with the assessment.

C. Termination of the applicant's posting

22. On 20 January 2009 the ambassador discussed the applicant's situation with his superiors. In an internal note for the attention of the Minister of Foreign Affairs, the ambassador reiterated that the applicant had been absent repeatedly, owing to her first pregnancy, and it was to be expected that she would be absent again in connection with the new pregnancy. It was concluded that she was of little use to the diplomatic mission in Ljubljana. She created additional costs for the MFA because of the need to replace her on a temporary basis (notably costs with regard to lodging the replacement diplomat in Ljubljana). The note also reiterated that the audit team had found "deficiencies in the applicant's consular activity". It was proposed that the applicant's posting be terminated.

23. In a separate communication sent to the MFA on 20 January 2009, the ambassador reiterated that the applicant's prolonged and repeated absences due to her pregnancies had meant that she was of little use to the diplomatic mission in Ljubljana. The ambassador added that she represented an additional security risk because of her marriage to a Slovenian national: the applicant's husband drove the applicant's car, which was registered with diplomatic plates.

24. By a ministerial order of 20 January 2009 the applicant's posting to Ljubljana was terminated. The next day the Ljubljana embassy was given notice of the order. The applicant was informed that her mission had been terminated and that she was expected to return to the Bucharest office on 14 February 2009. She immediately requested parental leave (see Article 27 of Law no. 269/2003, quoted in paragraph 33 below).

25. At the applicant's request, her work contract was suspended by orders of the Minister of Foreign Affairs, firstly in respect of her parental leave (from 14 February 2009 to 15 May 2010 for the first child, and from 15 May 2010 to 22 July 2011 for the second child), and then in order to allow her to accompany her husband on his permanent diplomatic posting abroad (lasting four years, starting from 22 July 2011). She was not paid salary by her employer while her contract was suspended.

26. On 1 September 2015 the applicant resumed her work at the MFA. On 20 September 2016 she was promoted to first secretary. On the date of the last information received from the parties in this regard (the Government's observations of 14 June 2019) she was still working for the MFA, in Bucharest.

II. CIVIL ACTION AGAINST THE TERMINATION OF THE APPLICANT'S DIPLOMATIC POSTING IN SLOVENIA

27. On 28 September 2009 the applicant lodged a civil action against the MFA concerning the termination of her posting abroad. She complained mainly that the reason for the act in question had been her pregnancy. In her view, that reason was discriminatory and thus unlawful.

28. On 21 March 2012 the Bucharest County Court dismissed the action. It reiterated that the Minister of Foreign Affairs had the discretion to organise foreign representation and terminate postings abroad whenever necessary, on serious grounds. The court concluded that the applicant's posting had not been terminated on discriminatory grounds. The relevant parts read as follows:

> "The court considers that the termination [of the applicant's posting was] allowed in the specific sphere of diplomatic activity and [did] not constitute a disciplinary measure ... it is within the discretion of [the MFA] to decide, in order to ensure the renewal [of the diplomatic corps], when to begin a diplomat's new posting and when to terminate [the postings] of others, in order to ensure and maintain the functional capacity of diplomatic missions.
>
> ...
>
> In so far as discrimination is concerned, the court notes that decisions to terminate a posting are taken by [the MFA] with regard to all diplomats, irrespective of their sex; when [the applicant] argues that her posting should not have been terminated on these grounds, [she] is using her pregnancy in order to obtain preferential treatment."

29. The applicant appealed before the Bucharest Court of Appeal. She maintained her arguments that her diplomatic posting had been terminated on discriminatory grounds related to her pregnancy.

30. In a final decision of 8 November 2012, the Court of Appeal dismissed the appeal and upheld the decision rendered by the County Court on 21 March 2012 (see paragraph 28 above). In addition, it found as follows:

> "The Labour Code does not limit an employer's right to organise the activity of its pregnant employees, the sole prohibition being that their work contract may not be terminated ...
>
> ... [the applicant] did not prove that she had been discriminated against by [the MFA], as the decisions to terminate her posting had been taken by the MFA lawfully and within the scope of its discretion, with a view to ensuring the functioning of the MFA; such a measure can be taken in respect of all employees of the MFA, irrespective of sex or pregnancy."

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LAW

31. The relevant provisions of the Equal Opportunity Act (Law no. 202/2002) read as follows:

Article 6

"(5) The following actions do not constitute discrimination:

(a) special measures provided for by law for the protection of maternity, birth, the postnatal period, breastfeeding and child-rearing;

(b) positive actions for the protection of certain categories of women or men;

..."

Article 10

"(1) Maternity cannot constitute grounds for discrimination.

(2) Any less favourable treatment of a woman in connection with pregnancy or maternity leave constitutes discrimination under the present law."

32. The relevant provisions of Government Emergency Ordinance no. 96/2003 on the protection of maternity in the workplace read as follows:

Article 2

"...

(g) the duration of mandatory postnatal leave is 42 days, which the worker must take after giving birth; it is included in maternity leave, which has an overall duration of 126 days for all pregnant workers, in accordance with the law; ..."

