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News from the Member States and EEA Countries: The Netherlands

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Citation

Holtmaat, H. M. T. (2010). News from the Member States and EEA Countries: The Netherlands. *European Gender Equality Law Review*, (2), 91-92. Retrieved from <https://hdl.handle.net/1887/35917>

Version: Not Applicable (or Unknown)

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Note: To cite this publication please use the final published version (if applicable).

European Gender Equality Law Review



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damages awarded are in general considered to be too low, one reason being the lack of clarity in Maltese law about the availability of moral damages. Once again, such a case highlights the need for revision of the law on moral damages to permit the award of substantial damages capable of real deterrence as well as providing fair compensation for moral suffering. A proposal for legislation amending the relevant civil law is currently in process of being presented to Parliament. This should make clear provision for the award of ‘non-material damages’ if passed.

Miscellaneous

The National Council of Women – resolutions and activities

The influential women’s NGO, the National Council of Women for Malta (NCW Malta),¹¹⁹ has renewed calls for the speedy adoption of legislation fully implementing Directive 2008/104/EC of 19 November 2008 on temporary agency work. The Directive must be transposed by 5 December 2011. NCW Malta has issued a similar call in relation to the recently adopted Directive 2010/41/EU¹²⁰ on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity. It has also called on Government to take a stand on the participation of women on company boards.

Report on the Economic Impact of Parental Leave

A number of events have taken place to discuss the issue of the extension of parental leave and maternity leave, such as the event held by Fondazzjoni IDEAT, a think tank of the Labour Party, which was presented with a report drawn up by Professor Edward Scicluna MEP.¹²¹

THE NETHERLANDS – Rikki Holtmaat

Legislative and policy developments

In the past six months, hardly any new legislative and policy developments have taken place, since the Government fell in February and a new Government has still not been installed since the general elections in June.

One noteworthy point is that the interim Minister of Social Affairs has announced that he does not intend to lengthen the period of pregnancy leave from 16 weeks to 18 or 20 weeks. According to the Minister, such a measure is not necessary.¹²² The Dutch regulation (a minimum of 16 weeks of paid leave) appears to be sufficient. If the mother is still not fit to work, she has a right to paid sickness leave. Research, which the Minister presented to Parliament in July, shows that such extensions would cost an additional EUR 117 million and EUR 322 million respectively.¹²³ The Minister also

¹¹⁹ <http://www.ncwmalta.com/home?l=1>, accessed on 3 October 2010.

¹²⁰ Directive 2010/41/EU of 7 July 2010, OJ L 180/1.

¹²¹ E. Scicluna, ‘The Economic Impact of Parental Leave – An Evaluation of the Benefits and the Costs’, which can be downloaded from the NCW website at www.ncwmalta.com/home?l=1, accessed on 4 October 2010.

¹²² See <http://www.rijksoverheid.nl/onderwerpen/verlof-voor-ouders/documenten-en-publicaties/kamerstukken/2010/04/13/brief-van-minister-donner-over-update-onderhandelings-ontwerprichtlijn-zwangerschapsverlof.html>, accessed on 6 October 2010.

¹²³ See <http://www.rijksoverheid.nl/onderwerpen/verlof-voor-ouders/nieuws/2010/07/14/langer-zwangerschapsverlof-kost-meer-dan-het-oplevert.html>, accessed on 6 October 2010.

does not intend to propose the introduction of a period of two weeks paid leave for fathers directly after the birth of a child. Such a measure would cost EUR 235 million and cannot be afforded in this period of economic crisis, according to the Minister. The Dutch Government therefore does not support the amendment of the Pregnancy Leave Directive (92/85/EEG), as proposed by the Commission and supported in the European Parliament.

Equality body decisions

In the summer of 2010 one interesting case in the area of gender equality has been decided by the Equal Treatment Commission (ETC).¹²⁴

An organisation that owns several centres which provide daycare for young children asked the Equal Treatment Commission to give its opinion about the organisation's intention to adopt special policy rules for their male employees. These rules (included in a protocol for how to handle cases of suspected child abuse), provide that male employees are not allowed to be the sole staff member working with a group of children. There always needs to be another adult person present in the room. Only for very brief periods of time (e.g. when the co-worker visits the toilet) it is permissible for a male worker to be the only person working with a group of children. The reason given for this rule is that male workers in daycare centres are specifically vulnerable to being accused of sexual abuse of children. The organisation states that the rule is meant to protect the children and the workers as well as the organisation itself (which could suffer as a result of (false) accusations).

The ETC reviewed this proposed measure and concluded that it would constitute a case of direct discrimination on the ground of sex in the working conditions of male workers, and none of the possible legal justification grounds in the equal treatment legislation would be applicable.¹²⁵

According to the ETC, the organisation had not substantiated (with statistics) its contention that male workers are more vulnerable to being accused of child sex abuse than female workers. In fact, in the past, there were many cases of female workers being accused of such abuse. Male workers will consider this rule to be discriminatory against them and will not see it as a protective measure. The ETC does not mention this argument, but the rule is highly stereotyping and stigmatising for male teaching assistants who work with young children. In Dutch society, they already have to fight against a general image of being 'sissies', or (worse) perhaps leaning towards paedophilia. Therefore it is right for the ETC to strike down this (proposed) discriminatory rule. All measures aimed at protecting children against (sex) abuse should be equally applicable to male and female workers in this sector.

¹²⁴ To be found at the website of the Equal Treatment Commission: <http://www.cgb.nl>, accessed on 11 November 2010.

¹²⁵ See Oordeel 2010-112 of 20 July 2010: <http://www.cgb.nl/oordeel/2010-112>, accessed on 17 September 2010).