



Press and Information

Court of Justice of the European Union

PRESS RELEASE No 30/14

Luxembourg, 6 March 2014

Judgment in Case C-595/12

Loredana Napoli v Ministero della Giustizia – Dipartimento dell'Amministrazione penitenziaria

The automatic exclusion of a female worker from a training course because she has taken compulsory maternity leave constitutes unfavourable treatment contrary to EU law

In such a case, the female worker might not be able to benefit in the same way as her colleagues from an improvement in working conditions

In 2009, Ms Napoli was successful in a competition for appointment as deputy commissioner in the prison service and she was admitted, on 5 December 2011, to the training course scheduled to start on 28 December 2011. Since Ms Napoli gave birth on 7 December 2011, she was placed, in accordance with the national legislation, on compulsory maternity leave for three months, until 7 March 2012. By decision of 4 January 2012, taken pursuant to the Italian regulations, the Amministrazione penitenziaria (Prison Service) informed Ms Napoli that she would be excluded from the course once the first 30 days of the maternity leave had elapsed and that payment of her salary would be suspended. The Italian authorities however notified her that she would be admitted as of right to the next course organised.

The Tribunale amministrativo regionale per il Lazio (Lazio Regional Administrative Court, Italy), before which the dispute was brought, asked the Court of Justice whether the directive on equal treatment of men and women¹ precludes national legislation which excludes a woman, because she has taken compulsory maternity leave, from a vocational training course which forms an integral part of her employment and which she must attend in order to be able to be appointed to a post as a civil servant and to thereby benefit from an improvement in her employment conditions, while nevertheless guaranteeing her the right to participate in a subsequent training course, organised at an unknown date.

In its judgment delivered today, the Court observes first that, in accordance with EU law, less favourable treatment of a woman related to pregnancy or maternity leave constitutes discrimination on grounds of sex. Furthermore, a woman is entitled, after the end of her 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.

It is common ground that Ms Napoli is in an employment relationship and that the course, from which she was excluded as a result of her maternity leave, forms part of her working conditions, since it is provided in the context of the employment relationship and is intended to prepare her for an examination which, should she be successful in it, would allow her access to a higher grade.

The Court points out that, admittedly, the maternity leave has not affected Ms Napoli's status as probationary deputy commissioner (which thus guarantees her enrolment in the following course) and that she has returned to the job to which she was assigned before her leave. However, **being excluded from the vocational training course as a result of having taken maternity leave** has had a negative effect on Ms Napoli's working conditions: her colleagues were able to attend the

¹ Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (OJ 2006 L 204, p. 23).

first course in its entirety and to be promoted, before her, to the higher grade of deputy commissioner while receiving the corresponding pay.

The Court thus finds that the fact that Ms Napoli was excluded from that first course and subsequently prevented from participating in the examination has resulted in her **losing a chance of benefitting**, in the same way as her colleagues, **from an improvement in working conditions** and must therefore be regarded as constituting **unfavourable treatment**. That **automatic exclusion**, which does not take account either of the stage of the course at which the absence for maternity leave takes place or of the training already received, and which merely grants the female worker the right to participate in a training course organised at a later, but uncertain, date, **does not comply with the principle of proportionality, in particular because the competent authorities are under no obligation to organise such a course at specified intervals**.

In order to achieve substantive equality between men and women, the Member States have a certain degree of discretion: the competent authorities could reconcile the requirement that candidates are fully trained with the female worker's rights **by providing, if appropriate, for a female worker who returns from maternity leave, equivalent parallel remedial courses enabling her to be admitted within the prescribed period to the examination and thereby to be promoted, without delay, to a higher grade**. In this way, the career development of such a female worker would not be hindered in relation to that of a male colleague who was successful in the competition and admitted to the initial training course.

The Court concludes by pointing out that the provisions of the directive are sufficiently clear, precise and unconditional to have **direct effect**. Thus, the national court responsible for applying those provisions is under a duty to give full effect to them, **if necessary refusing of its own motion to apply any conflicting provision of national legislation**.

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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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

Press contact: Christopher Fretwell ☎ (+352) 4303 3355