Article 21

"(1) An employer shall not terminate a work contract in the following cases:

(a) [in the case] of a [pregnant worker], for reasons directly connected to her condition;

(b) [in the case] of a worker who is on leave due to risks connected to maternity;

(c) [in the case] of a worker who is on maternity leave;

..."

33. At the time of the facts of the present case, the relevant provisions of Law no 269/2003 on the statute of the diplomatic and consular corps ("Law no. 269/2003") read as follows:

Article 3

"(1) The general provisions of labour law and those of the statute of civil servants complement the provisions of the statute of the Romanian diplomatic and consular corps, unless otherwise stated in the present law.

(2) While on posting[s] abroad, members of the diplomatic and consular corps are also subject to the provisions of the international treaties which Romania has entered into, and to other rules of international law."

Article 9

"(1) Promotion within the diplomatic and consular ranks is on the basis of time spent in service ..., the evaluation of professional activity, and qualifications obtained from the Diplomatic Academy or other institutes for continuous learning ..."

Article 25

"(1) During diplomatic and consular postings abroad, members of the Romanian diplomatic and consular corps, as well as the members of their families who accompany them, have the benefit of medical assistance, covered by the mandatory health insurance organised by the MFA ..."

Article 27

"(1) Members of the Romanian diplomatic and consular corps have the right to annual leave, study leave, unpaid leave, medical leave, maternity leave, [and] parental leave until a child is two years old ..."

Article 35

"(1) Members of the diplomatic and consular corps ... are sent on permanent posting[s] abroad following a competitive examination ...

(5) The length of a diplomatic posting abroad is, in principle, four years, and three years in countries with a difficult climate.

...

(15) Vacant diplomatic and consular posts abroad which must be filled urgently ... are published within the central administration of [the MFA] ... after being approved by the Minister of Foreign Affairs. The Minister of Foreign Affairs will fill these posts on a temporary basis for a period of up to 13 months, with the possibility of one extension for up to one year."

Article 48

"(1) In order to ensure the necessary specialist staff from the [MFA], secondments and temporary employment are possible for the duration of a permanent diplomatic posting ..."

II. DOMESTIC PRACTICE

34. On several occasions the National Council for Combating Discrimination (NCCD) was asked to verify allegations of discrimination

against pregnant workers. The NCCD found the following situations discriminatory:

- the refusal to pay a pregnant worker's salary for two months, with the intention of making her resign (decision of 18 January 2012);

- the decision to retain all workers except pregnant workers in their posts, following the reorganisation of an employer company (decision of 6 February 2013);

- a change in a claimant's work situation during her short absence from work due to complications caused by her pregnancy (decision of 30 April 2014);

- the hasty dismissal of a visibly pregnant worker, despite the employer's arguments that the dismissal was related to the claimant's performance (decision of 25 January 2017);

- a change of work conditions during or after a person's return from parental leave (decisions of 7 February 2013, 16 October 2013, 4 September 2013, and 18 November 2015).

35. On the other hand, the NCCD considered that the fact that an employer had offered less complex tasks to a claimant during her pregnancy did not constitute discrimination, as that had been justified by the fact that her presence at work would be limited during her pregnancy (decision of 14 September 2016).

36. The Bucharest Court of Appeal identified the following situations as being discriminatory on grounds of pregnancy:

- offering a pregnant worker a temporary work contract instead of a permanent one (final decision of 14 December 2016);

- giving a worker notice of her dismissal as soon as she had informed her employer of her pregnancy (final decisions of 25 June 2012 and 6 November 2012);

- dismissing a pregnant worker at the end of the probationary period of an open-ended contract (final decision of 13 June 2014).

37. The Bucharest County Court examined an action seeking the annulment of a ministerial order whereby the MFA had decided to recall Mr X from his four-year posting at the embassy in Geneva before the end of the relevant term and terminate his work contract. The claimant had been hired for a specific position at the embassy in Geneva, but following the diplomatic activities being restructured, those tasks had been transferred to another embassy, in Moscow. The County Court dismissed the action, on the grounds that the reason for terminating the posting had been legitimate.

III. COUNCIL OF EUROPE MATERIAL

A. Recommendation No. R(85)2 of the Committee of Ministers

38. The relevant provisions of Recommendation No. R(85)2 on legal protection against sex discrimination, adopted by the Committee of Ministers of the Council of Europe on 5 February 1985 at the 380th meeting of the Ministers' Deputies, read as follows:

> "... Recognising the necessity to ensure legal and *de facto* equality between men and women, in particular by improving the situation of women and by taking into account the specific needs of certain categories of people;
>
> ...
>
> **Principles**
>
> I. Promotion of equality between the sexes by legislation
>
> In order to promote equality between the sexes, legislation should aim at the following objectives:
>
> 1. In the field of employment, men and women should have equal rights with regard to opportunities for employment and conditions of employment in all fields and, in particular, should be entitled to:
>
> a. equal right of access to work;
>
> b. equal conditions of work;
>
> c. equal opportunities for training;
>
> d. equal pay for work of equal value;
>
> e. equal opportunities for advancement.
>
> ...
>
> III. Special temporary measures (positive action)
>
> States should, in those areas where inequalities exist, give consideration to the adoption of special temporary measures designed to accelerate the realisation of *de facto* equality between men and women, where there are no obstacles of a constitutional nature, in particular by:
>
> a. making employers aware of the desirability of having as an objective the achievement of equality between the sexes;
>
> ..."

