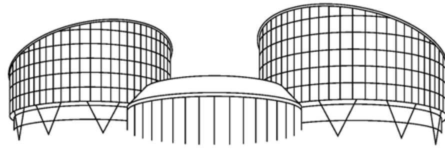

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF B.T. v. RUSSIA

(Application no. 15284/19)

JUDGMENT

Art 14 (+ Art 8) • Discrimination • Sex • Entitlement to parental leave of male police personnel conditional upon lack of maternal care for their children for objective reasons • Findings in *Gruba and Others v. Russia* applied • No reasonable relationship of proportionality between the legitimate aim of maintaining the operational effectiveness of the police and difference in treatment between male and female personnel • Lack of reasonable and objective justification

Prepared by the Registry. Does not bind the Court.

STRASBOURG

19 March 2024

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of B.T. v. Russia,

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

Pere Pastor Vilanova*, President*,
Yonko Grozev,
Georgios A. Serghides,
Darian Pavli,
Peeter Roosma,
Ioannis Ktistakis,
Oddný Mjöll Arnardóttir*, judges*,
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 15284/19) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Mr B.T. ("the applicant"), on 7 March 2019;

the decision to give notice of the application to the Russian Government ("the Government");

the observations submitted by the Government and the observations in reply submitted by the applicant;

the comments submitted by the Institute for Legal Culture "Ordo Iuris", which was granted leave to intervene by the President of the Section;

the decision of the President of the Section to grant the applicant anonymity of his own motion (Rule 47 § 4 of the Rules of Court);

the decision of the President of the Section to appoint one of the sitting judges of the Court to act as an *ad hoc* judge, applying by analogy Rule 29 § 2 of the Rules of Court (see *Kutayev v. Russia*, no. 17912/15, §§ 5-8, 24 January 2023);

Having deliberated in private on 20 February 2024,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

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

THE FACTS

2. The applicant was born in 1982 and lives in Vladikavkaz. He was represented by Mr K.S. Tsakoyev, a lawyer practising in Vladikavkaz.

3. The Government were represented initially by Mr M. Galperin, Representative of the Russian Federation to the European Court of Human Rights, and then by his successor in that office, Mr A. Fedorov.

4. The facts of the case may be summarised as follows.

5. Between 1 August 2008 and 11 July 2017 the applicant was employed in the internal affairs agencies of the Russian Federation. From 25 December 2013 he held the position of head of the road police at the Department of Internal Affairs for the Digorskiy District of the Republic of North Ossetia-Alania. His duties included supervising and managing the work of the traffic police in ensuring road safety, maintaining public order and policing crimes relating to road traffic.

6. On 14 April 2017 the applicant married Ms T.S.

7. On 26 May 2017 their daughter, A.T., was born.

8. On 27 May 2017 T.S. refused to care for the child.

9. From 2 June to 15 June 2017 T.S. underwent medical treatment in the gynaecology department of the North Ossetia-Alania Republican Clinical Hospital.

10. On 9 June 2017 the applicant removed the child from the maternity hospital.

11. On 10 June 2017 a document confirming T.S.'s refusal to bring up the child was certified by a notary.

12. On 14 June 2017 the applicant asked his superior for parental leave until his daughter reached the age of three years. He submitted that his wife T.S. was refusing to bring up the child, that she was undergoing medical treatment in the North Ossetia-Alania Republican Clinical Hospital, and that it was he who was taking care of the child. He enclosed his marriage certificate, the child's birth certificate and a copy of a notarised certificate of the mother's refusal to bring up the child (see paragraph 11 above) and asked for his request to be treated with utmost urgency.

13. On 15 June 2017 the applicant's request was rejected by reference to section 56(8) of the Law on Service in Internal Affairs Agencies (see paragraph 25 below) in the absence of evidence that the child lacked maternal care for objective reasons.

14. From 15 June 2017 the applicant stopped coming to his place of work.

15. On the same day, T.S. commenced divorce proceedings in the Leninskiy District Court of Vladikavkaz. Relying on her poor health and lack of income, she asked the court to determine the place of the child's residence as being with the applicant and to grant her contact with the child for six hours every Sunday.

