



## Difference in entitlement to parental leave was gender discrimination

In today's **Chamber** judgment<sup>1</sup> in the case of [Gruba and Others v. Russia](#) (application nos. 66180/09, 30771/11, 50089/11 and 22165/12) the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 14 (prohibition of discrimination) taken in conjunction with Article 8 (right to respect for private and family life) of the European Convention on Human Rights for all four applications, and**

**a violation of Article 6 § 1 (right to a fair hearing) of the Convention in respect of application no. 22165/12 (Mr Morozov).**

The case concerned the difference in entitlement to parental leave between policemen and policewomen.

The Court found that the difference in treatment between policemen and policewomen as regards entitlement to parental leave had not been justified. The authorities had failed to balance the legitimate aim of operational effectiveness of the police and the applicants' rights not to be discriminated against on grounds of gender. The Court concluded that this difference in treatment had amounted to gender discrimination.

### Principal facts

The applicants are four Russian nationals, who were born between 1967 and 1979 and live in Russia. Aleksandr Valeryevich Gruba (application no. 66180/09) worked as a road police officer in Syktyvkar, Aleksandr Mikhaylov (no. 50089/11) as an auditor in the St Petersburg Interior Department, and Oleg Marintsev (no. 30771/11) and Aleksey Morozov (no. 22165/12) as police tax inspectors.

Between 2009 and 2012, all four applicants had requests for parental leave rejected, essentially because such leave could only be granted to a policeman if his child had been left without the care of a mother. They challenged the refusals in the domestic courts, without success. The authorities also found that there was no evidence that Mr Mikhaylov's and Mr Morozov's wives, who had been diagnosed with health problems and had been advised not to carry anything heavier than 5 kg, could not care for their children.

Mr Gruba, Mr Mikhaylov and Mr Morozov stopped working because they considered that they were entitled to parental leave, and subsequently lost their jobs, while Mr Marintsev was dismissed for health reasons. The appeals against these decisions were rejected by the courts.

In the case of Mr Morozov, the public prosecutor attended the civil hearing, expressing her position that the applicant's claims – concerning the refusal to grant parental leave and his dismissal -- should be rejected.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

## Complaints, procedure and composition of the Court

Relying on Article 14 (prohibition of discrimination) taken in conjunction with Article 8 (right to respect for private and family life), the applicants complained that the refusal to grant them parental leave had amounted to gender discrimination.

In addition, relying on Article 6 § 1 (right to a fair hearing) Mr Morozov (application no. 22165/12) complained about the public prosecutor's participation in his hearing.

The applications were lodged on 24.11.2009 (66180/09), 21.04.2011 (30771/11), 03.08.2011 (50089/11) and 14.03.2012 (22165/12).

Judgment was given by a Chamber of seven judges, composed as follows:

Paul **Lemmens** (Belgium), *President*,  
Georgios A. **Serghides** (Cyprus),  
Dmitry **Dedov** (Russia),  
Georges **Ravarani** (Luxembourg),  
Anja **Seibert-Fohr** (Germany),  
Peeter **Roosma** (Estonia),  
Andreas **Zünd** (Switzerland),

and also Milan **Blaško**, *Section Registrar*.

## Decision of the Court

### Article 14 taken in conjunction with Article 8

The Court reiterated that gender stereotypes, such as the perception of women as primary child-carers and men as primary breadwinners, could not sufficiently justify a difference in treatment between men and women as regards entitlement to parental leave. Concerning the argument that, in becoming policemen, the applicants had accepted limitations of their rights, the Court found that their signature on their work contract could not be equated to a waiver of the right not to be subjected to gender discrimination.

The Court accepted that maintaining the operational effectiveness of the police was a legitimate aim that might justify certain restrictions on the rights of police personnel. However, it was not convinced that an inherent requirement of police service was being excluded from parental leave. It was significant that the entitlement to parental leave depended on the sex of the police personnel rather than on their position in the police force, the availability of a replacement or any other circumstance relating to the operational effectiveness of the police. Indeed, policewomen were unconditionally entitled to parental leave and the restriction only concerned policemen.

In refusing to grant parental leave to each of the four applicants, the domestic authorities had failed to balance the legitimate interest in ensuring the operational effectiveness of the police, on one hand, and on the other, the applicants' right not to be discriminated against on grounds of their gender. Moreover, Mr Mikhaylov and Mr Morozov had been refused parental leave despite the fact that their wives were not well enough to take care of their children.

The Court considered that the difference in treatment between policemen and policewomen as regards entitlement to parental leave had not been justified and concluded that it had amounted to gender discrimination. There had therefore been a violation of Article 14 of the Convention taken in conjunction with Article 8 in respect of each applicant.

### Article 6 § 1

The Court noted that while the prosecutor had legal grounds under the domestic legislation to participate in the hearing, this particular case had not presented any special circumstances relating to the protection of vulnerable persons or State interests justifying such an intervention. The Court saw no reason to speculate on what effect the prosecutor's intervention may have had on the course of the proceedings; however it found that the mere repetition of the Interior Department's arguments by the prosecutor was meaningless unless it had been aimed at reinforcing the Interior Department's position and thereby influencing the court in its favour.

The Court therefore concluded that in the Russian context the principle of the equality of arms, requiring a fair balance between the parties, had not been respected. There had accordingly been a violation of Article 6 § 1 of the Convention in respect of Mr Morozov (application no. 22165/12).

### Just satisfaction (Article 41)

The Court held that Russia was to pay the following:

- i) 1,196 euros (EUR) to Mr Mikhaylov in respect of pecuniary damage;
- ii) EUR 7,500 to Mr Gruba , EUR 7,500 to Mr Mikhaylov; EUR 1,000 to Mr Marintsev, and EUR 5,500 to Mr Morozov, in respect of non-pecuniary damage;
- iii) EUR 1,200 to Mr Gruba, EUR 145 to Mr Marintsev, EUR 4,150 to Mr Mikhaylov, and EUR 406 to Mr Morozov, in respect of costs and expenses.

*The judgment is available only in English.*

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**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.