

JUDGMENT OF THE COURT
12 JULY 1984¹

Ulrich Hofmann
v Barmer Ersatzkasse
(reference for a preliminary ruling
from the Landessozialgericht Hamburg)

(Equal treatment for men and women — Maternity leave)

Case 184/83

Social policy — Male and female workers — Access to employment and working conditions — Equal treatment — Directive 76/207 — Purpose — Protection of women in relation to pregnancy and maternity — Scope — Discretion of Member States — Additional maternity leave granted to the mother — Grant of such leave to the father — Duty of Member States — None

(Council Directive 76/207, Arts 1, 2 (3) and (4), and 5 (1))

1. Directive 76/207 is not designed to settle questions concerning the organization of the family, or to alter the division of responsibility between parents.
2. By reserving to Member States the right to retain or introduce provisions which are intended to protect women in connection with “pregnancy and maternity”, Directive 76/207 recognizes the legitimacy, in terms of the principle of equal treatment, of protecting a woman’s needs in two respects. First, it is legitimate to ensure the protection of a woman’s biological condition during pregnancy and thereafter until such time as her physiological and mental functions have returned to normal after childbirth; secondly, it is legitimate to protect the special relationship between a woman and her child over the period which follows pregnancy and childbirth, by preventing that relationship from being disturbed by the multiple burdens which would result from the simultaneous pursuit of employment.
3. Maternity leave granted to a woman on expiry of the statutory protective period falls within the scope of Article

¹ — Language of the Case: German.

- 2 (3) of Directive 76/207, inasmuch as it seeks to protect a woman in connection with the effects of pregnancy and motherhood. That being so, such leave may legitimately be reserved to the mother to the exclusion of any other person, in view of the fact that it is only the mother who may find herself subject to undesirable pressures to return to work prematurely.
4. Directive 76/207 leaves Member States with a discretion as to the social measures which they adopt in order to guarantee, within the framework laid down by the directive, the protection of women in connection with pregnancy and maternity and to offset the disadvantages which women, by comparison with men, suffer with regard to the retention of employment. Such measures are closely linked to the general system of social protection in the various Member States. The Member States therefore enjoy a reasonable margin of discretion as regards both the nature of the protective measures and the detailed arrangements for their implementation.
5. Articles 1, 2 and 5 (1) of Directive 76/207 must be interpreted as meaning that a Member State may, after the protective period has expired, grant to mothers a period of maternity leave which the State encourages them to take by the payment of an allowance. The directive does not impose on Member States a requirement that they shall, as an alternative, allow such leave to be granted to fathers, even where the parents so decide.

In Case 184/83

REFERENCE to the Court under Article 177 of the EEC Treaty by the Landessozialgericht [Higher Social Court] Hamburg for a preliminary ruling in the proceedings pending before that court between

ULRICH HOFMANN, residing in Hamburg,

and

BARMER ERSATZKASSE, Wuppertal,

on the interpretation of Articles 1, 2 and 5 (1) of Council Directive 76/207 of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions,