



A national collective agreement may reserve to mothers alone an additional maternity leave

It must nevertheless be demonstrated that that additional leave seeks to protect female workers from the effects of pregnancy and motherhood

Syndicat CFTC du personnel de la Caisse primaire d'assurance maladie de la Moselle (CFTC Union of the Local Sickness Insurance Fund of the Moselle; 'Syndicat CFTC') disputes the refusal by the Caisse primaire d'assurance maladie de Moselle (Local Sickness Insurance Fund of the Moselle) to grant to the father of a child the leave for female workers who bring up their children on their own, as provided for in the National Collective Labour Agreement for staff of social security bodies.

Seised by Syndicat CFTC, the Conseil des prud'hommes de Metz (Labour Tribunal, Metz, France) referred to a judgment of the Cour de cassation (Court of Cassation, France) which held that the leave at issue is a supplementary maternity leave offered at the expiry of the statutory maternity leave and that it is thus intended to protect the special relationship between a woman and her child during the period which follows pregnancy and childbirth. In the light of that judgment, the referring court asks the Court of Justice whether EU law excludes the possibility of reserving to female workers bringing up their children on their own three months leave with half pay or one and a half months' leave with full pay and unpaid leave of up to a year after maternity leave.

In its judgment delivered today, the Court recalls, first of all, that the directive on the 'principle of equality of men and women' ¹ **prohibits all direct or indirect discrimination on grounds of sex in relation to employment and working conditions.**

However, the Court specifies that, after the expiry of the statutory maternity leave, a Member State may reserve additional leave to the mother where that leave concerns her, not in her capacity as parent, but in connection with the effects of pregnancy and motherhood. Such additional leave must be intended to ensure the protection of the biological condition of the woman and the special relationship between her and her child during the period following childbirth.

The Court points out, next, that a collective agreement which excludes from the benefit of such additional leave a male worker who is bringing up a child on his own establishes a difference in treatment between male and female workers. It is only if such a difference in treatment seeks the protection of the mother in connection with the effects of pregnancy and motherhood, that is to say, if it is intended to protect the woman's biological condition and the special relationship between her and her child during the period following childbirth, that it appears to be compatible with the 'principle of equality' directive. Thus, if the collective agreement were to apply to women solely in their capacity as parents, that article would institute direct discrimination as regards male workers.

The Court adds that leave at the end of the statutory maternity leave could be regarded as forming an integral part of maternity leave of a longer period and more favourable to female workers than

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).

the statutory maternity leave. Nevertheless, the possibility of introducing a period of leave reserved for mothers after the expiry of the statutory maternity leave is subject to the condition that it is itself intended to protect women. Consequently, the mere fact that leave immediately follows the statutory maternity leave is not sufficient for it to be considered that it may be reserved for female workers who bring up their child on their own.

Furthermore, **the referring court must specifically ascertain whether the leave provided for is intended, in essence, to protect the mother in connection with the effects of pregnancy and motherhood.**

Finally, the Court points out that the duration of the leave provided for in the collective agreement may vary considerably, from one and a half months to up to two years and three months. That period may thus be considerably greater than that of the statutory maternity leave of sixteen weeks, provided for in the Labour Code and, where the leave is taken for one or two years, it is 'unpaid', which does not appear to ensure maintenance of pay and/or entitlement to an adequate allowance for the female worker, a condition required under the directive for maternity leave.²

It concludes therefrom that **the 'principle of equality' directive does not preclude a national collective agreement which reserves to female workers who bring up their child on their own the right to leave after the expiry of the statutory maternity leave, provided that such leave is intended to protect workers in connection with the effects of pregnancy and motherhood**, which is for the referring court to ascertain, taking into account, inter alia, the conditions for entitlement to the leave, its length and modalities of enjoyment, and the legal protection that attaches to that period of leave.

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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² Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) (OJ 1992 L 348, p. 1).