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NEWS REPORT

Country:	The Netherlands
Title:	The Council of State rules that NWO (organisation in charge of allocating subsidies for academic research) breached her duty of care towards a pregnant applicant
Date:	17 December 2018
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<u>Context</u>	
Issue at stake:	Judgment by the Council of State on discrimination of a pregnant woman who applied for a research grant
Ground of discrimination:	Sex
Source:	National court decision
Field:	Pregnancy and maternity
Applicable law:	Article 1 Protocol No. 12 to the ECHR, art. 26 ICCPR

Content

Decision of the Court: On 31 October 2018, the Council of State rendered judgment in the case of a female academic researcher who had applied for a (substantial) grant for her research. On 19 October 2015, the applicant sent an e-mail to NWO, the organisation that decides on applications for subsidies, informing them that she was pregnant and asking them to take this into account during the application process. During the application procedure, an applicant has five days for submitting a reply/defence to the reports which are drafted by referees regarding his/her application. This deadline lay on or around the due date of giving birth of the applicant. When the applicant asked for a deferral, NWO informed her that it was not possible to submit her reply after giving birth (in February 2016). Therefore, the applicant asked if the NWO could send the reports to her as soon as possible after receiving them so that she could already work on formulating her response to the reports. NWO received the reports on 10 November, 26 November and 21 December 2015. On 5 January 2016, the applicant contacted the NWO to find out if the reports had already been received. Subsequently she received the reports on 7 January. She submitted her reply three days before giving birth on 13 January. Her application was rejected in May 2016. The applicant argued that NWO acted in a discriminatory way by not paying due attention to the fact that she was pregnant and was due to give birth.

The lower administrative court dismissed the case, but was overruled in appeal by the Council of State's decision. The Council observed that the policies of NWO were in itself not discriminatory. NWO has a 'Diversity Policy' which takes into account the specific situation of pregnant applicants. However, the decisions by NWO in this individual case did not meet the high standards that are applicable when civil rights are at stake. It was not the task of the applicant to point out, at the moment she received the referee reports shortly before the childbirth, that she was no longer able to submit a reply or to deliver the desired quality. "The degree of assertiveness of the pregnant applicant cannot determine the extent to which her fundamental rights are respected", so the Council ruled. NWO should have contacted the applicant to discuss the appropriate period for the reply, taking into

account the interest of the other applicants. This was especially the case, as NWO knew that she was pregnant and childbirth was due shortly, and because she received the referee reports already in November and December 2015, but did not send them to the applicant before 7 January 2016.

The Council revoked the decision by NWO and ruled that, if the applicant still wants to continue with her application for the grant, her application must be included in the next application round.

Key points of analysis: For several reasons this is a relevant judgment. In the first place it is the first of its kind. There have been discussions about equal treatment by NWO, but this is the first time a court ruling has been given. Secondly, the subsidies that NWO can grant, can be very substantial (up to EUR 800.000 in this case) and are very important for academics, especially academics in the first stages of their career. This is also the phase in life where women often become pregnant. As the time schedules for the NWO applications are very strict, it is very difficult for women who are pregnant or have young children to deliver the necessary high quality within the set time limits. In view of this, it is important that the Council of State has explicitly ruled that NWO has to pay due notice to the interests of pregnant women and that is the basic right of a pregnant woman to be treated equally in a situation like this.

Internet link source:

<https://www.raadvanstate.nl/uitspraken/zoeken-in-uitspraken/tekst-uitspraak.html?id=97095>.