B. European Social Charter

39. The respondent State ratified the European Social Charter (revised) in 1999, and considered itself bound by that charter. The relevant provisions read as follows:

"...

Part I

The Parties accept as the aim of their policy, to be pursued by all appropriate means both national and international in character, the attainment of conditions in which the following rights and principles may be effectively realised:

...

8. Employed women, in case of maternity, have the right to a special protection.

...

20. All workers have the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex.

...

27. All persons with family responsibilities and who are engaged or wish to engage in employment have a right to do so without being subject to discrimination and as far as possible without conflict between their employment and family responsibilities.

...

Part II

The Parties undertake, as provided for in Part III, to consider themselves bound by the obligations laid down in the following articles and paragraphs.

...

Article 8 – The right of employed women to protection of maternity

With a view to ensuring the effective exercise of the right of employed women to the protection of maternity, the Parties undertake:

1. to provide either by paid leave, by adequate social security benefits or by benefits from public funds for employed women to take leave before and after childbirth up to a total of at least fourteen weeks;

2. to consider it as unlawful for an employer to give a woman notice of dismissal during the period from the time she notifies her employer that she is pregnant until the end of her maternity leave, or to give her notice of dismissal at such a time that the notice would expire during such a period;

3. to provide that mothers who are nursing their infants shall be entitled to sufficient time off for this purpose;

4. to regulate the employment in night work of pregnant women, women who have recently given birth and women nursing their infants;

...

Article 20 –The right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex

With a view to ensuring the effective exercise of the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex, the Parties undertake to recognise that right and to take appropriate measures to ensure or promote its application in the following fields:

a access to employment, protection against dismissal and occupational reintegration;

b vocational guidance, training, retraining and rehabilitation;

c terms of employment and working conditions, including remuneration;

d career development, including promotion.

...

Article 27 –The right of workers with family responsibilities to equal opportunities and equal treatment

With a view to ensuring the exercise of the right to equality of opportunity and treatment for men and women workers with family responsibilities and between such workers and other workers, the Parties undertake:

...

2. to provide a possibility for either parent to obtain, during a period after maternity leave, parental leave to take care of a child, the duration and conditions of which should be determined by national legislation, collective agreements or practice;

..."

IV. LAW AND PRACTICE OF THE EUROPEAN UNION

A. Directives of the Council of the European Union

40. The matter of equality between men and women, and special protection for pregnancy, has been tackled in several directives adopted by the Council of the European Union, in particular: Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions; 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; and 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 (recast) (which repealed Directive 76/207/EEC).

41. The relevant provisions of Directive 2006/54/EC read as follows:

"Whereas:

...

23. It is clear from the case-law of the Court of Justice that unfavourable treatment of a woman related to pregnancy or maternity constitutes direct discrimination on grounds of sex. Such treatment should therefore be expressly covered by this Directive.

24. The Court of Justice has consistently recognised the legitimacy, as regards the principle of equal treatment, of protecting a woman's biological condition during

pregnancy and maternity and of introducing maternity protection measures as a means to achieve substantive equality. This Directive should therefore be without prejudice to 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. This Directive should further be without prejudice to Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC.

25. For reasons of clarity, it is also appropriate to make express provision for the protection of the employment rights of women on maternity leave and in particular their right to return to the same or an equivalent post, to suffer no detriment in their terms and conditions as a result of taking such leave and to benefit from any improvement in working conditions to which they would have been entitled during their absence.

...

Article 15 Return from maternity leave

A woman on maternity leave shall be entitled, after the end of her period of maternity leave, to return to her job or to an equivalent post on terms and conditions which are no less favourable to her and to benefit from any improvement in working conditions to which she would have been entitled during her absence."

42. The relevant provisions of Directive 92/85 read as follows:

"Whereas Article 15 of Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work provides that particularly sensitive risk groups must be protected against the dangers which specifically affect them;

Whereas pregnant workers, workers who have recently given birth or who are breastfeeding must be considered a specific risk group in many respects, and measures must be taken with regard to their safety and health;

Whereas the protection of the safety and health of pregnant workers, workers who have recently given birth or workers who are breastfeeding should not treat women on the labour market unfavourably nor work to the detriment of directives concerning equal treatment for men and women;

...

Whereas the risk of dismissal for reasons associated with their condition may have harmful effects on the physical and mental state of pregnant workers, workers who have recently given birth or who are breastfeeding; whereas provision should be made for such dismissal to be prohibited;

...

Whereas, moreover, provision concerning maternity leave would also serve no purpose unless accompanied by the maintenance of rights linked to the employment contract and or entitlement to an adequate allowance;

...

