



Refusal of a request for paternity leave made by a lesbian following the birth of her partner's child: application declared inadmissible

In its decision in the case of **Hallier and Others v. France** (application no. 46386/10) the European Court of Human Rights has unanimously declared the application inadmissible. The decision is final.

The case concerned the inability of a lesbian (Ms Lucas) to obtain paternity leave following the birth of her partner's child. Ms Hallier and Ms Lucas have lived as a couple for many years and are in a civil partnership.

The Court held that the application was manifestly ill-founded, noting the following points in particular.

Firstly, the institution of paternity leave pursued a legitimate aim, namely to allow fathers to play a greater role in their children's upbringing by being involved at an early stage, and to promote a more equal distribution of household tasks between men and women.

Secondly, the difference in treatment whereby, at the relevant time, only the biological father was eligible for paternity leave had not been based on sex or sexual orientation.

Lastly, the Court noted that, under the Law of 17 December 2012, the mother's partner was now entitled to carer's leave under the same conditions as paternity leave if he or she was not the child's biological parent.

Principal facts

The applicants, Karine Hallier and Elodie Lucas, are French nationals who were born in 1975 and 1976 respectively and live in Arthon en Retz (France). Ms Hallier additionally acted as the legal representative of her son, V., who was born in June 2004 and was also an applicant before the Court.

After Ms Hallier gave birth to V., her partner, Ms Lucas, applied for 11 days' paid paternity leave, but her application was refused by the Health Insurance Office (CPAM) on the grounds that the legislation made no provision for granting paternity leave to a woman. Ms Lucas appealed unsuccessfully to the Friendly Settlements Board and subsequently to the Social Security Tribunal. The latter held that the legislation in force was clear and unambiguous with regard to the status of persons entitled to paternity leave, referring not to the mother's "partner" but rather to the "father" of the child; this implied that the person concerned had to be a man with a legally established parental relationship to the child. The Rennes Court of Appeal upheld that judgment and the Court of Cassation dismissed an appeal on points of law by Ms Lucas.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 13 August 2010.

Relying on Article 14 (prohibition of discrimination) taken in conjunction with Article 8 (right to respect for private and family life) of the Convention, Ms Hallier and Ms Lucas complained about the refusal of the application for paternity leave made by Ms Lucas following V.'s birth. They also alleged that the refusal had been based on discrimination on grounds of sex and sexual orientation.

The decision was given by a Committee of three judges, composed as follows:

Mārtiņš Mits (Latvia), *President*,
André Potocki (France),
Lətif Hüseynov (Azerbaijan), *Judges*,

and also Anne-Marie Dougin, *acting Deputy Registrar*

Decision of the Court

Article 14 taken in conjunction with Article 8 of the Convention

The Court considered that Ms Lucas, who had been helping to care for the child to whom her partner of many years had given birth, was in a comparable situation to a biological father within a heterosexual couple. She had nonetheless been subjected to a difference in treatment – as she was unable to claim paternity leave – which, in the Court’s view, had pursued a legitimate aim. The institution of paternity leave was designed to allow fathers to play a greater role in their children’s upbringing by being involved at an early stage, and to promote a more equal distribution of household tasks between men and women.

Furthermore, the difference in treatment had not been based on sex or sexual orientation since, in a different-sex couple, the mother’s partner would not be eligible for paternity leave either if he was not the child’s father. The Court therefore considered that the institution of paternity leave was proportionate to the aim pursued; the fact that, at the relevant time, paternity leave had been conditional on the existence of a parental relationship was a matter falling within the State’s margin of appreciation. The Court therefore found no appearance of a violation of Article 14 taken in conjunction with Article 8. Lastly, the Court noted that, following the amendments introduced by the Law of 17 December 2012, the mother’s partner was now entitled to carer’s leave under the same conditions as paternity leave if he or she was not the child’s biological parent.

The Court therefore rejected the application as being manifestly ill-founded (Article 35 §§ 3 (a) and 4 of the Convention).

The decision is available only in French.

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Press contacts

echrpress@echr.coe.int | tel: +33 3 90 21 42 08

Inci Ertekin (tel: + 33 3 90 21 55 30)

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Denis Lambert (tel: + 33 3 90 21 41 09)

Patrick Lannin (tel: + 33 3 90 21 44 18)

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.