16. On 7 July and 11 July 2017 respectively the applicant was disciplined and dismissed from his post for being absent from work without good reason.

17. The applicant challenged the lawfulness of the above-mentioned decisions and of the refusal of his request for parental leave in the Digorskiy District Court of the Republic of North Ossetia-Alania ("the District Court").

18. Meanwhile, on 2 October 2017 the Leninskiy District Court of Vladikavkaz dissolved the marriage between the applicant and T.S. The child's place of residence was determined as being with the applicant. T.S. was granted visiting rights every Sunday from 11 a.m. to 5 p.m.

19. On 9 November 2017 the District Court dismissed the applicant's claims. In so far as the issue of parental leave was concerned, the District Court reiterated the position of the Constitutional Court of the Russian Federation:

> "Service in the agencies of the Ministry of the Interior is a special type of public service which ensures the protection of public safety and public order, and it is therefore performed in the public interest. Persons engaged in such service exercise constitutionally important functions and therefore hold a special legal status. Consequently, the imposition by the federal legislature, under its discretionary powers, of limitations on the rights and freedoms of persons serving in the police is not in itself incompatible with the Constitution (decision no. 566-O-O of 16 April 2009).
>
> Owing to the specific demands of service in Ministry of the Interior agencies, non-performance of duties by their personnel must be excluded as it might cause detriment to the public interests protected by law. The fact that fathers serving in Ministry of the Interior agencies who raise children together with the [children's] mother are not entitled to parental leave respects the balance between public and private interests ... (decision no. 377-O-O of 5 March 2009)."

It further held that section 56(8) of the Law on Service in Internal Affairs Agencies provided that parental leave could be granted to male employees who were fathers only if they were bringing up children without maternal care because there were objective reasons why the mother could not care for the child.

20. The District Court examined the record of inspection of the applicant's living conditions of 7 June 2017, from which it followed that the child's mother had refused to bring up the child for health reasons and that the applicant intended to take parental leave to bring his daughter up himself. It examined documents confirming that it was the applicant who had picked the child up from the maternity hospital on 9 June 2017 because the mother had been transferred from the maternity hospital to the Republican Clinical Hospital for further medical treatment; that on 14 June and 15 June 2017 the child had been examined by a paediatrician from the children's hospital at the applicant's home address and in his presence; and that since the child's birth it had been the applicant who had been taking care of her and taking her for medical check-ups at the children's hospital (the document recording the last point was dated 4 August 2017).

21. The District Court questioned T.S., who testified that she had lived with the applicant from 2015, that their marriage had been registered on 14 April 2017, and that their daughter was born on 26 May 2017. She had not wanted to have a child for health reasons, and it had been the applicant who had insisted that her pregnancy was taken to term. On 27 May 2017 she had formally refused to bring up the child. T.S. further submitted that she had stayed at the gynaecology department of the North Ossetia-Alania Republican Clinical Hospital until 19 June 2017, following which she had undergone treatment at the Arkhonskaya Central District Hospital. The District Court noted in that connection that the medical documents in the case

file confirmed T.S.'s stay in the Republican Clinical Hospital only until 15 June 2017. The entries in the Central District Hospital's register confirming that she had undergone treatment there from 20 June to 8 July 2017 were found to be unreliable because they contained inconsistent information about T.S.'s year of birth, her place of residence, her diagnosis and the dates of her stay in the hospital.

22. The District Court further considered that the notarised document of 10 June 2017, whereby the child's mother T.S. had formally refused to bring up the child born on 26 May 2017, did not imply a lack of maternal care. She had not been deprived of her parental authority and she had not been undergoing medical treatment at the point when the applicant had stopped coming to work. No other facts indicating the absence of maternal care for objective reasons as from 15 June 2017 were established during the proceedings. The District Court further relied on the decision of the Leninskiy District Court of Vladikavkaz, which had dissolved the marriage between the applicant and T.S., determined the child's residence as being with the applicant and determined that the child would have contact with T.S., from which it concluded that T.S. was participating in bringing up and supporting the child, who was therefore not deprived of maternal care. The applicant's dismissal for absence from his place of work was therefore found to have been a lawful disciplinary measure.

