



## NEWS REPORT

**Date:** 22 June 2009  
**Expert:** Lorenzo Cachón  
**Title:** Dismissal of a worker because of his sexual orientation  
**Country:** Spain

**Context** Invalid dismissal in Aerolíneas Argentinas due to infringement of the fundamental rights of a homosexual employee

**Ground discrimination:** sexual orientation

**Source:** court decision  
**Field:** Employment  
**Legislative provisions:** Art. 17 of Royal Legislative Decree 1/1995 of 24 March, Workers' Statute

### Content

**Case:** In September 2008 the Aerolíneas Argentinas dismissed a homosexual employee. The worker submitted a complaint which was accepted by the Social Court no. 35 of Madrid (Sentence 84/2009); the Court declared the dismissal void and therefore obliged the airline to take the worker back and pay all wage arrears.

According to the judgment, it was proved during the proceedings that the worker's sexual orientation gave rise to various forms of unfavourable treatment, up to his dismissal.

In the judgment the judge states that unfavourable treatment based on sexual orientation is discriminatory, and therefore the worker's dismissal is declared void.

The grounds cited are the International and European legislation (the judgement quote art. 13 of the Treaty establishing the European Community, though not Directive 2000/78/EC) and also national legislation (the Spanish Constitution and the Workers' Statute).

As the judge considered that sexual orientation falls within the sphere of fundamental rights, he asked the employer to prove that the dismissal was not due to the worker's sexual orientation. But the employer was unable to demonstrate objective grounds for the dismissal.

