

**Cour de Cassation - 18 December 2001, Appeal No 06-45132**

THE COUR DE CASSATION, SOCIAL CHAMBER, handed down the following judgment:

Whereas, according to the judgment appealed from (Paris, 4 July 2006) taking advantage of the provisions of Article 9, paragraph 2 of the RATP employment legislation (hereafter referred to as "the Statute"), which provided that the age limit of 35 years was not applicable to widows, divorced women who had not remarried, mothers of three and more children and unmarried mothers with at least one child in their care, who are obliged to work, Mr X brought proceedings in the Industrial Court, asserting he was the victim of discrimination, as he had been deprived of the benefit of permanent employee status and the advantages pertaining to it when although he fulfilled the requirements.

On the first ground of appeal:

The RATP appealed this judgment, on the one hand, for having held that the judicial judge had power to determine the legality of Article 9 of the Statute and to determine the issue question of Mr X's integration to the status of RATP permanent employee, and , on the other hand, for having dismissed his alternate claim for a stay until the administrative judge could determine the prejudicial issue. According to the grounds:

1°/ (As to the first ground of appeal,) the controversy concerning the conformity of a regulation with regard to the principle of equality of treatment between men and women in their professional life fell within the jurisdiction of the administrative judge. In the present case, the Court of Appeal had refused to refer to the administrative judge the prejudicial issue of the legality of Article 9 of in the RATP Statute, on the inoperative ground of the European jurisprudence. The Court of Appeal had thereby violated the principle of separation of powers and Article 13 of Title 2 of the Law of 16-24 August 1790, and the decree of 12 Fructidor Year III.

2°/ Secondly, the conformity of a regulatory provision with regard to the principle of equal treatment of men and women in their professional lives was a question for the administrative judge. In the present case, even supposing the judicial judge had been able to retain his power on the basis of an appeal decision handed down by the European Community Court of Justice on 9 March 1978 (the *Simmenthal* case 106/77), the Court of Appeal had itself held that this decision reserved the right for the national judge not to apply on his own authority any provision in the national legislation that is contrary to the European norms on the condition that provided that this issue fell within its jurisdiction. Consequently, in affirming that this judicial precedent judgment of the European Community Court of Justice referred to above would allow permitted it to have competence to determine the illegal nature of the discrimination revealed in Article 9 of the Statute and to grant in granting Mr X the benefit of the permanent employee status as a permanent employee, the Court of Appeal had not applied the legal principles flowing from its own previous judgments and, as a consequence, violated the principle of the separation of powers and the texts provisions cited above.

Firstly However, the RATP is a commercial and industrial government entity. The litigation relating to the individual situation of one of its employees, who is neither a director nor a public accountant publicly accountable, is subject to the Courts of law in the judicial system.

By referring to the primacy of the European Community law, without having regard to the legality of Article 9 of the Statute, the Court of Appeal had correctly decided that this text could not stand in the way of the application of the principle of equality of treatment between male and female workers in matters of employment and work resulting from Article 141, paragraph 4, of the EC Treaty and Article 2, paragraph 4 of Directive No. 76/207/EEC of 9 February 1976.

This ground of appeal was accordingly not made out.

On the second ground of appeal:

The RATP also appealed the decision to have refused to apply Article 9 of the Statute and to have granted Mr X, in spite of the age limit, the benefit of the status as a permanent employee. As to the arguments on this ground:

1°/ It was not an act of illegal discrimination to respond to a legitimate aim in the social order of social policy when such measures were appropriate and necessary to achieve this end. This was the case with the provisions stated in Article 9 of the RATP Statute, which intended to compensate for ameliorate the delay in professional career progress for women placed in a difficult position regarding their families. Consequently, in rejecting the application of the said Article 9 as contrary to the EC and national principle of equality between men and women, without investigating if this provision, far from having the character of illegal discrimination, did not, on the contrary, aim at establishing an equality of treatment between men and women with respect to access to employment , the Court of Appeal had failed to have regard in its judgment to the legal basis of Directive 76/207/EEC and Article 141 §4 of the EC Treaty, signed on 25 March 1957.

2°/ It had asserted that the only difference between employees under the Statute and those benefiting from a work contract for an indefinite period was the payment of social contributions to specific organisations and that Mr X . Mr X did not explicitly state in what way membership of the general social security scheme was globally less favourable than that of the RATP scheme. The sole reference to the automatic retirement age was insufficient in this regard. He did not either specify in what way he would be a victim of an alleged inequality and illegality. The Court of Appeal, which had dismissed the application of Article 9 of the Statute without replying to this peremptory ground of appeal in the RATP submissions, had violated Article 455 of the *New Civil Procedure Code*.

However, the Court had appreciated that the regulation under attack gave absolute and unconditional priority to the applications from of certain categories of women, including divorced (but not remarried) women who found themselves obliged to work, reserving for them the benefit of exemption from age limits for access to the status of permanent employees at the RATP, to the exclusion of divorced (but not remarried) men who were in the same situation. The Court of Appeal, which was not obliged to reply to irrelevant submissions allegedly omitted as asserted in the second ground of appeal, had exactly determined that such a regulation was contrary to the EU principle of equality of treatment of male and female workers in matters of employment and work, arising from Article 141, paragraph 4 of the EC Treaty and Article 3, paragraphs 1 and 2, paragraph 4 of the Directive 76/207/EEC.

Accordingly, this ground of appeal was not made out.

**FOR THESE REASONS:**

the Court **DISMISSES** the appeal and orders the RATP to pay costs.

Having regard to Article 700 of the New Civil Procedure Code, the RATP was ordered to pay Mr X the sum of 2,500 Euros.

This is the judgment of the Cour de Cassation, Social Chamber, handed down by the President in Open Court on 18 December 2007.