



Press and Information

Court of Justice of the European Union

**PRESS RELEASE No 89/15**

Luxembourg, 16 July 2015

Judgment in Case C-222/14

Konstantinos Maïstrellis v Ypourgos Dikaiosynis, Diafaneias kai Anthroponon Dikaiomaton

## **By prohibiting a male civil servant whose wife does not work from taking parental leave, Greek legislation is incompatible with EU law**

*Parental leave is an individual right which cannot depend on the situation of the spouse*

Greek law provides that a male civil servant is not entitled to paid parental leave if his wife does not work or exercise any profession, unless it is considered that, due to a serious illness or injury, the wife is unable to meet the needs related to the upbringing of the child.

At the end of 2010, Mr Konstantinos Maïstrellis, a judge in Greece, applied for paid parental leave of nine months for the purpose of bringing up his child, who was born on 24 October 2010. That application was rejected by the Ypourgos Dikaiosynis, Diafaneias kai Anthroponon Dikaiomaton (Greek Minister for Justice, Transparency and Human Rights) on the ground that Mr Maïstrellis's wife was not working at the time.

Hearing the case, the Symvoulío tis Epikrateias (Greek Council of State) has asked the Court of Justice whether denying the benefit of parental leave to a male civil servant whose wife is not working is compatible with the Parental Leave Directive<sup>1</sup> and the Employment Equality Directive<sup>2</sup>.

By today's judgment, the Court of Justice answers **that national legislation cannot deprive a male civil servant of the right to parental leave on the ground that his wife does not work or exercise any profession.**

The Court recalls that, according to the Parental Leave Directive, each of the parents is entitled, individually, to parental leave. That is a minimum requirement from which Member States cannot derogate in their legislation or in collective agreements. It follows **that a parent cannot be deprived of the right to parental leave, and the employment status of the spouse cannot therefore prevent the exercise of that right.** That solution, moreover, complies not only with the objective of the directive, which is to facilitate the reconciliation of the parental and professional responsibilities of working parents, but also with the status of parent leave entitlement as a fundamental social right recognised by the Charter of Fundamental Rights of the EU.

Furthermore, the Court notes that in Greece mothers who are civil servant are always entitled to parental leave, whereas fathers who are civil servant are only entitled to it 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 sufficient for women with an identical status. Far from ensuring full equality in practice between men and women in working life, the Greek legislation is therefore more 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.** It follows that the Greek Civil Service Code introduces, in

<sup>1</sup> Council Directive 96/75/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC (OJ 1996 L 145, p. 4), as amended by Council Directive 97/75/EC of 15 December 1997 (OJ 1998 L 10, p. 24).

<sup>2</sup> 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).

respect of civil servant fathers who want to take parental leave, **direct discrimination on grounds of sex** contrary to the Employment Equality Directive.

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**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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