Article 10
Prohibition of dismissal

In order to guarantee workers, within the meaning of Article 2, the exercise of their health and safety protection rights as recognized under this Article, it shall be provided that:

1. Member States shall take the necessary measures to prohibit the dismissal of workers, within the meaning of Article 2, during the period from the beginning of their pregnancy to the end of the maternity leave referred to in Article 8 (1), save in exceptional cases not connected with their condition which are permitted under national legislation and/or practice and, where applicable, provided that the competent authority has given its consent;

2. if a worker, within the meaning of Article 2, is dismissed during the period referred to in point 1, the employer must cite duly substantiated grounds for her dismissal in writing;

3. Member States shall take the necessary measures to protect workers, within the meaning of Article 2, from consequences of dismissal which is unlawful by virtue of point 1."

B. Case-law of the Court of Justice of the European Union

43. In its case-law, the Court of Justice of the European Union (hereinafter, "the CJEU") established that as only women could become pregnant, a refusal to employ a pregnant woman based on her pregnancy or her maternity, or the dismissal of a pregnant woman on such grounds, amounted to direct discrimination on grounds of sex, which could not be justified by any other interest.

44. In the *Dekker* judgment (8 November 1990, C-177/88, ECLI:EU:C:1990:383), the CJEU ruled that a refusal to employ a woman who met the conditions for a post because she was pregnant constituted direct discrimination on grounds of sex. The applicant in the *Dekker* case applied for the post, was considered the most suitable candidate, but ultimately was not hired because she was pregnant. The employer argued that, in accordance with the law, she was not eligible to be paid pregnancy benefits by the relevant insurer, and thus the employer would have to pay those benefits during her maternity leave. As a result, the employer would be unable to afford to employ a replacement during her absence, and would thus be short-staffed. The CJEU found as follows.

"12 In that regard it should be observed that only women can be refused employment on grounds of pregnancy and such a refusal therefore constitutes direct discrimination on grounds of sex. A refusal of employment on account of the financial consequences of absence due to pregnancy must be regarded as based, essentially, on the fact of pregnancy. Such discrimination cannot be justified on grounds relating to the financial loss which an employer who appointed a pregnant woman would suffer for the duration of her maternity leave."

45. In the *Hertz* judgment (8 November 1990, C-179/88, ECLI:EU:C:1990:384), the CJEU ruled that dismissals which were the

result of absences due to an illness not attributable to pregnancy or confinement did not breach the Directive on equal treatment. In that case, the applicant, who had been absent due to illness during her pregnancy, became ill again after the end of her maternity leave. She was dismissed because of her absences. The relevant parts of that judgment read as follows:

> "3 It follows from the provisions of the Directive quoted above that the dismissal of a female worker on account of pregnancy constitutes direct discrimination on grounds of sex, as is a refusal to appoint a pregnant woman (see judgment of today's date in Case C-177/88 Dekker v VJM-Centrum [1990] ECR I-3941).
>
> 14 On the other hand, the dismissal of a female worker on account of repeated periods of sick leave which are not attributable to pregnancy or confinement does not constitute direct discrimination on grounds of sex, inasmuch as such periods of sick leave would lead to the dismissal of a male worker in the same circumstances.
>
> 15 The Directive does not envisage the case of an illness attributable to pregnancy or confinement. It does, however, admit of national provisions guaranteeing women specific rights on account of pregnancy and maternity, such as maternity leave. During the maternity leave accorded to her pursuant to national law, a woman is accordingly protected against dismissal due to absence. It is for every Member State to fix periods of maternity leave in such a way as to enable female workers to absent themselves during the period in which the disorders inherent in pregnancy and confinement occur.
>
> 16 In the case of an illness manifesting itself after the maternity leave, there is no reason to distinguish an illness attributable to pregnancy or confinement from any other illness. Such a pathological condition is therefore covered by the general rules applicable in the event of illness."

46. The CJEU further held that any unfavourable treatment directly or indirectly connected to pregnancy or maternity constituted direct sex discrimination.

In the *Webb* judgment (14 July 1994, C-32/93, ECLI:EU:C:1994:300), the CJEU found that the situation of a pregnant woman could not be compared with that of a man who was absent because of illness. The applicant in the *Webb* case found out that she was pregnant a few weeks after being hired to replace a worker who had herself become pregnant. She was dismissed as soon as the employer found out about her pregnancy. The CJEU ruled as follows:

> "24 First, in response to the House of Lords' inquiry, there can be no question of comparing the situation of a woman who finds herself incapable, by reason of pregnancy discovered very shortly after the conclusion of the employment contract, of performing the task for which she was recruited with that of a man similarly incapable for medical or other reasons.
>
> 25 As Mrs Webb rightly argues, pregnancy is not in any way comparable with a pathological condition, and even less so with unavailability for work on non-medical grounds, both of which are situations that may justify the dismissal of a woman without discriminating on grounds of sex. Moreover, in the Hertz judgment, cited above, the Court drew a clear distinction between pregnancy and illness, even where

the illness is attributable to pregnancy but manifests itself after the maternity leave. As the Court pointed out (in paragraph 16), there is no reason to distinguish such an illness from any other illness.

