SUMMARY

ECJ 6 March 2014, case C-595/12 (Lorredana Napoli - v - Ministero della Giustizia), Gender discrimination

Facts

Ms Napoli was successful in a competition for appointment as deputy commissioner of the prison service corps and was admitted to the training course for this position. The course was scheduled to start on 28 December 2011. On 7 December 2011 she gave birth and was placed on compulsory maternity leave until 7 March 2012. She was informed that she would be excluded from the course and that payment of her salary would be suspended. However, she would be admitted to the next course organised.

National proceedings

Ms Napoli brought an action against the Justice Department before the local administrative tribunal. It held that the relevant provision of Italian law was incompatible with Directive 2006/54 and it ordered the Justice Department, by way of an interlocutory order, to readmit Ms Napoli to the course once her maternity leave was over (i.e. as from 8 March 2012). The court referred five questions to the ECJ.

ECJ's findings

The first two questions relate to Articles 2(2)(c), 14(1)(c) and 15 of Directive 2006/54. Article 2(2)(c) provides that 'discrimination' includes "any less favourable treatment of a woman related to pregnancy or maternity leave". Article 14(1)(c) prohibits sex discrimination in employment and working conditions. Article 15 provides that:

"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."

The exclusion of Ms Napoli from the course that started on 28 December 2011 and the fact that she was subsequently prevented from participating in the examination at the end of that course resulted in her losing a chance of benefiting from an improvement in working conditions. The other workers admitted to the course had the opportunity to attend that course in its entirety and, if they were successful in the examination at the end of the training, they might also have been promoted. Therefore, Ms Napoli was discriminated against on the grounds of her sex (§ 32-33).

This finding is not called into question by the fact that only candidates who have been adequately prepared to perform their new functions should be allowed to participate in the examination. Depending on the circumstances, even though national authorities have a certain degree of discretion when adopting measures which they consider to be necessary in order to guarantee public security, they are nevertheless required, when they lay down measures which derogate from a fundamental right such as equal treatment of men and women, to observe the principle of proportionality (§ 34-35).

A measure such as that at issue, which merely grants a woman who has taken maternity leave the right to participate in a training course organised at a later, but uncertain date, does not appear to comply with the principle of proportionality, particularly given the fact that the prison authorities are under no obligation to organise courses at specified intervals. Those authorities could, for example, provide, for a worker returning from maternity leave, a parallel remedial course allowing her to be admitted to the examination within the prescribed period (§ 36-38).

The referring court's third question relates to Article 14(2) of Directive 2006/54:

"Member States may provide, as regards access to employment including the training leading thereto, that a difference of treatment which is based on a characteristic related to sex shall not constitute discrimination where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that its objective is legitimate and the requirement is proportionate."

This provision does not apply to the Italian legislation at issue, which does not limit specific activities to male workers (§ 40-43).

The referring court's fifth question is whether Articles 14(1)(c) and 15 of Directive 2006/54 are sufficiently clear, precise and unconditional to have direct effect. The ECJ replies in the affirmative (§ 45-50).

Ruling

Article 15 of Directive 2006/54 [...] must be interpreted as precluding national legislation which, on grounds relating to the public interest, excludes a woman on maternity leave from a vocational training course which forms an integral part of her employment and which is a requirement for definitive appointment to a post as a civil servant and for benefitting from an improvement in her employment conditions, even though she is guaranteed the right to participate in the next training course organised, albeit at an uncertain date.

Article 14(2) of Directive 2006/54 does not apply to national legislation, such as that at issue in the main proceedings, which does not limit a specified activity to male workers but which delays access by female workers to that activity, as they have been unable to receive full vocational training as a result of compulsory maternity leave.

The provisions of Article 14(1)(c) and Article 15 of Directive 2006/54 are sufficiently clear, precise and unconditional to have direct effect.

Creator: European Court of Justice (ECJ)
Verdict at: 2014-03-06
Case number: C-595/12