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FLASH REPORT

Country:	Greece
Title:	Exclusion of male lawyers from the coverage of nursery fees
Date:	14 February 2020
Expert:	Panagiota Petroglou
<u>Context</u>	
Issue at stake:	Exclusion of male lawyers, who are insured with the social security scheme for the lawyers of Athens, from the allowance covering the nursery fees of children aged one to five years provided only for female lawyers
Grounds of discrimination:	Gender
Field of application:	Equal pay; access to goods and services
Source:	Jurisprudence: Judgment No. 15908/11.11.2019 of the First Instance Administrative Court of Athens
Applicable law:	Article 15 of Presidential Decree 162/98 providing the regulation for the social insurance of lawyers (<i>Κανονισμός περίθαλψης Τ.Υ.Π.-Δ.Α.</i>)

Content

Key points of analysis:

Applicable Law

Article 15 of Presidential Decree (ΠΔ) 162/1998 providing the regulation for the social insurance of the Athens lawyers against the risk of sickness (*Κανονισμός περίθαλψης Τ.Υ.Π.-Δ.Α.*) (OJ A 122/1998) provides that: 'The social security scheme grants an allowance for the coverage of nursery fees for the children of the insured persons. The amount of the allowance is defined by decision of the administrative board of the social insurance scheme and is granted for up to 11 months per year. Beneficiaries of the allowance are directly insured female lawyers and female trainee-lawyers, who have children aged from one to five years insured in the same scheme and who are not entitled to such an allowance by another social security scheme. For the approval and reimbursement of the expense the following documents are required: a) an application of the entitled person, b) a receipt of payment issued by the crèche and c) a statement, as required by Act 1599/1986, by which it is declared that the relevant allowance is not granted by another source and that the child has remained in the crèche for the whole period concerned.'

FIACA No. 15908/11.11.2019

In 2012, a male lawyer, father of two minor children born in 2004 and 2011, asked the social security scheme at issue 'Unified Insurance Fund for the Self-Employed' (*Ενιαίο Ταμείο Ανεξάρτητα Απασχολούμενων* – ETAA as a successor to *Τ.Υ.Π.-Δ.Α.*) to pay him the above nursery allowance for the period November 2005 – December 2011 of the sum of EUR 2 930. Said Fund refused to do so arguing that according to the relevant regulation in force the above allowance is restricted to female lawyers. In December 2012, having

completed the obligatory internal administrative procedure, the male lawyer brought a recourse against said Fund to the First Instance Administrative Court of Athens (FIACA). He argued that the refusal was a breach of Greek and EU gender equality law. The case was heard in February 2019. By its judgment, No. 15908/11.11.2019, the FIACA found that Article 15 of Presidential Decree (ΠΔ) 162/1998 constituted direct discrimination against male lawyers in breach of the provisions of the Greek Constitution (Article 4(2) on gender equality¹ and Article 21 on family protection)² in conjunction with EU law (Article 157 TFEU, Directive 79/7/EEC),³ Presidential Decree 87/2002,⁴ which transposed into the Greek Legal order the Directives 96/97/EC and 86/378/EEC and Act 3896/2010,⁵ which transposed Directive 2006/54/EC. By finding so, the Court proceeded to levelling-up, declaring that beneficiaries of the allowance at issue are also male lawyers (and trainee lawyers) with children aged one to five years, who are insured with said scheme and who are not beneficiaries of the relevant allowance by another social security fund. However, the Court did not adjudicate to the male lawyer the due sum of EUR 2 930 finding that it does not have the power to check whether the other conditions for the payment of the above allowance are met; thus, the case was sent back to said Fund.

Relevant jurisprudence

In the past, the FIACA by at least two judgments (FIACA 3210/2017 and 5774/2007) found this provision to be in breach of the principle of gender equality as proclaimed by Articles 4(2) and 116(2) of the Greek Constitution and EU law. More in particular, FIACA 5774/2017 applied Presidential Decree 87/2002 (OJ A 66/4.4.2002) for the implementation of the principle of equal treatment of men and women in occupational social security schemes, including those of the self-employed, which transposed Directives 96/97 and 86/378. In particular its Article 5(e) prohibiting different conditions of access to allowances on the basis of sex (directly or indirectly) or the exclusion of one sex. FIACA 3210/2017 referred to Directive 76/207, which is irrelevant in the author's opinion. Both judgments obliged the above social security scheme to pay to the claimants (male lawyers) the sum of the expense of nursery fees they had paid. Additionally, FIACA 5574/2007 awarded the symbolic sum of EUR 100 for moral damages.

The same issue was also raised to the Equality body. Responding to a complaint lodged by a male lawyer, in December 2015, the Ombudsman found that Article 15 of Presidential Decree 162/1998 constituted discrimination based on sex to the detriment of male lawyers insured with said scheme. As a result, the complainant was paid the allowance initially refused. Moreover, the scheme committed itself to the payment of the nursery allowance to all the male lawyers insured with the scheme henceforth.⁶ However, this commitment did not lead the said Fund to satisfy the case in issue, which was pendant before the FIACA since 2012.

Internet link source:

<http://www.dsanet.gr/Epikairothta/Nomologia/MonDPrAth%2015908.19.htm>.

¹ Article 4(2) of the Greek Constitution ('Greek men and women have equal rights and obligations') requires (substantive) sex equality in all areas; it implicitly prohibits sex discrimination.

² Article 21(1) of the Constitution requires the protection of marriage, the family, motherhood and childhood. This requirement seems to be similar to that of Article 33(1) of the EU Charter. Greek case law relies on this provision, alone or in conjunction with Article 4(2) of the Constitution, in order to uphold claims to maternity and parenthood protection.

³ Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security, OJ L 6, 10.1.1979, pp. 24–25.

⁴ Presidential Decree 87/2002 on the application of the principle of equal treatment of men and women in the occupational social security schemes, implementing Directives 96/97/EC and 86/378/EEC, OJ A 66/4.4.2002. It has been repealed by Article 30(5) of Act 3896/2010 transposing Directive 2006/54/EC.

⁵ 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.

⁶ Summary of the case available at: <https://www.synigoros.gr/resources/docs/epidoma-vrefonhpiakoy-sta8moy.pdf>.