

JUDGMENT OF THE COURT (Fourth Chamber)

16 July 2015 (*)

(References for a preliminary ruling — Social policy — Directive 96/34/EC — Framework agreement on parental leave — Clause 2.1 — Individual right to parental leave on the grounds of the birth of a child — National legislation denying the right to such leave for a staff member whose wife does not work — Directive 2006/54/EC — Equal treatment of men and women in matters of employment and occupation — Articles 2(1)(a) and 14(1)(c) — Working conditions — Direct discrimination)

In Case C-222/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Simvoulio tis Epikratias (Greece), made by decision of 20 March 2014, received at the Court on 7 May 2014, in the proceedings

Konstantinos Maïstrellis

v

Ypourgos Dikaiosynis, Diafaneias kai Anthropinon Dikaiomaton,

THE COURT (Fourth Chamber),

composed of L. Bay Larsen, President of the Chamber, K. Jürimäe, J. Malenovský, M. Safjan (Rapporteur) and A. Prechal, Judges,

Advocate General: J. Kokott,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Mr Maïstrellis, acting on his own behalf and by K. Daktylidi, dikigoros,
- the Greek Government, by V. Karageorgos, I. Bakopoulos and S. Lekkou, acting as Agents,
- the European Commission, by M. Patakia and D. Roussanov, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 16 April 2015,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Council Directive 96/34/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) ('Directive 96/34'), and 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).

2 The request has been made in proceedings between Mr Maïstrellis and the Ypourgos Dikaiosynis, Diafaneias kai Anthropinon Dikaiomaton (Minister for Justice, Transparency and Human Rights)

concerning the refusal of the latter to grant parental leave to Mr Maïstrellis on the ground that his wife is not in work.

Legal context

EU law

Directive 96/34

- 3 Directive 96/34, which, pursuant to Article 4 of Directive 2010/18/EU of 8 March 2010 implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and the ETUC and repealing Directive 96/34 (OJ 2010 L 68, p. 13), was repealed with effect from 8 March 2012, was intended, according to Article 1 thereof, to implement the Framework Agreement on parental leave, concluded on 14 December 1995 by the European cross-industry organisations, namely the union of European employer confederations (UNICE), the European central association of public sector employers (CEEP) and the European trade union confederation (ETUC) — that framework agreement (‘the Framework Agreement’) being annexed to that directive.
- 4 The preamble to the Framework Agreement stated, in the first paragraph thereof:

‘The ... framework agreement represents an undertaking by UNICE, CEEP and the ETUC to set out minimum requirements on parental leave ..., as an important means of reconciling work and family life and promoting equal opportunities and treatment between men and women.’
- 5 Paragraphs 4, 7 and 8 of the general considerations of the Framework Agreement were worded as follows:
 - ‘4. Whereas the Community Charter of Fundamental Social Rights [of Workers, adopted at the European Council meeting held in Strasbourg on 9 December 1989] stipulates at point 16 dealing with equal treatment that measures should be developed to enable men and women to reconcile their occupational and family obligations;
 - ...
 7. Whereas family policy should be looked at in the context of demographic changes, the effects of the ageing population, closing the generation gap and promoting women’s participation in the labour force;
 8. Whereas men should be encouraged to assume an equal share of family responsibilities, for example they should be encouraged to take parental leave by means such as awareness programmes.’
- 6 Clause 1 of the Framework Agreement stated:
 - ‘1. This agreement lays down minimum requirements designed to facilitate the reconciliation of parental and professional responsibilities for working parents.
 2. This agreement applies to all workers, men and women, who have an employment contract or employment relationship as defined by the law, collective agreements or practices in force in each Member State.’
- 7 Clause 2 of the Framework Agreement provided:
 - ‘1. This agreement grants, subject to clause 2.2, men and women workers an individual right to parental leave on the grounds of the birth or adoption of a child to enable them to take care of that child, for at least three months, until a given age up to 8 years to be defined by Member States and/or management and labour.

