

Case No: 78118
Document No: 824186
Decision No: 193/17/COL

REASONED OPINION

delivered in accordance with Article 31 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice concerning Norway's breach of Article 14(1)(c) read in conjunction with Article 2(1)(c) of Directive 2006/54/EC by rendering the fathers' entitlement to paid parental leave dependent upon the mother's situation whilst this is not the case in the reverse circumstances

1 Introduction

1. By letter dated 28 October 2015 (Doc. No 777814), the EFTA Surveillance Authority (“the Authority”) informed the Norwegian Government that it had opened an own initiative case regarding the assessment of whether the Norwegian provisions concerning the right to parental leave comply with Directive 2010/18/EU on parental leave¹ and Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation².

2. In particular, on 16 July 2015, the Court of Justice of the European Union (“the Court of Justice”) gave its judgment in *Maïstrellis*, C-222/14³, where it concluded that the provisions of Directive 96/34/EC (currently replaced by Directive 2010/18/EU) and Directive 2006/54/EC had to 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, whereas, by contrast, national law does not, for a mother exercising the profession of civil servant, provide for such an exclusion relating to the employment status of her husband.

3. It appears that the Norwegian provisions on paid parental leave are similar to those examined in the *Maïstrellis* judgment and distinguish between the rights of employees to take paid parental leave on the basis of their sex. Consequently, those provisions infringe the prohibition of direct discrimination on grounds of sex under Directive 2006/54/EC.

4. On 21 June 2016 and 28 November 2016, the Authority received complaints of fathers who were not entitled to any paid parental leave due to the fact that their wives were not working or studying full time (Cases No 79295 and 79951). On 24 June 2016 and on 7 December 2016, the Authority informed the Norwegian Government about the complaints (Doc. Nos 809843 and 829962).

2 Correspondence

5. In the above mentioned letter of 28 October 2015, the Authority requested information from the Norwegian Government in order to assess whether and how the Norwegian Government considers the provisions as compatible with Directive 2010/18/EU and/or Directive 2006/54/EC, as also interpreted in the *Maïstrellis* judgment.

¹ Act referred to at point 31a of Annex XVIII to the EEA Agreement (*Council Directive 2010/18/EU of 8 March 2010 implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC*), as adapted to the EEA Agreement by Protocol I thereto.

² Act referred to at point 21b of Annex XVIII to the EEA Agreement (*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 (recast)*), as adapted to the EEA Agreement by Protocol I thereto.

³ Judgment of 16 July 2015, *Maïstrellis*, C-222/14, EU:C:2015:473.