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FLASH REPORT

Country:	Greece
Title:	Discrimination of female cleaners
Date:	11 February 2019
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<u>Context</u>	
Issue at stake:	Exclusion of female cleaners from the possibility to be transferred to another branch of a private bank resulted in the termination of their employment contract
Ground of discrimination:	Sex
Source:	National court decision
Field:	Employment
Applicable law:	Act 3896/2010 'Implementation of the Principle of Equal Treatment of Men and Women in Matters of Employment and Occupation. Harmonisation of Existing Legislation with Directive 2006/54/EC of the European Parliament and the Council,' OJ A 207/08.12.2010.

Content

Case: A recent case, was inspired by the CJEU judgment in *Nikoloudi* (C-196/02).¹ It concerned the decision of a private bank to close down the cleaners department in order to outsource the cleaning activities. This resulted in the redundancy of 64 cleaners, all of them women (with the only exception of one male cleaner). Of these cleaners, 62 accepted the employer's offer to resign in order to be paid a bonus, which amounted to the double or triple of the legal redundancy compensation. The remaining 4 female cleaners who declined the offer were dismissed. One of them brought the case before the First Instance Court of Athens alleging, inter alia, that she was the victim of direct (or indirect) sex discrimination. According to the claimant, her employment, in a predominantly female dominated department was terminated without any possibility of transfer to other jobs being provided, whereas predominantly male departments, such as those of blue-collar workers or clerks were given the possibility of transfer to other jobs within the bank.

Decision of the Court: (*judgment No 2323/2018 of the First Instance Civil Court of Athens – Labour disputes Section*)

By its judgment of 12 December 2018, No. 2323/12.12.2018 the FICCA found that the provision of the internal rules of the bank, as modified in June 2014, for the first time excluding the cleaners (the word in Greek is used in the female gender given that it is a predominantly female profession) from the possibility to be transferred to other jobs, whereas predominantly male departments, such as those of blue-collar workers or clerks

¹ CJEU 10 March 2005 *Nikoloudi v Organismos Tilepikinonion Ellados AE* Case C-196/02, ECLI:EU:C:2005:141.

were offered that possibility, constituted indirect sex discrimination in breach of Act 3846/2010,² which implemented Directive 2006/54/EC.

However, the Court did not find that the termination of the employment contract *per se* constituted (direct or indirect) sex discrimination. The reasoning of the FICCA was as follows: *the termination was due to the implementation of the entrepreneurial decision of the bank to close down the cleaners department and not to any other ground which would amount to or could be deemed sex discrimination*. This wording shows that the Court was in search of an eventual “fault” of the employer, which it did not find. Nonetheless, the termination was found null and void in breach of other national law provisions, which are not of interest under EU law and in the present context.

Key points of analysis: To the author’s knowledge, after the aforementioned CJEU preliminary ruling in *Nikoloudi* this is the only Greek judgment applying the notion of indirect discrimination on the grounds of sex in private sector employment. Therefore, this judgment is of great importance. However, it is obvious that the Court subjected the finding of discrimination to the requirement of fault, which is contrary to the ECJ case law in the cases *Draehmpaehl*³ and *Dekker*.⁴

Internet link source: Not available. This judgment has not yet been published in the legal reviews nor has it been uploaded on any on-line case law data bank.

² Act 3896/2010, ‘Implementation of the Principle of Equal Treatment of Men and Women in Matters of Employment and Occupation. Harmonisation of Existing Legislation with Directive 2006/54/EC of the European Parliament and the Council,’ OJ A 207/08.12.2010.

³ ECJ, 22 April 1997 *Draehmpaehl v Urania Immobilienservice OHG*, Case C-180/95, ECLI:EU:C:1997:208.

⁴ ECJ, 8 November 1990 *Dekker v Stichting Vormingscentrum voor Jong Volwassenen* Case C-177/88, ECLI:EU:C:1990:383.