2. To promote equal opportunities and equal treatment between men and women, the parties to this agreement consider that the right to parental leave provided for under clause 2.1 should, in principle, be granted on a non-transferable basis.
3. The conditions of access and detailed rules for applying parental leave shall be defined by law and/or collective agreement in the Member States, as long as the minimum requirements of this agreement are respected. Member States and/or social partners may, in particular:
 - (a) decide whether parental leave is granted on a full-time or part-time basis, in a piecemeal way or in the form of a time-credit system;
 - (b) make entitlement to parental leave subject to a period of work qualification and/or a length of service qualification which shall not exceed one year;
 - (c) adjust conditions of access and detailed rules for applying parental leave to the special circumstances of adoption;
 - (d) establish notice periods to be given by the worker to the employer when exercising the right to parental leave, specifying the beginning and the end of the period of leave;
 - (e) define the circumstances in which an employer, following consultation in accordance with national law, collective agreements and practices, is allowed to postpone the granting of parental leave for justifiable reasons related to the operation of the undertaking (e.g. where work is of a seasonal nature, where a replacement cannot be found within the notice period, where a significant proportion of the workforce applies for parental leave at the same time, where a specific function is of strategic importance). Any problem arising from the application of this provision should be dealt with in accordance with national law, collective agreements and practices;
 - (f) in addition to (e), authorise special arrangements to meet the operational and organisational requirements of small undertakings.’

Directive 2006/54

8 Recitals 2, 11 and 22 in the preamble to Directive 2006/54 state:

‘(2) Equality between men and women is a fundamental principle of Community law under Article 2 and Article 3(2) [EC] and [of] the case-law of the Court of Justice. Those Treaty provisions proclaim equality between men and women as a “task” and an “aim” of the Community and impose a positive obligation to promote it in all its activities.

...

(11) The Member States, in collaboration with the social partners, should continue to address the problem of the continuing gender-based wage differentials and marked gender segregation on the labour market by means such as flexible working time arrangements which enable both men and women to combine family and work commitments more successfully. This could also include appropriate parental leave arrangements which could be taken up by either parent ...

...

(22) In accordance with Article 141(4) [EC], with a view to ensuring full equality in practice between men and women in working life, the principle of equal treatment does not prevent Member States from maintaining or adopting measures providing for specific advantages in order to make it easier for the under-represented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers. Given the current situation and bearing in mind Declaration No 28 to the Amsterdam Treaty, Member States should, in the first instance, aim at improving the situation of women in working life.’

9 Article 1 of that directive provides:

‘The purpose of this Directive is to ensure the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.

To that end, it contains provisions to implement the principle of equal treatment in relation to:

...

(b) working conditions, including pay;

...’

10 Article 2(1)(a) of that directive contains the following definition:

‘For the purposes of this Directive, the following definitions shall apply:

(a) “direct discrimination”: where one person is treated less favourably on grounds of sex than another is, has been or would be treated in a comparable situation.’

11 Article 3 of the directive, entitled ‘Positive action’, provides as follows:

‘Member States may maintain or adopt measures within the meaning of Article 141(4) [EC] with a view to ensuring full equality in practice between men and women in working life.’

12 Article 14 of Directive 2006/54, entitled ‘Prohibition of discrimination’, provides in paragraph 1(c):

‘There shall be no direct or indirect discrimination on grounds of sex in the public or private sectors, including public bodies, in relation to:

...

(c) employment and working conditions, including dismissals, as well as pay as provided for in Article 141 [EC].’

13 Article 28 of the directive, entitled ‘Relationship to Community and national provisions’ provides in paragraph 2:

‘This Directive shall be without prejudice to the provisions of Directive 96/34 ... and 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)].’

Greek law

14 Article 44 of the Code on the Administration of Courts and Status of Judges, in the version applicable to the main proceedings (‘the Code on the Status of Judges’), states, in paragraphs 20 and 21:

‘20. A judge who is pregnant has a right to a period of leave before and after childbirth in accordance with the rules applicable to civil administrative officials of the State.

21. A mother exercising the profession of judge shall be granted, upon decision of the Ypourgos Dikaioynis, Diafaneias kai Anthropinon Dikaionaton and on their request, a period of paid leave of nine (9) months for childcare ...’