26 Furthermore, contrary to the submission of the United Kingdom, dismissal of a pregnant woman recruited for an indefinite period cannot be justified on grounds relating to her inability to fulfil a fundamental condition of her employment contract. The availability of an employee is necessarily, for the employer, a precondition for the proper performance of the employment contract. However, the protection afforded by Community law to a woman during pregnancy and after childbirth cannot be dependent on whether her presence at work during maternity is essential to the proper functioning of the undertaking in which she is employed. Any contrary interpretation would render ineffective the provisions of the directive.

27 In circumstances such as those of Mrs Webb, termination of a contract for an indefinite period on grounds of the woman's pregnancy cannot be justified by the fact that she is prevented, on a purely temporary basis, from performing the work for which she has been engaged ..."

47. In the *Hofmann* judgment (12 July 1984, C-184/83, ECLI:EU:C:1984:273), which concerned paternity allowance, the CJEU found as follows:

"25 It should further be added, with particular reference to paragraph (3), that, by reserving to member states the right to retain, or introduce provisions which are intended to protect women in connection with 'pregnancy and maternity', the directive recognizes the legitimacy, in terms of the principle of equal treatment, of protecting a woman's needs in two respects. First, it is legitimate to ensure the protection of a woman's biological condition during pregnancy and thereafter until such time as her physiological and mental functions have returned to normal after childbirth; secondly, it is legitimate to protect the special relationship between a woman and her child over the period which follows pregnancy and childbirth, by preventing that relationship from being disturbed by the multiple burdens which would result from the simultaneous pursuit of employment."

48. In the *Tele Danmark* judgment (4 October 2001, C-109/00, ECLI:EU:C:2001:513), the CJEU extended the protection for absence due to pregnancy to temporary contracts. The applicant was recruited for a six-month fixed period. She failed to inform the employer that she was pregnant, even though she was aware of this when the contract was concluded. Because of her pregnancy, she was unable to work during a substantial part of the term of that contract. The relevant parts of the judgment read as follows:

"29. In paragraph 26 of *Webb*, the Court also held that, while the availability of an employee is necessarily, for the employer, a precondition for the proper performance of the employment contract, the protection afforded by Community law to a woman during pregnancy and after childbirth cannot be dependent on whether her presence at work during the period corresponding to maternity leave is essential to the proper functioning of the undertaking in which she is employed. A contrary interpretation would render ineffective the provisions of Directive 76/207.

30. Such an interpretation cannot be altered by the fact that the contract of employment was concluded for a fixed term.

31. Since the dismissal of a worker on account of pregnancy constitutes direct discrimination on grounds of sex, whatever the nature and extent of the economic loss incurred by the employer as a result of her absence because of pregnancy, whether the contract of employment was concluded for a fixed or an indefinite period has no bearing on the discriminatory character of the dismissal. In either case the employee's inability to perform her contract of employment is due to pregnancy.

32. Moreover, the duration of an employment relationship is a particularly uncertain element of the relationship in that, even if the worker is recruited under a fixed term contract, such a relationship may be for a longer or shorter period, and is moreover liable to be renewed or extended."

In that judgment, the CJEU further found that the size of an employer was irrelevant for that matter:

"37. It suffices to observe that Directives 76/207 and 92/85 do not distinguish, as regards the scope of the prohibitions they lay down and the rights they guarantee, according to the size of the undertaking concerned."

V. INTERNATIONAL MATERIAL

49. The relevant parts of the United Nations Convention on the Elimination of All Forms of Discrimination against Women ("the CEDAW"), which was ratified by the respondent State on 7 January 1982, read as follows:

Article 4

"1. Adoption by States Parties of temporary special measures aimed at accelerating *de facto* equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.

2. Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory."

Article 5

"States Parties shall take all appropriate measures:

(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;

(b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases."

Article 11

"1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular: (a) The right to work as an inalienable right of all human beings;

(b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;

(c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;

(d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;

(e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;

(f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures: (a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;

(b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;

(c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;

(d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.

3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary."

Article 12

"1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.

2. Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation."

THE LAW

ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 12 TO THE CONVENTION

A. Scope of the case

50. In her initial application to the Court, the applicant complained that she had been discriminated against at work, in so far as her posting at the Romanian embassy in Ljubljana had been terminated because of her pregnancy without any valid reason being presented to her. She relied on Article 1 of Protocol No. 12 to the Convention.

51. In her submissions in reply to the Government's observations, the applicant further complained of violations of Articles 6 and 8 of the Convention as a result of the same facts which she had brought to the Court's attention in her initial application.

52. Having regard to the substance of the applicant's complaints, and regardless of whether the above-mentioned complaints and/or arguments raised under Articles 6 and 8 of the Convention fall to be examined within the context of the present application, the Court, which is master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 114 and 126, ECHR 2018), will examine the application from the standpoint of Article 1 of Protocol No. 12 to the Convention alone.

That provision reads as follows:

> "1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.
>
> 2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1."

