

## Paid parental leave for a judge with unemployed wife?

### *Charter Articles of relevance*

- Article 15 – Freedom to choose an occupation and right to engage in work
- Art 20 Equality before the law
- Art 21 Non-discrimination
- Art 23 Equality between women and men
- Art 33 para. 2 in order to reconcile family and professional life, everyone has the right to parental leave following the birth or adoption of a child
- Article 51 para. 1 – Field of application
- Article 52 para. 1 – Scope and interpretation of rights and principles

Principle of equal opportunities and equal treatment of men and women in matters of employment and occupation

### *Findings of the Court of Justice of the European Union*

The CJEU was asked to answer the following questions:

- whether the provisions of Directives 96/34 and 2006/54 must be interpreted as precluding national provisions under which a civil servant is not entitled to parental leave in a situation as in the present case.

The Court in its reasoning stated:

According to the settled case-law of the Court, in interpreting a provision of EU law, it is necessary to consider not only its wording, but also the context in which it occurs and the objectives pursued by the rules of which it is part.

As regards the wording of the Framework Agreement, under clause 2.1 thereof, an ‘individual right’ to parental leave is granted to men and women workers on the grounds of the birth or adoption of a child, to enable them to take care of that child, for at least three months.

Moreover, under clause 2.2 of the Framework Agreement, in order to promote equal opportunities and equal treatment between men and women, that right to parental leave ‘should, in principle, be granted on a non-transferable basis’. It follows from those



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provisions that each of the child's parents is entitled, individually, to parental leave for at least three months.

It follows from the wording of the Framework Agreement and from its objectives and context that each parent 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 or exercise any profession.

According to recital 11 to *Directive 2006/54*, to enable both men and women to combine family and work commitments more successfully, Member States should adopt 'appropriate parental leave arrangements which could be taken up by either parent'.

Under national law, mothers who are civil servants are always entitled to parental leave, whereas fathers who are civil servant are entitled to it only if the mother of their child works or exercises a profession.

Thus, the mere fact of being a parent is not sufficient for male civil servants to gain entitlement to that leave, whereas it is for women with an identical status.

Furthermore, having regard to Article 3 of Directive 2006/54, a provision such as the one at issue in the main proceedings, far from ensuring full equality in practice between men and women in working life, 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.

The provision at issue in the main proceedings constitutes direct discrimination on grounds of sex as regards the granting of parental leave.

The answer to the question referred is that the provisions of Directives 96/34 and 2006/54 must be interpreted as precluding directly discriminating national provisions as in the present case.