15 The third sentence of Article 53(3) of the Civil Service Code, in the version applicable to the main proceedings (‘the Civil Service Code’), reads as follows:

‘... if the civil servant’s wife does not work or exercise any profession, the male spouse shall not be entitled to use the procedures available under paragraph 2 (including obtaining paid parental leave for childcare), 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, as confirmed by a certificate issued by the Superior Medical Commission having jurisdiction over the particular civil servant’.

The main proceedings and the question referred for a preliminary ruling

16 On 7 December 2010, Mr Maïstrellis, a judge in Greece, submitted an application to the Ypourgos Dikaïosynis, Diafaneias kai Anthropon Dikaïomaton seeking paid parental leave of nine months for the purpose of bringing up his child who was born on 24 October 2010. In his capacity as a judge, Mr. Maïstrellis is subject to the specific provisions concerning that occupation, namely the Code on the Status of Judges.

17 By a decision of 18 January 2011, the Ypourgos Dikaïosynis, Diafaneias kai Anthropon Dikaïomaton rejected Mr Maïstrellis’s application on the ground that, in accordance with Article 44(21) of that code, the leave applied for is granted to a mother exercising the profession of judge only.

18 Mr Maïstrellis brought an action against that decision before the Simvoulío tis Epikratias (Council of State). By a judgment of 4 July 2011, that court upheld that action noting that, in accordance with its case-law, Article 44(21) of the Code on the Status of Judges, interpreted in the light of Directive 96/34, must apply not only to mothers exercising the profession of judge, but also to fathers exercising the profession of judge. The matter was referred to the administrative authorities.

19 By a decision of 26 September 2011, the Ypourgos Dikaïosynis, Diafaneias kai Anthropon Dikaïomaton again rejected Mr Maïstrellis’s application on the ground that, pursuant to the third sentence of Article 53(3) of the Civil Service Code, he was not entitled to the leave provided for in Article 44(21) of the Code on the Status of Judges. Accordingly, although a father exercising the profession of judge is entitled, in principle, to parental leave to bring up a child, he could not benefit from it if his wife does not work or exercise any profession. In the present case, Mr Maïstrellis’s wife, as he himself stated, was not in work.

20 On 10 October 2011, Mr Maïstrellis brought an action against that new decision before the Simvoulío tis Epikratias. That court points out that, according to its case-law, in areas that are not specifically regulated for judges, the provisions of the Civil Service Code and, in particular, the third paragraph of Article 53(3) of that code could be applied to complement and supplement those provisions.

21 In that regard, the referring court asks whether that provision of the Civil Service Code complies with Directives 96/34 and 2006/54.

22 Accordingly, the Simvoulío tis Epikratias decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

‘Must the provisions of Directive 96/34 and Directive 2006/54, in so far as they are applicable, be interpreted as precluding national regulations, such as the contested provision of the third sentence of Article 53(3) of the Civil Service Code, providing that if the civil servant’s wife does not work or exercise any profession the male spouse is not entitled to parental leave, 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?’

Consideration of the question referred for a preliminary ruling

23 By its question, the referring court asks, in essence, whether the provisions of Directives 96/34 and 2006/54 must be interpreted as precluding national provisions under which a civil servant is not entitled to parental leave in a situation where 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.

Preliminary observations

- 24 In the present case, Mr Maïstrellis, in his capacity as a judge, is, in principle, subject to the Code on the Status of Judges. The referring court notes, however, that, according to its case-law, where the system governing judges is not subject to specific provisions, the provisions of the Civil Service Code may be applied to complement and supplement those provisions and, in particular, the third sentence of Article 53(3) of that code, which is expressly mentioned in the wording of the question referred.
- 25 In that regard, Mr Maïstrellis claims that the Ypourgos Dikaïosynis, Diafaneias kai Anthropinon Dikaïomaton relied on the third sentence of Article 53(3) of the Civil Service Code although the conditions laid down for the application of that provision to judges had not been fulfilled.
- 26 However, it must be noted that, according to settled case-law, questions on the interpretation of EU law referred by a national court in the factual and legislative context which that court is responsible for defining, and the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance (judgments in *Melki and Abdeli*, C-188/10 and C-189/10, EU:C:2010:363, paragraph 27, and in *Stanley International Betting and Stanleybet Malta*, C-463/13, EU:C:2015:25, paragraph 26).
- 27 In particular, it must be noted in that regard that it is not for the Court to rule on the interpretation of national provisions, as such an interpretation falls within the exclusive jurisdiction of the national courts. Thus, the Court, when a question is referred to it by a national court, must base itself on the interpretation of national law as described to it by that court (judgment in *ČEZ*, C-115/08, EU:C:2009:660, paragraph 57 and the case-law cited).
- 28 In those circumstances, the question referred for a preliminary ruling by the Simvoulío tis Epikratias should be answered.

