

Greece, Council of State, case number 1113/2014, Judgement of March 20th 2014

Deciding bodies and decisions

- Greece, Council of State, case number 1113/2014
- CJEU, Judgement of 16 July 2015, Case C-222/14, Maïstrellis, ECLI:EU:C:2015:473

Area of law

Non-discrimination - social policy - parental leave

Subject matter

References for a preliminary ruling — Social policy — Directive 96/34/EC — Framework agreement on parental leave — Clause 2.1 — Individual right to parental leave on the grounds of the birth of a child — National legislation denying the right to such leave for a staff member whose wife does not work — Directive 2006/54/EC — Equal treatment of men and women in matters of employment and occupation — Articles 2(1)(a) and 14(1)(c) — Working conditions — Direct discrimination

Summary Facts Of The Case

The applicant, a judge in Greece, submitted an application to the Ministry of Justice seeking paid parental leave of nine months for the purpose of bringing up his child. According to relevant domestic law, a male civil servant (or judge) is not entitled to parental leave if his wife does not work or exercise any profession. Greek law curtailed this benefit in two ways: first of all by limiting it to mothers only; and secondly (in a rather contradictory manner) by attaching strict conditions as regards fathers, which didn't apply to mothers. If a mother stays at home to look after the child (as in this case), a father could only obtain the leave if the mother was unable to look after the child due to illness or injury. The applicant stated that his wife was at the time unemployed, thus his application was rejected. Finally, the applicant lodged a complaint (*application for annulment*) against that decision before the Greek Council of State. The Greek courts had already ruled that the first limit was inapplicable. The Greek Council of State now asked the CJEU if the second limit breached EU law (compliance of the aforementioned provision of the Civil Service Code to Directives 96/34 and 2006/54).

Relation to the scope of the Charter

Article 21 - Non-discrimination

Article 23 - Equality between women and men

The case fell within the scope of the Charter pursuant to Article 51(1) therein as it concerned the interpretation of national law in the light of EU law on equal treatment of men and women in matters of employment and occupation (EU Directive 2006/54/EC) and parental leave (Council Directive 96/34/EC).

Diagram

Case timeline representation



Impact on Jurisprudence

The referring court (Symvoulio tis Epikrateias) has yet to issue a decision after the preliminary ruling of the CJEU (decision of July 16, 2015, C-222/14)

Impact on Legislation / Policy

The national provision in question in the present case had already been abolished by Law 4210/2013 (i.e. two years after the rejection of the applicant's application), probably because the national legislator foresaw that the provision would be found to be incompatible to EU law.

Sources - EU and national law

EU law

- EU Directive 2006/54/EC
- Council Directive 96/34/EC

National law

- Code on the Administration of Courts and Status of Judges, Article 44
 - Civil Service Code, Article 53(3)
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Sources - CJEU Case Law

- *Commission v Luxembourg*, C?519/03, EU:C:2005:234, paragraph 33
 - *Chatzi*, C?149/10, EU:C:2010:534, paragraph 37
 - *Commission v France*, 312/86, EU:C:1988:485, paragraph 14
 - *Griesmar*, C?366/99, EU:C:2001:648, paragraph 56
 - *Commission v Greece*, C?559/07, EU:C:2009:198, paragraph 69
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Sources - Internal or external national courts case law

The Court cites its own jurisprudence on matters of parental leave (*Symvoulio tis Epikrateias* 2/2006, 1006/2010 and 4519/2012).

Comments

The CJEU answered that EU law must be interpreted as precluding national provisions under which a civil servant is not entitled to parental leave in a situation where his wife does not work or exercise any profession, *unless it is considered that due to a serious illness or injury the wife is unable to meet the needs related to the upbringing of the child* (para 53). “The provision at issue in the main proceedings constitutes direct discrimination on grounds of sex, within the meaning of Article 14(1) of Directive 2006/54, read in conjunction with Article 2(1)(a) of that directive, in respect of fathers who are civil servants, as regards the granting of parental leave.” (para 52).

It constitutes direct discrimination because:

- The parental leave agreement states that parental leave is an “individual right” which is “non-transferable”, applied to *each* parent (see, to that effect, judgment in *Commission v Luxembourg*, C-519/03, EU:C:2005:234, paragraph 33) (para 32 and 33). The possible limits referred to in the Directive make no provision for denying parental leave based on the employment status of the spouse. This literal interpretation is reinforced by the overall context of the agreement: “enable men and women to reconcile their occupational and family obligations”; Men should be encouraged to assume an “equal share of family responsibilities”, inter alia by taking parental leave (para 40). “It was with the same objective” that the right to parental leave was included in Article 33 (2) of the Charter (para 39).
- Secondly, the Greek rule also violated the Directive because parental leave was a working condition, and the position of men and women was “comparable” as regards bringing up children (see judgments in *Commission v France*, 312/86, EU:C:1988:485, paragraph 14; *Griesmar*, C-366/99, EU:C:2001:648, paragraph 56; and *Commission v Greece*, C-559/07, EU:C:2009:198, paragraph 69). The Greek law attached a condition to fathers that it did not attach to mothers, so constituted sex discrimination.

This distinction “is liable to perpetuate a traditional distribution of the roles of men and women by keeping men in a role subsidiary to that of women in relation to the exercise of their parental duties (see, to that effect, judgments in *Lommers*, C-476/99, EU:C:2002:183, paragraph 41, and *Roca Álvarez*, C-104/09, EU:C:2010:561, paragraph 36)” (para 50). While the Directive does provide that it is “without prejudice” to the parental leave agreement and the pregnant workers’ Directive, the “deprivation” of a father’s parental leave “in no way” helps the health and safety of pregnant workers or new mothers, which is the purpose of the latter Directive.
