

Contract / Constitutional Law / International Law
Term in employment contract restricting pregnancy – Whether such term contravened Federal Constitution – Whether such term contravened Convention on the Elimination of All Forms of Discrimination against Women (“CEDAW”) – Whether CEDAW applicable in Malaysia

Airasia Bhd v Rafizah Shima Mohamed Aris
[2015] 2 CLJ 510, Court of Appeal

Facts The appellant, Airasia Bhd, executed a Training Agreement and Bond in October 2006 (“the agreement”) with the respondent, a female employee of the appellant. The agreement contained a term prohibiting the respondent from getting pregnant during the duration of the training period, which was for approximately four years. When the respondent subsequently confirmed her pregnancy before the end of the four year period, the respondent’s employment was terminated. The appellant commenced a civil suit at the Sessions Court for breach of agreement and a summary judgment was entered against the respondent. On appeal, the respondent filed an action for a declaration that the term in the agreement was illegal, null and void as it is discriminatory against her right as a married woman, and contravened the Federal Constitution as well as the Convention on the Elimination of All Forms of Discrimination against Women (“CEDAW”). The High Court held in favour of the respondent. The appellants appealed to the Court of Appeal.

Issues The issues before the Court of Appeal were (1) whether the agreement is discriminatory against the rights of women and contravened the Federal Constitution and CEDAW; and (2) whether CEDAW has any force of law in Malaysia.

Held In allowing the appeal, it was held that as a branch of public law, constitutional law concerns only the contravention of an individual’s rights by a public authority, and therefore did not apply to the agreement in question, which was a lawful contract between private parties. Additionally, while Malaysia is signatory to CEDAW, without express incorporation into domestic law or local legislation, the provisions of international obligations in the said convention did not have any binding effect. Furthermore, the agreement did not restrain or prohibit marriage or pregnancy if the respondent completed the said training programme in the manner stipulated in the agreement. Therefore, the agreement was not discriminatory against the rights of women.