



European network of legal experts in gender equality and non-discrimination

NEWS REPORT

Country:	Germany
Title:	Prohibition of indirect sex discrimination by regulations on parental leave
Date:	8 September 2016
Expert:	Ulrike Lembke
<u>Context</u>	
Issue at stake:	Disadvantages caused by parental leave constitute a prohibited indirect sex discrimination
Ground of discrimination:	Sex
Source:	National court decision
Field:	Parental leave
Applicable law:	Federal Statute on Parental Leave and Parental Allowances and special dismissal protection in case of collective redundancies

Content

Case: The female claimant was employed by an airline which cancelled all flights from, to and in Germany and therefore dismissed all of its employees in Germany in December 2009 and January 2010. Not meeting the requirements of collective redundancies procedure, these dismissals were invalid. The claimant had been on parental leave at the time of the collective redundancies. Therefore, the competent authority decided that her dismissal was not subject of the special collective redundancies protection but was covered by the regulations of the Federal Statute on Parental Leave and Parental Allowances. After the necessary permission by the highest state authority, the dismissal of the claimant became valid in March 2010 under the regulations on dismissal protection during parental leave, while the collective dismissals of her colleagues entered into effect much later after extensive court proceedings. The Federal Labour Court rejected her dismissal protection complaint.

Decision of the Court: On 8 June 2016, the Federal Constitutional Court decided that the decision of the Federal Labour Court violated the constitutional prohibition of sex discrimination under Article 3(2) of the German Basic Law. The application of the Federal Statute on Parental Leave and Parental Allowances instead of the regulations on special dismissal protection in case of collective redundancies put the claimant at a disadvantage. While the regulations on parental leave are gender neutral, an evidently greater proportion of mothers than of fathers takes parental leave (2014: 41,5 % of working mothers but only 2 % of working fathers). Thus, the non-application of the regulations on special dismissal protection detrimental to parents taking parental leave in fact put female parents at a disadvantage compared to male parents and constituted an indirect sex discrimination. This discrimination was not compatible with the German Constitution. The competent authorities were obliged to apply the advantageous dismissal protection.

Key points of analysis: The application of less advantageous dismissal protection under parental leave regulations instead of special dismissal protection in case of collective redundancies establishes an indirect sex discrimination prohibited under constitutional law due to the fact that an evidently greater proportion of mothers than of fathers takes parental leave.

Internet link source:

Federal Constitutional Court, judgment of 8 June 2016, 1 BvR 3634/13:

http://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2016/06/rk20160608_1bvr363413.html, accessed 1 August 2016.