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NEWS REPORT

Country:	Greece
Title:	Greek Council of the State (Supreme Administrative Court) judgment 252/2015: the modification of a town plan so as to allow the building of a communal nursery and kindergarten in a space of common use is compatible with the Greek Constitution, as it serves an important social need: family and maternity protection
Date:	24 March 2016
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<u>Context</u>	
Issue at stake:	Reconciling of family and professional responsibilities
Ground of discrimination:	Sex
Source:	National supreme court judgment
Field:	Pregnancy and maternity; parental leave
Applicable law:	Articles 21(1) and 24 of the Greek Constitution; Article 33 of the EU Charter of Fundamental Rights; general principle of the reconciliation of family and work responsibilities; Directive 2010/18/EU

Content

Case law development: A Presidential Decree (PD) modified the town plan of a commune so as to allow the building of a communal nursery and kindergarten in a space which was previously of common use. An inhabitant of a nearby house lodged an action for the annulment of this PD with the Council of the State (the Supreme Administrative Court; CS), alleging that it conflicted with the Constitution as it led to the downgrading of the environment. The CS dismissed the action holding that the environment was not downgraded, while the building of a nursery and kindergarten serves an important social need: family and maternity protection.

Key points of analysis: In support of his action for the annulment of the PD, the claimant invoked Article 24 of the Greek Constitution, which requires the protection of the natural and cultural environment by the State and imposes several particular obligations on the State for the preservation of the environment. The CS held that the claimant's allegations were unfounded, while the building of a communal nursery and kindergarten serves an important social need: family and maternity protection. It consequently dismissed the action.

The claimant alleged that the space at stake was a park with vegetation protected by forest legislation, and therefore the impugned PD conflicted with Article 24(1) of the Constitution. However, the CS found that there was no forest vegetation in this space, as

there were only nine small olive trees, three fig trees and a cypress. Moreover, for the purposes of the building of the nursery and kindergarten, only three olive trees and one fig tree needed to be cut down.

The claimant also alleged that getting rid of the common use of the space would downgrade the natural and housing environment of his home. However, the CS considered that it was proven that 'the modification of the town plan and the building of a communal nursery and kindergarten aims to serve an important social need related to family and maternity protection, in view of the fact that there is no other nursery in the area, while the two existing kindergartens are sheltered in inappropriate buildings rented by the commune. It was also proven that the space at stake was chosen on the basis of town planning criteria, as it is easily accessible from all areas of the commune, it is far from areas with heavy traffic and near the borders of the commune with the Mount Hymettus forest, and there is no other appropriate plot'. The CS consequently held that the impugned PD was compatible with the Constitution and dismissed the action.

Article 21(1) of the Constitution provides that the family, marriage, motherhood and childhood shall be under the protection of the State. The CS did not invoke Article 21(1). However, by holding that the impugned PD served the protection of the family and motherhood, it implicitly indicated that it served the aims of and materialized the obligations imposed on the State by this constitutional provision. It is obvious that the impugned PD also serves the purposes of the EU principle of reconciling family and professional obligations, Article 33 of the EU Charter of Fundamental Rights and the parental leave Directive 2010/18/EU.

Internet link sources:

Articles 21(1) of the Constitution (family and maternity protection), English translation *via* Greek Parliament website, at: <http://www.hellenicparliament.gr/en/Vouli-ton-Ellinon/To-Politevma/Syntagma>, accessed 31 December 2015.

Presidential Decree (PD) dated 3 February 2009, OJ D A.A.P. 63/13.02.2009, *via* Official Journal website (in Greek) at: <http://www.et.gr>, accessed 31 December 2015.