23. On 28 February 2018 the Supreme Court of the Republic of North Ossetia-Alania upheld the judgment on appeal, finding it lawful, well-reasoned and justified.

24. On 29 May and 17 September 2018 the Supreme Court of the Republic of North Ossetia-Alania and the Supreme Court of the Russian Federation, respectively, rejected cassation appeals by the applicant.

RELEVANT LEGAL FRAMEWORK

25. Federal Law no. 342-FZ on Service in the Internal Affairs Agencies of the Russian Federation, in force from 1 January 2012, provides that a female employee of an internal affairs agency who is a mother is entitled to parental leave until a child reaches the age of three, in accordance with labour legislation. A male employee who is a father and who is actually bringing a child up may be granted parental leave if the child has no maternal care for objective reasons (the mother's death, withdrawal of her parental authority, or her extended stay in a medical institution, among other reasons) until the child reaches the age of three years. Such personnel are also entitled to related social benefits in accordance with labour legislation and other laws, provided that they do not contradict Federal Law no. 342-FZ (section 56(8)).

26. For further relevant legal framework on parental leave, see *Gruba and Others v. Russia* (nos. 66180/09 and 3 others, §§ 54-60, 6 July 2021).

THE LAW

I. JURISDICTION

27. The Court observes that the facts giving rise to the alleged violation of the Convention occurred prior to 16 September 2022, the date on which the Russian Federation ceased to be a party to the Convention. The Court therefore decides that it has jurisdiction to examine the present application (see *Fedotova and Others v. Russia* [GC], nos. 40792/10 and 2 others, §§ 68-73, 17 January 2023, and *Pivkina and Others v. Russia* (dec.), nos. 2134/23 and 6 others, § 46, 6 June 2023).

II. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 8

28. The applicant complained that the refusal to grant him parental leave amounted to discrimination on grounds of sex. He relied on Article 14 of the Convention taken in conjunction with Article 8 of the Convention. The relevant provisions read as follows:

Article 8

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

Article 14

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

A. Admissibility

29. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. Submissions by the parties

(a) The applicant

30. The applicant submitted that the child's mother, T.S., had formally refused to bring up the child and had instituted proceedings for divorce asking the court to determine that the child should reside with the applicant, her father, and to grant her visiting rights once a week. This clearly demonstrated the mother's unwillingness to participate in the child's upbringing, except for a few hours once a week, which objectively demonstrated that the child had had no maternal care. The applicant had therefore had no choice but to ask for parental leave. However, his request for parental leave had been rejected and he had been dismissed from his post. He had therefore been subjected to discrimination on grounds of sex, and his right to respect for his family life had been violated.

(b) The Government

31. The Government submitted that there were no restrictions on grounds of sex in the conditions of the post held by the applicant. The personnel of internal affairs agencies had a special status because their task was to protect the life, health, property and rights of citizens, as well as the interests of society and the State, from criminal attacks. Pursuing a career in internal affairs agencies was a voluntary choice and, in signing a service contract and taking the oath of allegiance, the applicant had accepted the provisions imposing special duties and limitations on him. Those special duties and limitations were justified by their special status and by the requirements of police service, aimed at protecting important interests of the citizens, society and the State. They did not therefore amount to discrimination.

32. The Government further submitted that, in contrast to the provisions governing the parental leave entitlement of military personnel as examined in the case of *Konstantin Markin v. Russia* ([GC], no. 30078/06, ECHR 2012 (extracts)), Russian law granted male police officers parental leave in cases where their children had been left without maternal care. The Government stressed that the list of situations where parental leave could be granted was not exhaustive and was therefore not limited to the mother's death, withdrawal of her parental authority or a lengthy hospital stay. They produced examples of cases where parental leave had been granted to a male police officer because the mother's serious illness had prevented her from taking care of the children; where the mother's parental authority had been restricted; where the mother had been recognised as legally incapable (fully or partially); where the mother had been declared a missing person or her place of residence was unknown; where the mother had been sentenced to imprisonment or had been remanded in detention or was undergoing

compulsory inpatient psychiatric treatment; and where the absence of maternal care had been established by a court. Parental leave could therefore be granted not only in the case of the absence of a mother but also in cases where the mother could not take care of the child for other reasons.

