

Bilbao, 26 November 2020

ELA HAS OBTAINED A SENTENCE THAT ACKNOWLEDGES THE RIGHT OF A MOTHER TO ALSO BENEFIT FROM LEAVE GRANTED TO THE OTHER PARENT

In a Sentence on the 6/10/2020, the High Court of Justice of the Basque Country (TSJPV in Spanish), has upheld the appeal made by a female worker and has declared her right to enjoy an extra 8 weeks of maternity leave for the birth and care of her daughter, sentencing the National Institute of the Social Security/ Instituto Nacional de la Seguridad Social (INSS in Spanish) and the General Treasury of the Social Security/Tesorería General de la Seguridad Social (TGSS) to include this declaration and to pay the corresponding allowance.

The female worker gave birth to a daughter in June, 2019, forming a single-parent family. After benefitting from her maternity leave (currently called leave for child birth and care), she applied to the INSS for the 8 additional weeks of the leave pertaining to the other parent. This leave was refused.

Having appealed against this refusal, the TSJPV has upheld this appeal based on the protection of the child, regarding the attention, care and development of the affected child (belonging to a single-parent family), who was going to suffer a clear reduction compared to other children in a similar situation, framed in a two-parent family model, where children from two-parent families had the right to benefit from care by their parents, for a period of 16 + 8 weeks, while children from single-parent families were only entitled to benefit from the care by their sole parent, that is to say, for 16 weeks.

The High Court understands that the maternity protection rules must be interpreted in view of the general principle of the higher interest of the child that belongs to the family with the parent or parents who care for him or her and the parental care in accordance with that established in article 8 of the European Agreement for the Protection of Human Rights and Basic Freedoms, and to the mandate of article 39 of the Spanish Constitution.

It adds that under the general umbrella of non-discrimination, if the allowance is refused to the beneficiary, in the terms requested, there is a violation of the right of equality that is embodied in the Convention on the Rights of the Child, with the clear reduction in the attention, care and development of the affected child with

respect to that received by others in a similar situation, framed in a two-parent family model.

The sentence itself it talks about the fact that single-parent families and indirectly, women, would be discriminated against by this additional benefit of 8 weeks not being acknowledged to them, understanding this to be a breakdown of the principle of equality stated in article 14 of the EC.

Currently, we must communicate that an appeal has been brought against the sentence by the Public Prosecution Service, an event that is highly unusual.

This sentence presents a clear gender reading, since most single-parent families are headed by women. Therefore, the fact of being a woman represents a factor of social and economic vulnerability; it also recalls that women are the ones who present the worst socio-economic and working data for a work market based on the sexual division of work and on an unequal division of care.

Therefore, the implantation of this sentence would mainly have repercussions on women's working and conciliation conditions.

In the same way, we consider it to be highly relevant that the social protection model of a system that is only focused on the carer's right to conciliation is starting to be changed, moving towards a system that also guarantees the dependent person the right for care. Additionally, this sentence would mean broadening the spotlight of the social protection from a "sole" family model towards a wider conception of family models and the subsequent transformation of the social imaginary.

It is also worth remembering that, beyond workers' rights to labour, family and personal conciliation, and beyond the private and individual arrangements, the creation of a public, comprehensive care system that provides a real way out for all the care requirements both for children and for dependent persons, or those with a lack of personal autonomy, is urgently needed.

With regard to all this, the sentence presented here is relevant and, groundbreaking, as it considers that women and single-parent families are entitled to the same benefits and leave for child birth and care as two-parent families, and all of this for the sake of protecting the child's legal principle.

Likewise, we consider that this sentence is particularly interesting in terms of an opening up to a new jurisprudence with a gender or feminist focus to be taken into account, both on the route towards a feminist collective bargaining agreement, as well as a reference for the women's movement and the feminist movement.