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FLASH REPORT

Country:	Netherlands
Title:	Supreme Court rules that lapse of maternity leave of teachers in secondary education in case it overlaps with school holidays constitutes discrimination
Date:	24 November 2020
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<u>Context</u>	
Issue at stake:	Decision by the Supreme Court on the overlapping of maternity leave and school holidays
Grounds of discrimination:	Gender, Sex
Field of application:	Employment
Source:	Supreme Court
Applicable law:	Equal Treatment Act

Content

Decision of the Supreme Court: On 6 November 2020, the Supreme Court ruled that the provision in the secondary education collective agreement, which states that the pregnancy- and maternity leave of employees comes to lapse when it overlaps with school holidays other than the summer holiday, is contrary to the Equal Treatment Act and constitutes direct discrimination.

The case was initiated by a teacher in secondary education, whose maternity leave partly coincided with the May vacation in 2018 and therefore came to lapse. The teacher took the view that this was contrary to antidiscrimination law, whereas the school stated that the collective agreement did not grant a number of holidays, but only stipulated when granted days can be taken. The District Court asked preliminary questions to the Supreme Court, which have now been answered.

The Supreme Court's decision is relevant, because in the past the Supreme Court took a different view. In a judgment of 9 August 2002, it ruled in a similar situation that there was no discrimination involved, because the provision in the collective agreement did not grant a specific number of holidays to employees, but only pointed out when holidays could be taken. However in the meantime the CJEU rendered the Gómez-judgment (C-324-1, ECLI:EU:C:2004:160), in which it made clear that art. 5(1) of Directive 76/207/EEC (old) must be interpreted as meaning that a worker must be able to take her annual leave during a period other than the period of her maternity leave, including in a case in which the period of maternity leave coincides with the general period of annual leave fixed by a collective agreement for the entire workforce. In its decision, the Supreme Court applied the Gómez-judgment and ruled that it is contrary to both Dutch and EU-law if maternity leave comes to lapse in case it overlaps with school holidays.

Key points of analysis: In this case the case-law of the CJEU has been decisive, which is important to observe.

Internet link source: <https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:HR:2020:1748>.