A. Admissibility

1. *The Court's jurisdiction* ratione materiae

53. At the outset, the Court reiterates that as the question of applicability is an issue of its jurisdiction *ratione materiae*, the general rule of dealing with applications should be respected and the relevant analysis should be carried out at the admissibility stage unless there is a particular reason to join this question to the merits (see *Denisov v. Ukraine* [GC], no. 76639/11, § 93, 25 September 2018). No such particular reason exists in the present case, and the issue of the applicability of Article 1 of Protocol No. 12 falls to be examined at the admissibility stage.

54. The Court reiterates that whereas Article 14 of the Convention prohibits discrimination in the enjoyment of "the rights and freedoms set forth in [the] Convention", Article 1 of Protocol No. 12 introduces a general prohibition of discrimination (see *Sejdić and Finci v. Bosnia and Herzegovina* [GC], nos. 27996/06 and 34836/06, § 53, ECHR 2009, and *Baralija v. Bosnia and Herzegovina*, no. 30100/18, § 45, 29 October 2019).

55. It is important to note that Article 1 of Protocol No. 12 extends the scope of protection to not only "any right set forth by law", as the text of paragraph 1 might suggest, but beyond that. This follows in particular from paragraph 2, which further provides that no one may be discriminated against by a public authority (see *Savez crkava "Riječ života" and Others v. Croatia*, no. 7798/08, § 104, 9 December 2010). According to the Explanatory Report on Article 1 of Protocol No. 12, the scope of protection of that Article concerns four categories of cases in particular where a person is discriminated against:

> "i. in the enjoyment of any right specifically granted to an individual under national law;
>
> ii. in the enjoyment of a right which may be inferred from a clear obligation of a public authority under national law, that is, where a public authority is under an obligation under national law to behave in a particular manner;
>
> iii. by a public authority in the exercise of discretionary power (for example, granting certain subsidies);
>
> iv. by any other act or omission by a public authority (for example, the behaviour of law enforcement officers when controlling a riot)."

The Explanatory Report further clarifies that:

> "... it was considered unnecessary to specify which of these four elements are covered by the first paragraph of Article 1 and which by the second. The two paragraphs are complementary and their combined effect is that all four elements are covered by Article 1. It should also be borne in mind that the distinctions between the respective categories i-iv are not clear-cut and that domestic legal systems may have different approaches as to which case comes under which category."

56. Therefore, in order to determine whether Article 1 of Protocol No. 12 is applicable, the Court must establish whether the applicant's complaints fall within one of the four categories mentioned in the Explanatory Report (see *Savez crkava "Riječ života" and Others*, cited above, § 105).

57. In this connection, the Court notes that the domestic law regulates the organisation and duration of diplomatic postings abroad (see paragraph 33 above) but also grants, in accordance with the domestic courts' interpretation, a discretionary power to the MFA to decide on the early termination of a diplomatic posting abroad (see paragraph 28 above). While contesting the manner in which this discretion had been exercised, the applicant did not contest its existence (see paragraph 62 below).

Consequently, the Court cannot but conclude that the present case falls at least under category (iii) of potential discrimination envisaged by the Explanatory Report (see paragraph 55 above).

58. It follows that Article 1 of Protocol No. 12 applies to the facts of the present case.

2. Other grounds for inadmissibility

59. The Court further notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

3. Submissions by the parties

(a) The applicant

60. The applicant averred that the main reason for the early termination of her posting abroad had been her pregnancy. Although her work performance had been assessed as satisfactory by the ambassador (see paragraph 20 above), her direct superior, the ambassador had requested that her posting be terminated as soon as she had announced her second pregnancy. In her view, this sequence of events indicated with certainty that her pregnancy had been the reason for the early termination of her diplomatic posting. She further objected to the remarks made by the ambassador concerning the alleged security risk posed by her husband driving her diplomatic car (see paragraph 23 above).

61. The applicant further averred that the work at the embassy had represented no danger for her pregnancy. She pointed out that she had been able to carry out her tasks without any risk while she had been pregnant the first time. Consequently, it could not be argued that in recalling her to Bucharest, the MFA had acted with a view to protecting her pregnancy. Moreover, the MFA had not demonstrated how her pregnancy would have been better protected in the office in Bucharest than in the office in Ljubljana. Moreover, the applicant argued that she had been recalled to Bucharest as a consequence of her exercising her lawful right to protection of pregnancy.

62. She considered that in terminating her posting abroad, the MFA had used its discretion in an improper and unreasonable manner. The authorities could not provide any reasons for the measure. Moreover, the Government could not prove that other diplomats who had received good evaluations from their superiors had been recalled from their postings with the explanation that the MFA no longer needed them in those posts.

63. She argued that the dysfunctionalities of the consular section of the embassy had not been caused by her pregnancy, but by the MFA's deficient

organisation as regards the replacement of diplomats who, during their posting, found themselves objectively and temporarily unable to exercise their duties as a result of unpredictable events such as medical leave.

