

Maintenance of salary for civil servants during maternity leave : the Constitutional Court sanctions an unjustified difference in treatment

A secondary school teacher (the “Teacher”), on leave without pay for professional reasons, from 2019, until the start of the 2021/2022 school year, requested end of 2020, for her salary to be paid during her first maternity leave on the basis of a medical certificate for pregnancy.

Her request was refused by the Minister.

Indeed, article 30 of the Law of April 16, 1979 laying down the general status of civil servants, as amended (the “Law”), provides that leave without pay ceases in the event of pregnancy or adoption, and that the employee is then entitled to maternity or adoption leave.

Nevertheless, article 30 of the Law further provides that such maternity or adoption leave is paid, only if it occurs "during the first two years following the end of the maternity or adoption leave or, if applicable, the end of the parental leave or recreation leave consecutive thereto", which was not the case here, as this was the Teacher's first maternity leave.

The Teacher appealed the decision and raised the question of conformity to the Constitution of article 30, § 2, al. 3 of the Law, following which the Administrative Court referred to the Constitutional Court the question of whether article 30 of the Law complies with Article 10bis, paragraph 1 of the Constitution (applicable before July 1st, 2023) insofar as it makes payment for maternity leave conditional on the latter occurring within the first two years following the end of maternity or foster leave or, if applicable, the end of the parental leave or recreation leave consecutive thereto.

The legislator may (without violating the constitutional principle of equality) subject certain categories of people to different legal regimes, provided that the difference instituted stems from objective disparities and that it is rationally justified, appropriate and proportionate to its aim. Besides, implementation of the constitutional rule of equality before the law presupposes that the categories of people between whom discrimination is alleged are in a comparable situation.



In the case at hand, the two categories are (i) civil servants on maternity leave without pay, whose maternity leave occurs within two years of the end of a precedent maternity or foster leave, or, where applicable, the end of parental leave or recreation leave consecutive thereto, and, (ii) civil servants on unpaid leave who are on maternity leave and whose maternity leave occurs after the two-year period has elapsed, or who have never previously been on leave.

The Constitutional Court considered that

- these two categories of people are sufficiently comparable ;
- the difference in treatment is that the first category of civil servants benefits from a reinstatement of their salary, while the second category is excluded
- the difference in treatment is not rationally justified following which article 30 § 2, al. 3 of the Law was declared unconstitutional.

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