33. The notarisation of the mother's refusal to bring the child up or care for the child in the present case did not indicate that it was impossible for her to fulfil her duties of caring for the child for objective reasons, neither did it have any implications for the mother's rights and duties in respect of the child. It could not therefore be considered to amount to a lack of maternal care that would make the applicant eligible for parental leave.

34. The Government concluded that the denial of parental leave had been lawful, had been proportionate to legitimate aims and had not amounted to discrimination on grounds of sex.

(c) The third-party intervener

35. The Institute for Legal Culture "Ordo Iuris", a Polish non-governmental legal association acting as a third party, outlined the development of the Court's case-law concerning the issue of discrimination on the ground of sex in respect of parental leave (it cited *Petrovic v. Austria*, 27 March 1998, *Reports of Judgments and Decisions* 1998-II; *Weller v. Hungary*, no. 44399/05, 31 March 2009; and *Konstantin Markin*, cited above). It also cited the Council of Europe's documents relating to parental leave, provided examples of regulation of parental leave in selected European countries and summarised the regulations governing parental leave for employees of the internal affairs agencies in Russia. It stressed that although Article 8 of the Convention did not include a right to parental leave or impose any positive obligation on States to provide parental leave allowances, if a State did decide to create a parental leave scheme, it had to do so in a manner which was compatible with Article 14. Member States were allowed to impose certain restrictions on the rights of police personnel specified under Article 8 where there was a real threat to the operational effectiveness of the police.

2. *The Court's assessment*

36. For the relevant general principles, see *Konstantin Markin* (cited above, §§ 124-27).

37. In *Konstantin Markin*, the applicant raised the issue of the exclusion of servicemen, by contrast with servicewomen, from entitlement to parental leave. The Court found that Article 14, taken together with Article 8, was applicable to parental leave. Accordingly, if a State decided to create a parental leave scheme, it had to do so in a manner which was compatible with Article 14 of the Convention (ibid., § 130).

38. The Court also found that, as regards parental leave and parental leave allowances, men were in a comparable situation to women. Indeed, in contrast to maternity leave, which was intended to enable the woman to recover from childbirth and to breastfeed her baby if she so wished, parental leave and parental leave allowances related to the subsequent period and were intended to enable the parent concerned to stay at home to look after an infant personally. Whilst being aware of the differences which might exist between the mother and the father in their relationship with the child, the Court concluded that, as regards the role of taking care of the child during the period corresponding to parental leave, men and women were "similarly placed" (ibid., § 132).

39. It follows from the above that for the purposes of parental leave the applicant, a policeman, was in an analogous situation to that of a policewoman.

40. The Court notes that, unlike the complete exclusion of male military personnel from entitlement to parental leave, Russian law provides that male police personnel are entitled to apply for parental leave if their children are left without maternal care for objective reasons (see paragraphs 25-26 above). The entitlement of male police officers to parental leave is therefore conditional upon a lack of maternal care for their children for objective reasons, while policewomen are unconditionally entitled to such leave.