(b) The Government

64. The Government pointed out that the Romanian embassy in Ljubljana was served by a very small team of diplomats. Consequently, when the applicant had accepted the relevant position she should have been aware that she would be expected to work on a more or less permanent basis and provide emergency consular assistance to Romanian nationals who needed it. While those circumstances were not to be interpreted as placing a restraint on the applicant's choices in her private life, they constituted a presumption that, on a professional level, she would understand that her long, repeated and unpredictable absences would affect the functioning of the embassy. Thus, she should have accepted the early termination of her posting.

65. While admitting that the applicant's pregnancy had played a role in the decision to terminate her posting in Slovenia, the Government argued that the actual reason behind that decision had been the need to ensure the proper functioning of the consular activity. The decision had not been a disciplinary measure against the applicant, who had continued to be employed by the MFA and to advance unhindered in her career (see paragraph 26 above).

66. Consequently, the Government argued that the applicant had not been subjected to a difference in treatment in the exercise of her duties. Given the particular circumstances of her work at the embassy, where she had been the sole consular officer, the same decision would have been taken regardless of the reasons behind her long and unpredictable absences from work.

67. In addition, the decision to terminate the applicant's posting had pursued a legitimate aim, notably ensuring the protection of the rights and freedoms of Romanian nationals abroad.

68. Lastly, the Government argued that the domestic courts had carefully examined the applicant's claims and had balanced her rights and interests against those of the Romanian nationals in need of consular assistance in Slovenia, and the obligations of the MFA to ensure the functional stability of the embassy.

4. The Court's assessment

(a) The general principles

69. Notwithstanding the difference in scope between Article 14 of the Convention and Article 1 of Protocol No. 12 to the Convention, the meaning of the notion of "discrimination" in Article 1 of Protocol No. 12

was intended to be identical to that in Article 14 (see paragraphs 18 and 19 of the Explanatory Report to Protocol No. 12). In applying the same term under Article 1 of Protocol No. 12, the Court therefore sees no reason to depart from the established interpretation of "discrimination" (see *Sejdić and Finci*, cited above, § 55).

70. It can be inferred that, in principle, the same standards developed by the Court in its case-law concerning the protection afforded by Article 14 are applicable to cases brought under Article 1 of Protocol No. 12.

71. In this vein, the Court reiterates that in the enjoyment of the rights and freedoms guaranteed by the Convention, Article 14 affords protection against different treatment, without objective and reasonable justification, of individuals in analogous, or relevantly similar, situations. In other words, the requirement to demonstrate an analogous position does not require that the comparator groups be identical. For the purposes of Article 14, a difference in treatment is discriminatory if it "has no objective and reasonable justification", that is, if it does not pursue a "legitimate aim" or if there is not a "reasonable relationship of proportionality" between the means employed and the aim sought to be realised (see *Molla Sali v. Greece* ([GC], no. 20452/14, §§ 133 and 135, 19 December 2018).

72. The Court has also established in its case-law that only differences in treatment based on an identifiable characteristic, or "status", are capable of amounting to discrimination within the meaning of Article 14 (see *Fábián v. Hungary* [GC], no. 78117/13, § 113, 5 September 2017).

73. Moreover, Article 14 does not prohibit Contracting Parties from treating groups differently in order to correct "factual inequalities" between them. Indeed, the right not to be discriminated against in the enjoyment of the rights guaranteed under the Convention is also violated when States, without an objective and reasonable justification, fail to treat differently persons whose situations are significantly different (see *Thlimmenos v. Greece* [GC], no. 34369/97, § 44, ECHR 2000-IV; *Stec and Others v. the United Kingdom* [GC], nos. 65731/01 and 65900/01, § 51, ECHR 2006-VI; and *Guberina v. Croatia*, no. 23682/13, § 70, 22 March 2016). The prohibition deriving from Article 14 will therefore also give rise to positive obligations for the Contracting States to make necessary distinctions between persons or groups whose circumstances are relevantly and significantly different (see *J.D. and A. v. the United Kingdom*, nos. 32949/17 and 34614/17, § 84, 24 October 2019 with further references, notably *Thlimmenos*, cited above, § 44). In this context, relevance is measured in relation to what is at stake, whereas a certain threshold is required in order for the Court to find that the difference in circumstances is significant. For this threshold to be reached, a measure must produce a particularly prejudicial impact on certain persons as a result of a protected ground, attaching to their situation and in light of the ground of

discrimination invoked (see *J.D. and A. v. the United Kingdom*, cited above, § 85).

74. The Court has acknowledged in its case-law, albeit indirectly, the need for the protection of pregnancy and motherhood (see, *mutatis mutandis*, *Khamtokhu and Aksenchik v. Russia* [GC], nos. 60367/08 and 961/11, § 82, 24 January 2017; *Konstantin Markin v. Russia* [GC], no. 30078/06, § 132, ECHR 2012 (extracts); *Alexandru Enache v. Romania*, no. 16986/12, §§ 68 and 76-77, 3 October 2017; and *Petrovic v. Austria*, 27 March 1998, § 36, *Reports of Judgments and Decisions* 1998-II).

