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NEWS REPORT

Country:	The Netherlands
Title:	Administrative High Court rules that self-employed women who did not receive a maternity benefit between 2004 and 2008 are entitled to compensation
Date:	1 August 2017
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<u>Context</u>	
Issue at stake:	Judgment by the Administrative High Court on compensation for self-employed women who did not receive a maternity benefit
Ground of discrimination:	Sex
Source:	National court decision
Field:	Pregnancy and maternity,
Applicable law:	Article 3:18(2) Employment and Care Act, article 3:19 Employment and Care Act (old), Article 11 UN Convention on Women's Rights

Content

Decision of the Court: On 27 July 2017, the Administrative High Court, the highest court in cases on social security, ruled that the State breached the UN Convention on Women's Rights by abolishing the right to a maternity benefit for self-employed women in 2004 and re-introducing the same right in 2008 without creating an arrangement for the women who gave birth between 2004 and 2008. The court ruled that the social security authorities have to compensate the self-employed women who did not receive a maternity benefit between 2004 and 2008. As such the court upheld the decision by the Administrative Court of the Mid-Netherlands of 9 October 2016, and overturned two decisions by the Administrative Courts Amsterdam of 18 July 2016.

The plaintiffs, three self-employed women, have been involved in litigation about their right to a maternity benefit since 2005, with the support of trade union 'FNV self-employed', the Association for women and law and the Clara Wichmann fund for test cases. A procedure in the Netherlands, up to the Dutch Supreme Court, yielded nothing. In the complaint-procedure before the CEDAW-Committee, the Committee ruled in plain language that the women were entitled to a maternity benefit and that the State had breached the Convention on Women's Rights by not creating an arrangement for them. Even this ruling did not induce the State to set things right. The women then started yet another procedure, in which they asked the social security authorities to grant them the benefit. On 18 July 2016, the Amsterdam Administrative Court dismissed the claim of two of the plaintiffs. The Administrative Court of the Mid-Netherlands allowed the claim of one of the other women. The latter decision has now been ratified by the Administrative High Court.

The Administrative High Court ruled in the first place that the opinion by CEDAW must be seen as “authoritative” and as an opinion which is especially significant in the present procedure. The court therefore follows CEDAW’s point of view that article 11(2)(b) of the UN Treaty concerns self-employed women as well. Subsequently the court ruled that this article can be invoked directly. This may not have been the case at the time the Dutch Supreme Court rendered its earlier judgment (in 2011), but the Supreme Court changed its jurisprudence on this subject in a judgment of 2014.

It follows from article 11(2)(b) that pregnant self-employed women were entitled to some form of compensation in the period between 2004 and 2008 during which time no maternity benefit existed for this group. By not granting them this compensation the State breached its obligations under the UN Women’s Treaty.

The foregoing does not mean that the women involved are, without a doubt, as yet entitled to a maternity benefit. It means that the social security authorities must take a decision on how to comply as yet with article 11(2)(b). If no (accurate) decision is taken within 16 weeks, the women will, however, be entitled to a maternity benefit on the basis of the law that applied until 1 August 2004 or the law that entered into force on 4 June 2008.

Key points of analysis: The judgment is relevant because 1) the authority of CEDAW is explicitly recognized, 2) it is confirmed that Article 11(2)(b) also relates to self-employed women, 3) the court ruled that Article 11(2)(b) can be invoked directly, and 4) most important of all, those self-employed women who gave birth between 1 August 2004 and 4 June 2008 and did not receive a maternity benefit, are as yet entitled to compensation. This does not only apply to the three women involved in the procedures, but also to approximately 17.000 other women. The social security authorities promised at an earlier stage that all women who are in the same situation as the plaintiffs, will be treated in the same manner. It is expected that the social security authorities will consult the Minister of Social Affairs and Employment on how to comply with the judgment.

Internet link source:

<http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:CRVB:2017:2461>

(Court decision)