

Judgment of the Court (Grand Chamber) of 18 March 2014 (request for a preliminary ruling from the Equality Tribunal — Ireland) — Z v A Government Department, The Board of Management of a Community School

(Case C-363/12) ⁽¹⁾

(Reference for a preliminary ruling — Social policy — Directive 2006/54/EC — Equal treatment of male and female workers — Commissioning mother who has had a baby through a surrogacy arrangement — Refusal to grant her paid leave equivalent to maternity leave or adoptive leave — United Nations Convention on the Rights of Persons with Disabilities — Directive 2000/78/EC — Equal treatment in employment and occupation — Prohibition of any discrimination on the ground of disability — Commissioning mother unable to bear a child — Existence of a disability — Validity of Directives 2006/54 and 2000/78)

(2014/C 142/07)

Language of the case: English

Referring court

Equality Tribunal

Parties to the main proceedings

Applicant: Z

Defendant: A Government Department, The Board of Management of a Community School

Re:

Request for a preliminary ruling — Equality Tribunal (Ireland) — Interpretation of Articles 4 and 14 of Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (OJ 2006 L 204, p. 23) — Interpretation of Articles 3(1) and 5 of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16) — Biological mother having recourse to surrogacy — Person suffering from a physical disability which prevents her from giving birth — Right to maternity leave.

Operative part of the judgment

1. Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, in particular Articles 4 and 14 thereof, must be interpreted as meaning that a refusal to provide paid leave equivalent to maternity leave to a female worker who as a commissioning mother has had a baby through a surrogacy arrangement does not constitute discrimination on grounds of sex.

The situation of such a commissioning mother as regards the grant of adoptive leave is not within the scope of that directive.

2. Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation must be interpreted as meaning that a refusal to provide paid leave equivalent to maternity leave or adoptive leave to a female worker who is unable to bear a child and who has availed of a surrogacy arrangement does not constitute discrimination on the ground of disability.

The validity of that directive cannot be assessed in the light of the United Nations Convention on the Rights of Persons with Disabilities, but that directive must, as far as possible, be interpreted in a manner that is consistent with that Convention.

⁽¹⁾ OJ C 311, 13.10.2012.