

SUMMARY

ECJ 16 July 2015, case C-222/14 (Konstantinos Maïstrellis - v - Ypourgos Dikaiosynis, Diafaneias kai Anthropinon Dikaiomaton), Working time and leave

Facts

Mr Maïstrellis, a judge, applied for parental leave after his wife gave birth to a child. His application was turned down. Initially, it was turned down on the ground that only female judges are eligible for parental leave. The Council of State struck down the decision rejecting the application for parental leave as being at odds with Directive 96/34. Following this judgment, Mr Maïstrellis applied anew. His application was turned down again. This time, the reason was that a male civil servant is only eligible for parental leave if his wife works or exercises a profession, which was not so in this case.

National proceedings

Mr Maïstrellis brought a second action before the Council of State. That court referred a question to the ECJ, asking whether Directive 96/34 (which implements the Framework Agreement on parental leave) and Directive 2006/54 on equal treatment of men and women in employment preclude national regulations providing that if a civil servant's wife does not work the male spouse is not entitled to parental leave unless the wife is unable to meet the child's needs due to serious illness or injury.

ECJ's findings

Clause 2.3 of the Framework Agreement on parental leave sets out conditions and rules that the Member States may adopt. Those conditions and rules do not provide that one of the parents can be denied the right to parental leave, inter alia, because of the employment status of his or her spouse. Thus, going by the literal wording of the Framework Agreement, the Greek legislation at issue is not compatible with Directive 96/34 (§ 31- 36).

A literal interpretation of the Framework Agreement is supported by its objectives, which are also reflected in the Charter (§37-40).

It follows from the wording and the objectives of the Framework Agreement that each parent individually is entitled to parental leave, which means that Member States cannot adopt provisions under which a father exercising the profession of civil servant is not entitled to parental leave in a situation where his wife does not work (§41).

The conditions for granting parental leave fall within employment and working conditions within the meaning of Directive 2006/54 (§45).

The situation of a male employee and that of a female employee parent are comparable as regards the bringing-up of children (§47).

Under Greek law, mothers who are civil servants are always entitled to parental leave, whereas fathers who are civil servants are entitled to it only if the mother of their child works. Far from ensuring full equality in practice between men and women in working life, that law 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 (§ 48-50).

The deprivation, for the father of the child, of the right to parental leave because of the employment situation of his wife in no way constitutes a measure to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (§ 51).

In these circumstances, it should be held that the provision at issue in the main proceedings constitutes direct discrimination on grounds of sex (§ 52).

Ruling

The provisions of Directive 96/34 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.

Creator: European Court of Justice (ECJ)

Verdict at: 2015-07-16

Case number: C-222/14