41. The Court has previously examined this difference in treatment between male and female police personnel and came to the conclusion that it was not objectively and reasonably justified under Article 14 of the Convention (see *Gruba and Others v. Russia*, nos. 66180/09 and 3 others, 6 July 2021). It held as follows:

> "80. The Court reiterates, firstly, that gender stereotypes, such as the perception of women as primary child-carers and men as primary breadwinners, cannot be considered to amount to sufficient justification for a difference in treatment between men and women as regards entitlement to parental leave (see *Konstantin Markin,* cited above, §§ 139-43). That finding applies just as much to police personnel as to military personnel.
>
> 81. As regards the argument that in signing a police service contract policemen accept the limitations on their rights provided by law ..., it amounts in substance to a waiver claim. The Court has already found that, in view of the fundamental importance of the prohibition of discrimination on grounds of sex, no waiver of the right not to be subjected to discrimination on such grounds can be accepted as it would be counter to an important public interest (ibid., § 150).
>
> 82. Moreover, the Constitutional Court relied on the special status of the police to justify the limitation of the rights of police personnel, including their right to parental leave ... The Government elaborated on that argument, claiming that placing policemen on the same footing as policewomen as regards entitlement to parental leave would result in a significant decrease in the number of police officers who were physically fit enough to maintain public order and to arrest offenders ...
>
> 83. The Court accepts that maintaining the operational effectiveness of the police is a legitimate aim ... that may justify certain restrictions on the rights of the police

personnel. It cannot however justify a difference in treatment between male and female police personnel.

84. The Court takes note in this connection of the Constitutional Court's reliance on Article 1 of ILO Convention No. 111 concerning Discrimination in Respect of Employment and Occupation, according to which any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination ... It is, however, not convinced that the exclusion from entitlement to parental leave in the present case can be regarded as being based on an inherent requirement of police service. Indeed, policewomen are unconditionally entitled to parental leave and the restriction only concerns policemen.

85. It is significant that the entitlement to parental leave depends on the sex of the police personnel rather than on their position in the police, the availability of a replacement or any other circumstance relating to the operational effectiveness of the police. Indeed, the Government accepted that there were no restrictions on grounds of sex for holding the posts equivalent to the applicants' posts: they could be held by both policemen and policewomen ... Policewomen holding those posts had an unconditional entitlement to three years' parental leave. The applicants, on the other hand, could only apply for parental leave if their children were left without maternal care, and that was solely because they were men."

42. The above findings concerning, in particular, unacceptability of reliance on gender stereotypes and the special status of the police to justify the difference in treatment between male and female police personnel as regards entitlement to parental leave, are fully applicable in the present case. In *Gruba and Others* (cited above) the Court further noted the difficulties a policeman could encounter even in cases where his particular family situation required him to assume the role of the primary caregiver for his child. The present case is no exception. Due to the strict and discriminatory interpretation of the conditional entitlement of male police personnel to parental leave – subject to lack of maternal care for objective reasons – the applicant's request for parental leave was rejected despite the particular circumstances of his family situation clearly showing the absence of maternal care for his newborn child on a daily basis. No regard whatsoever was had to the best interests of the child.

43. Most importantly, in refusing to grant parental leave to the applicant, the domestic authorities did not refer to any circumstances showing that a temporary departure on parental leave of police officers holding positions similar to the applicant's (head of the road police) would undermine the operational effectiveness of the police. The authorities therefore failed to perform any balancing exercise between the legitimate interest in ensuring the operational effectiveness of the police on the one hand, and, on the other hand, the applicant's right not to be discriminated against on grounds of sex as regards access to parental leave (see *Gruba and Others*, cited above, § 87).

44. In view of the foregoing, the Court considers that the difference in treatment between policemen and policewomen as regards entitlement to parental leave cannot be said to be reasonably and objectively justified. There was no reasonable relationship of proportionality between the legitimate aim

of maintaining the operational effectiveness of the police and the contested difference in treatment. The Court therefore concludes that this difference in treatment, of which the applicant was the victim, amounted to discrimination on grounds of sex.

45. There has therefore been a violation of Article 14 of the Convention taken in conjunction with Article 8.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

46. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

47. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award him any sum on that account.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Holds* that it has jurisdiction to deal with the applicant's complaint, as it relates to facts that took place before 16 September 2022;

2. *Declares* the application admissible;

3. *Holds* that there has been a violation of Article 14 of the Convention taken in conjunction with Article 8 of the Convention.

Done in English, and notified in writing on 19 March 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova
Deputy Registrar

Pere Pastor Vilanova
President