



Press and Information

Court of Justice of the European Union

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Judgment in Case C-173/13

Maurice Leone and Blandine Leone v Garde des Sceaux, ministre de la Justice, et Caisse nationale de retraite des agents des collectivités locales

French rules on certain pension-related advantages granted to civil servants give rise to indirect discrimination on grounds of sex

The unequal treatment, which results from a condition which female civil servants fulfil systematically because of the compulsory nature of maternity leave, is not justified, as the rules in question do not genuinely reflect a concern to attain the legitimate social policy objective relied on by France and have not been pursued in a consistent and systematic manner in the light of that aim

Under French law, civil servants who are the parents of at least three children may opt for early retirement with immediate payment of pension, subject to certain conditions, including having taken a career break of at least two consecutive months for each child. That career break may take the form of maternity leave, paternity leave, parental leave or adoption. French law further provides for a service credit for pension purposes to be granted for each child in respect of whom such a career break has been taken. Those rules were adopted following the Court of Justice's judgment in *Griesmar*¹ in which the Court held that earlier French rules, under which that service credit was granted only to female civil servants, thereby excluding male civil servants who were able to prove that they had assumed the task of bringing up their children, were directly discriminatory.

Mr Maurice Leone, a civil servant in the hospital sector, worked as a nurse in the civilian care homes of Lyon. In 2005, he applied for early retirement with immediate payment of his pension as father of three children. His application was refused on the ground that Mr Leone had not taken a career break for each of his children. Mr Leone then brought legal proceedings, taking the view that he had been the victim of discrimination on grounds of sex. EU law² requires the Member States to guarantee male and female workers equal pay for equal work. The Cour administrative d'appel de Lyon (Administrative Appeal Court, Lyon, France) referred questions to the Court of Justice.

In its judgment today, the Court holds, **with regard to the service credit**, that the French rules benefit civil servants of both sexes provided that they have had a career break of at least two consecutive months in order to care for their children, and appear to be neutral as to the sex of the beneficiary. The Court states, however, that, notwithstanding the appearance of neutrality, the criterion used in the French rules leads to a situation where many more women than men receive the benefit of the advantage concerned. Given the mandatory nature and minimum two-month duration of maternity leave under French law, female civil servants are the ones who are in a position to benefit from the service credit advantage. By contrast, other types of leave liable to give rise to entitlement to service credits and therefore available to male civil servants are optional and, in some cases, lead to a loss of pay and accumulation of pension rights. It follows that the French rules place a high number of male workers at a disadvantage, thereby giving rise to indirect discrimination on grounds of sex.

The Court further considers that, subject to assessment by the national court, that difference in treatment is not justified in the present case by objective factors unrelated to any discrimination on grounds of sex. Although the objective relied on by France (namely to compensate for the

¹ Case [C-366/99 Griesmar](#) ; see also press release No [n°62/01](#).

² Article 141 CE, now Article 157 TFEU.

disadvantages suffered in the course of their career by all workers, both female and male, who have taken a career break for a period of time in order to devote themselves to bringing up their children) indeed constitutes a legitimate social policy aim, the rules in question are not appropriate to achieve that aim or necessary in order to do so. In particular, the French rules do not genuinely reflect a concern to attain that aim and have not been pursued in a consistent and systematic manner in the light of that aim.

As regards, next, early retirement with immediate payment of pension, the Court holds that, as with respect to the service credit, the French rules, although ostensibly neutral, are liable to result in a much higher proportion of women than men receiving the benefit of it. Again, the Court considers that, subject to assessment by the national court, such a difference in treatment is not justified, as the French rules do not genuinely reflect a concern to attain the abovementioned legitimate social policy aim and have not been pursued in a consistent and systematic manner in the light of that aim.

Lastly, the Court examines whether the discrimination identified in the scheme involving the service credit and early retirement with immediate payment of pension may be justified on the ground that EU law³ allows Member States to maintain or adopt measures providing for specific advantages in order to make it easier for the underrepresented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers. The Court answers in both cases in the negative, considering that the measures in question are not of a nature such as to offset the disadvantages to which those workers are exposed by helping them in their professional life and thereby ensure full equality in practice between men and women in working life.

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.

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³ Article 141(4) EC, now Article 157(4) TFEU.