75. The Court has also held that the advancement of the equality of the sexes is a major goal in the member States of the Council of Europe. This means that very weighty reasons would have to be advanced before a difference in treatment on the grounds of sex could be regarded as being compatible with the Convention (see *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, 28 May 1985, § 78, Series A no. 94, and *Carvalho Pinto de Sousa Morais v. Portugal*, no. 17484/15, § 46, 25 July 2017). Consequently, where a difference in treatment is based on sex, the margin of appreciation afforded to the State is narrow, and in such situations the principle of proportionality does not merely require that the measure chosen should in general be suited to the fulfilment of the aim pursued, but it must also be shown that it was necessary in the circumstances (see *Emel Boyraz v. Turkey*, no. 61960/08, § 51, 2 December 2014).

(b) Application of those principles to the facts of the present case

76. Turning to the facts of the present case, the Court notes that it was considered that the applicant would be unable to carry out her work because of absences for medical appointments and maternity leave (see paragraphs 20, 22 and 23 above). The decision to recall her to Bucharest was taken as soon as she had announced her second pregnancy (see paragraphs 19 and 24 above). In their submissions, the Government also accepted that the applicant's condition had played a role in the decision to terminate her diplomatic assignment (see paragraph 65 above). Consequently, the Court considers it established that the applicant experienced such treatment mainly because of her pregnancy.

77. The Court observes that only women can be treated differently on grounds of pregnancy, and for this reason, such a difference in treatment will amount to direct discrimination on grounds of sex if it is not justified. On this point, the Court cannot but note that a similar approach was also taken by the CJEU in its case-law (see paragraphs 44 and 46 above), and that the approach is consistent with domestic law (see paragraph 31 above) and practice (see paragraphs 34-36 above).

78. Having established that the applicant was treated differently on grounds of sex, the Court must determine whether the reasons adduced by the authorities – the MFA, the domestic courts and the Government – to

justify the treatment applied to the applicant were relevant and sufficient, notwithstanding the narrow margin of appreciation afforded to States in cases such as the present one (see paragraph 75 above).

79. The Government argued that the decision to recall the applicant from her posting abroad had pursued the legitimate aim of the protection of the rights of others, notably Romanian nationals in need of consular assistance in Slovenia (see paragraphs 67-68 above). The Court accepts this assertion. It must then be established whether the measure was proportionate to this aim.

80. In this respect, it is to be noted that the domestic authorities and the Government considered that the early termination of the applicant's posting abroad had been justified by the fact that her absence would have jeopardised the functional capacity of the embassy's consular section (see paragraphs 22, 23, 28, 30 and 68 above). The Court observes that during the applicant's absence from the office consular services were suspended and requests for assistance were redirected to neighbouring countries (see paragraphs 11 and 15 above). It is thus clear that, bearing in mind the nature of her work and the urgency of the requests she was called upon to deal with (see paragraph 8 above), the applicant's absence from the office seriously affected consular activity in the embassy.

81. The Court also notes that domestic law does not prevent as such the early termination of a diplomatic posting abroad (see paragraph 33 above), a fact also affirmed by the domestic courts (see paragraphs 28 and 30 above and, *mutatis mutandis*, paragraph 37 above). In addition, domestic law allows an employer to organise the activity of pregnant employees, the sole prohibition being that their work contract may not be terminated (see paragraph 30 above).

82. In this vein, the Court notes that although her work conditions changed because of the early termination of her posting abroad, the applicant was not dismissed from her work as a diplomat in the MFA (see, in contrast, the case-law of the CJEU, quoted in paragraphs 43 to 48 above). That change in circumstances cannot be equated with a loss of employment (see also, for reference, the domestic case-law quoted in paragraph 35 above).

83. The Court therefore considers it established that the consequences for the applicant of the early termination of her posting abroad were not of the same nature as those expressly prohibited by the domestic equal opportunity laws (see paragraphs 31-32 above) and the State's international commitments in the field of protection of pregnancy and maternity (see paragraphs 39-42 and 49 above).

84. Moreover, despite her extended absence owing to maternity leave and parental leave, the applicant continued to be promoted by her employer, first in December 2007 while she was absent during her first pregnancy (see paragraph 13 above), and again in September 2016, about a year after her

return to work (see paragraph 26 above). Consequently, it appears that she did not suffer any significant long-term setbacks in her diplomatic career.

85. Lastly, it is to be noted that the domestic courts expressly reiterated that the decision to terminate the applicant's posting had not been a disciplinary measure (see paragraph 28 above). The Court has no reason to question that finding. It thus concludes that while the decision was motivated by the applicant's pregnancy, it was not intended to put her in an unfavourable position.

86. In the light of the above findings, the Court considers it established that the early termination of the applicant's diplomatic posting abroad was necessary for ensuring and maintaining the functional capacity of the diplomatic mission, and ultimately the protection of the rights of others. Notwithstanding the narrow margin of appreciation afforded to them, the domestic authorities provided relevant and sufficient reasons to justify the necessity of the measure.

87. There has accordingly been no breach of Article 1 of Protocol No. 12 to the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been no violation of Article 1 of Protocol No. 12 to the Convention.

Done in English, and notified in writing on 20 October 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti	Yonko Grozev
Registrar	President