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FLASH REPORT

Country:	Greece
Title:	Non-renewal of the fixed term contract of a female employee due to childbirth
Date:	14 February 2020
Expert:	Panagiota Petroglou
<u>Context</u>	
Issue at stake:	Non-renewal of the fixed term contract of a female employee due to childbirth
Grounds of discrimination:	Gender
Field of application:	Equal treatment in employment
Source:	Supreme Civil Court Judgment No. 107/21.6.2019 ¹
Applicable law:	Article 15(1) Act 1483/1984 OJ A 153/8.10.1984

Content

Case: A woman employed by the University of Athens during the period 1 October 2005 – 30 September 2010 under consecutive contracts in writing, labelled ‘contracts for services’ (*contrats d’ ouvrage*), gave birth to her child on 19 June 2010, during her last contract, which was to expire on 30 September 2010. As of 1 October 2010, the University of Athens refused to accept her services, claiming that her last contract had expired on 30 September 2010. The woman brought an action to the First Instance Civil Court of Athens (FICCA) seeking the judicial recognition of the real nature of said contracts as a single contract of employment of indefinite duration. She also claimed that the refusal of the University to accept her services from 1 October 2010 onward amounted to a termination of her employment contract, such a termination being null and void, because *inter alia* it violated Article 15(1) Act 1483/1984, which prohibits the dismissal of a female employee during her pregnancy and (at the time)² one year after childbirth. Moreover, she claimed that her dismissal was null void because it was contrary to the principle of good faith (Article 281 of the Civil Code), as she was dismissed for having given birth to her child, whereas two other colleagues of hers, whom she named and who were not in her situation, were maintained in the service. The FICCA by its judgment 3744/2014 dismissed the claim as ill-founded. The claimant appealed to the Civil Court of Appeal of Athens (CCAA), which by its judgment 644/2017 upheld the appeal, thus quashing the FICCA judgment and upholding the action. More specifically the Court of Appeal found that, according to their real nature, the contracts were contracts of employment and that Article 15(1) Act 1483/1984 was, therefore, applicable. Consequently, the cessation of her employment after the expiration of her last contract amounted to dismissal, which was null and void because it took place within a year after childbirth without a serious ground being invoked

¹ Although dated 21 June 2019, the judgment appeared in the SCC site and was thus made accessible to the public in the second semester of 2019.

² Article 15 (1), (3) of Act 1483/1984, as subsequently replaced by Article 36(1) of Act 3996/2011 and amended by Article 46 of Act 4488/2017, prohibits the dismissal of a female employee during her pregnancy and 18 months after childbirth or during a longer absence due to illness brought about by pregnancy or childbirth.

by the employer. Consequently, the woman was awarded full pay without interruption from the date of the employer's refusal to employ her (1 October 2010) till the completion of the protection period of one year after childbirth (19 June 2011). The University of Athens lodged an appeal on points of law from the above-mentioned CCA judgment. The case was heard by the Supreme Civil Court (SCC) on 23 January 2018.

Decision of the court: By its judgment No. 107/21.6.2019 the Supreme Civil Court (SCC) upheld the appeal on points of law and quashed the CCA judgment. The SCC found that the protection from dismissal afforded by Article 15(1) Act 1483/1984 to pregnant women or women who have recently given birth applies both to employment contracts of indefinite duration and to fixed term employment contracts. However, in the event of a fixed term contract, the protection against dismissal does not extend beyond the expiry thereof. According to the Supreme Court, such protection cannot apply in the absence of an express provision to this effect, as it would result in tacit modification of the will of the parties to the contract regarding its duration. In view of the above, the SCC quashed the CCA judgment because of an error in law (erroneous interpretation and application of Article 15(1) Act 1483/1984).

Key points of analysis: In Greece, according to Article 15(1) Act 1483/1984 the prohibition of dismissal covers pregnancy and extends beyond maternity leave; it thus exceeds the minimum protection provided by the Directive (see Article 10(2) of Directive 92/85/EEC), since it covers at least 18 months in both the public and the private sector. Even null and void employment relations are covered. However, SCC case law on protection of fixed term workers from dismissal in the event of pregnancy and childbirth is contrary to CJEU case law. In particular, in *Tele Danmark*³ and *Jiménez Melgar*,⁴ the CJEU found that, if the non-renewal of a fixed-term contract, which has come to an end, is due to the worker's pregnancy, it constitutes direct discrimination on grounds of sex, contrary to Article 2(1) and 3(1) of Council Directive 76/207/EEC.

The case which led to the SCC judgment No. 107/21.6.2019 is a very blatant example of such discrimination. Firstly, it is evident (and it was not disputed as the text of the judgment shows) that the only reason for the non-renewal of the claimant's fixed-term contract was the recent birth of her child. Although a comparison is not needed in the case of pregnancy and maternity, the claimant did allege that similar fixed term contracts of two colleagues of hers who were not in her condition were renewed at the same time (from the text of the judgment it does not appear whether these colleagues were male or female, but this allegation was not disputed either).

Internet link source: <http://www.areiospagos.gr/> (in Greek).

³ CJEU, C-109/00, *Tele Danmark A/S v. Handels- og Kontorfunktionærernes Forbund i Danmark (HK)*, 4 October 2001.

⁴ CJEU, C-438/99, *Maria Luisa Jiménez Melgar v. Ayuntamiento de Los Barrios*, 4 October 2001.