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Press and Information

Advocate General's Opinion in Case C-173/13
Maurice Leone and Blandine Leone v Garde des sceaux, Ministre de la Justice and Caisse nationale de retraite des agents des collectivités locales

According to Advocate General Jääskinen, male workers do not suffer discrimination as regards retirement merely because their female counterparts automatically satisfy, thanks to compulsory maternity leave, a legal condition relating to a break in their careers

It is legitimate to require male workers to make a special investment in bringing up their children by taking a voluntary career break

Under French law, pensioners who have brought up three or more children may draw their pension before reaching the statutory retirement age, provided, in particular, that they have taken a continuous career break of at least two months for each child. That break may take the form of, inter alia, maternity leave, paternity leave or parental leave, and it must take place around the time of the birth. French law also makes provision for a pension service credit for civil servants in local government who have brought up a child in similar circumstances.

Maurice Leone worked for the Hospices civils de Lyon as a civil servant in the hospital sector. In 2005, he applied for early retirement with immediate payment of his pension in his capacity as the father of three children. His application was rejected on the ground that he had not taken a break from work for each of his children. Mr Leone then started legal proceedings, claiming that he was the victim of indirect discrimination. EU law[1] requires Member States to guarantee equal pay between male and female workers for equal work. Mr Leone claims that female civil servants automatically satisfy the condition under French law relating to a career break, by reason of the automatic, compulsory nature of maternity leave, while male civil servants are for the most part excluded from those benefits because there is no legal provision enabling them to take paid leave equivalent to maternity leave. The Cour administrative d'appel de Lyon (Administrative Court of Appeal, Lyon) (France) has referred this issue to the Court of Justice.

In his Opinion delivered today, Advocate General Jääskinen takes the view, as regards the service credit, that a civil servant may not simply rely on the fact that he is a father in order to benefit from that provision. The Court has previously ruled that the grant of a service credit for children may be made dependent on special investment by the worker in bringing up his children, mere involvement in their conception not being sufficient in that regard[2]. Furthermore, Mr Jääskinen states that, in order for indirect discrimination to be established, it is essential that the respective situations of the different groups should be comparable. He considers that the situation of female civil servants who have taken responsibility for bringing up their children during their compulsory maternity leave and that of male civil servants who have not proved that they have taken responsibility for bringing up their children (so agreeing to make a voluntary sacrifice of part of their careers) are not comparable in the light of the conditions for access to the service credit scheme.

As regards early retirement with immediate payment of a pension, Mr Jääskinen uses the same reasoning as for the service credit, by making it clear that the differences that may exist between the two provisions are not decisive, for they concern male and female workers alike. The Advocate General has also examined the argument that the conditions laid down by French law are automatically satisfied by female workers (women being required to take maternity leave), while it

[1] Article 141 EC, now Article 157 TFEU.
[2] Case C-366/99 *Griesmar* . See also Press Release No. 62/01

is clearly more difficult for male workers to satisfy them (because men can choose not to take a break from work which is not always remunerated). Here again, the Advocate General considers that male and female workers are in different situations that cannot be compared and that a father may legitimately be required to show that he did actually make the choice of taking a career break so as to devote himself to his children for the same length of time as a mother, if he is to enjoy the same retirement benefits. The same assessment applies to the parents of non-biological children.

If the Court were, nevertheless, to make a finding of indirect discrimination, the Advocate General considers that in the light of *Griesmar* that discrimination is not justified.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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