Directive 96/34

- 29 It should be noted at the outset that Directive 96/34 and the Framework Agreement are intended to apply to public officials (see judgment in *Chatzi*, C-149/10, EU:C:2010:534, paragraphs 27 to 30).
- 30 According to the settled case-law of the Court, in interpreting a provision of EU law, it is necessary to consider not only its wording, but also the context in which it occurs and the objectives pursued by the rules of which it is part (see judgments in *Adidas*, C-223/98, EU:C:1999:500, paragraph 23; *SGAE*, C-306/05, EU:C:2006:764, paragraph 34; and *Hořtická and Others*, C-561/13, EU:C:2014:2287, paragraph 29).
- 31 As regards the wording of the Framework Agreement, under clause 2.1 thereof, an ‘individual right’ to parental leave is granted to men and women workers on the grounds of the birth or adoption of a child, to enable them to take care of that child, for at least three months.
- 32 Moreover, under clause 2.2 of the Framework Agreement, in order to promote equal opportunities and equal treatment between men and women, that right to parental leave ‘should, in principle, be granted on a non-transferable basis’.
- 33 It follows from those provisions that each of the child’s parents is entitled, individually, to parental leave for at least three months (see, to that effect, judgment in *Commission v Luxembourg*, C-519/03, EU:C:2005:234, paragraph 33).
- 34 That right to parental leave for each of the child’s parents constitutes one of the minimum requirements laid down by the Framework Agreement, within the meaning of clause 1.1 of that agreement.
- 35 Accordingly, clause 2.3 of the Framework Agreement states that the conditions of access and detailed rules for applying parental leave are to be defined by law and/or collective agreement in the Member States, as long as the minimum requirements of that agreement are respected. That provision sets out the conditions of access to parental leave and the detailed rules for applying parental leave that Member States and/or the social partners may adopt.

- 36 However, as the Advocate General stated in point 42 of her Opinion, those conditions and those detailed rules do not in any way provide that one of the parents can be denied the right to parental leave, inter alia, because of the employment status of his or her spouse.
- 37 That literal interpretation of clauses 1 and 2 of the Framework Agreement is supported by the objectives and context of that agreement.
- 38 The Framework Agreement is designed, according to clause 1.1 thereof, to facilitate the reconciliation of parental and professional responsibilities for working parents, an objective set, as paragraph 4 of the general considerations in the Framework Agreement recalls, by point 16 of the Community Charter of the Fundamental Social Rights of Workers (judgment in *Chatzi*, C-149/10, EU:C:2010:534, paragraph 36).
- 39 It was with the same objective that the right to parental leave was included, in Article 33(2) of the Charter of Fundamental Rights of the European Union, among the fundamental social rights grouped together in Title IV under the heading ‘Solidarity’ (judgment in *Chatzi*, C-149/10, EU:C:2010:534, paragraph 37). That provision states that, in order to reconcile family and professional life, everyone has the right, inter alia, to parental leave following the birth or adoption of a child.
- 40 Likewise, paragraphs 7 and 8 of the general considerations of the Framework Agreement state that family policy should be looked at in the context of ‘promoting women’s participation in the labour force’ and that men should be encouraged to assume an ‘equal share of family responsibilities’, inter alia by taking parental leave.
- 41 Consequently, it follows from the wording of the Framework Agreement and from its objectives and context that each parent is entitled to parental leave, which means that Member States cannot adopt provisions under which a father exercising the profession of civil servant is not entitled to parental leave in a situation where his wife does not work or exercise any profession.

Directive 2006/54

- 42 At the outset, it should be noted, first, as is stated in recital 2 of Directive 2006/54, that the principle of equal treatment between men and women implemented by that directive has general application. Furthermore, that directive, as is apparent in particular from Article 14(1) thereof, and the case-law of the Court, applies to employment relationships in the public or private sectors (see, to that effect, judgment in *Napoli*, C-595/12, EU:C:2014:128, paragraph 39).
- 43 According to recital 11 to that directive, to enable both men and women to combine family and work commitments more successfully, Member States should, inter alia, adopt ‘appropriate parental leave arrangements which could be taken up by either parent’.
- 44 Under the first indent of Article 2(1)(a) of that directive, ‘direct discrimination’ exists where one person is treated less favourably, on grounds of sex, than another person is, has been or would be treated in a comparable situation.
- 45 The granting of parental leave, which enables new parents to interrupt their professional activities to devote themselves to their family responsibilities, has consequences on the exercise of the professional activities of the civil servants concerned. Therefore, the conditions for granting parental leave fall within employment and working conditions, within the meaning of Article 14(1)(c) of Directive 2006/54.
- 46 In the present case, parental leave as provided for in the third sentence of Article 53(3) of the Civil Service Code concerns civil servants in their capacity as parents.
- 47 In that regard, it should be noted that the situation of a male employee parent and that of a female employee parent are comparable as regards the bringing-up of children (see judgments in *Commission v France*, 312/86, EU:C:1988:485, paragraph 14; *Griesmar*, C-366/99, EU:C:2001:648, paragraph 56; and *Commission v Greece*, C-559/07, EU:C:2009:198, paragraph 69).

- 48 Although the first sentence of Article 53(3) of the Civil Service Code provides that a father exercising the profession of civil servant is not entitled to parental leave for childcare in a situation where 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, that provision, by contrast, does not, for a mother exercising the profession of civil servant, provide for such an exclusion relating to the employment status of her husband. Moreover, the order for reference does not refer to any other provision of national law that establishes such a condition for mothers who are civil servants.
- 49 It follows that, under national law, mothers who are civil servants are always entitled to parental leave, whereas fathers who are civil servant are entitled to it only 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 for women with an identical status (see, by analogy, judgment in *Roca Álvarez*, C-104/09, EU:C:2010:561, paragraph 23).
- 50 Furthermore, having regard to Article 3 of Directive 2006/54, a provision such as the one at issue in the main proceedings, far from ensuring full equality in practice between men and women in working life, is 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 (see, to that effect, judgments in *Lommers*, C-476/99, EU:C:2002:183, paragraph 41, and *Roca Álvarez*, C-104/09, EU:C:2010:561, paragraph 36).
- 51 Finally, it should be pointed out that, under Article 28(2) of Directive 2006/54, that directive is to be without prejudice to the provisions of Directive 96/34 and Directive 92/85. However, a provision such as the third sentence of Article 53(3) of the Civil Service Code cannot fall within the protection provided by Directive 92/85. As the Advocate General stated in point 50 of her Opinion, the deprivation, for the father of the child, of the right to parental leave because of the employment situation of his wife in no way constitutes a measure to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding.
- 52 In those circumstances, it should be held that the provision at issue in the main proceedings constitutes direct discrimination on grounds of sex, within the meaning of Article 14(1) of Directive 2006/54, read in conjunction with Article 2(1)(a) of that directive, in respect of fathers who are civil servants, as regards the granting of parental leave.
- 53 Having regard to all of the foregoing considerations, the answer to the question referred is that the provisions of Directives 96/34 and 2006/54 must be interpreted as precluding national provisions under which a civil servant is not entitled to parental leave in a situation where 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.

Costs

- 54 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fourth Chamber) hereby rules:

The provisions of Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC, as amended by Council Directive 97/75/EC of 15 December 1997, and 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, must be interpreted as precluding national provisions under which a civil servant is not entitled to parental leave in a situation where 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.

[Signatures]

* Language of the case: Greek.