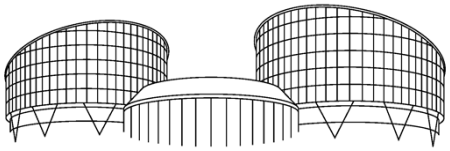

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

# CASE OF GRUBA AND OTHERS v. RUSSIA

*(Applications nos. 66180/09 and 3 others – see appended list)*

JUDGMENT

| |
|---|
| Art 14 (+ Art 8) • Discrimination • Sex • Entitlement to parental leave of male police personnel conditional upon lack of maternal care for their children • No reasonable relationship of proportionality between legitimate aim of maintaining operational effectiveness of police and difference in treatment • Lack of reasonable and objective justification<br>Art 6 § 1 (civil) • Fair hearing • Violation of equality arms in absence of justification for public prosecutor's intervention in proceedings |

STRASBOURG

6 July 2021

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

**In the case of Gruba and Others v. Russia,**

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

Paul Lemmens, *President,*
Georgios A. Serghides,
Dmitry Dedov,
Georges Ravarani,
Anja Seibert-Fohr,
Peeter Roosma,
Andreas Zünd, *judges,*
and Milan Blaško, *Section Registrar,*

Having regard to:

the applications (nos. 66180/09, 30771/11, 50089/11 and 22165/12) 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 four Russian nationals whose names, dates of birth and places of residences are listed in the appended table ("the applicants"), on the various dates indicated in the appended table;

the decision to give notice to the Russian Government ("the Government") of the complaints about the domestic authorities' refusal to grant the applicants parental leave because they belonged to the male sex and about the allegedly unfair civil proceedings in application no. 22165/12, and to declare inadmissible the remainder of applications nos. 66180/09, 50089/11 and 22165/12;

the parties' observations;

Having deliberated in private on 8 June 2021,

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 applicants were represented by lawyers whose names are listed in the appended table.

3. The Government were represented initially by Mr G. Matyushkin, 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, as submitted by the parties, may be summarised as follows.

# I. APPLICATION No. 66180/09 (GRUBA v. RUSSIA)

5. At the material time the applicant was working as a road police officer in the Syktyvkar Town Interior Department. His duties included ensuring the security of road traffic, as well as maintaining public order and fighting crimes relating to road traffic. There were no restrictions on grounds of sex for holding that post.

6. On 13 July 2008 the applicant's wife gave birth to a son.

7. For financial reasons, given that the applicant's wife had a higher salary than him, they decided that it was for the applicant to take parental leave as from April 2009.

8. On 22 April 2009 the applicant asked his superior for parental leave until 13 January 2010. His request was refused because parental leave could be granted to a policeman only if his children were left without maternal care.

9. The applicant challenged the refusal before the Syktyvkar Town Court, claiming that he was entitled to parental leave.

10. On 6 July 2009 the Syktyvkar Town Court dismissed the applicant's claim. It held that service in the police was a special type of public service which ensured the protection of the public safety and public order, and it was therefore performed in the public interest. Persons engaged in such service exercised constitutionally important functions and therefore held 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 was not in itself incompatible with the Constitution. In signing a police service contract the applicant had voluntarily chosen a professional activity which entailed, firstly, limitations on his civil rights and freedoms inherent in that type of public service, and, secondly, the performance of duties to ensure the protection of public safety and order. Accordingly, the applicant had undertaken to abide by the statutory requirements limiting his rights and freedoms and imposing on him special public obligations.

11. Relying on section 54 of Regulation no. 4202-1 (see paragraph 58 below), the Town Court further found that, unlike policewomen, policemen were entitled to parental leave only where they had to bring up children left without maternal care, that is to say in the event of the mother's death, withdrawal of parental authority, lengthy illness or other situations where the children lacked maternal care. That restriction was based, firstly, on the special legal status of the police, and, secondly, on the constitutionally important aims justifying limitations on human rights and freedoms in connection with the necessity to create appropriate conditions for the police to efficiently fulfil their duty to protect public safety and order. Owing to the specific demands of the police service, the non-performance of duties by personnel had to be excluded because it was liable to harm the public

interests protected by law. The restrictions on the right of male personnel to take parental leave could therefore not be regarded as a breach of their constitutional rights or freedoms, including their right to take care of and raise children. By granting, on an exceptional basis, the right to parental leave to female personnel, the legislature took into account the special social role of women associated with motherhood. Therefore, the refusal to grant parental leave to the applicant did not breach the principles of equality of human rights and freedoms or equality of rights of men and women.

12. On 10 August 2009 the Supreme Court of the Komi Republic upheld the judgment on appeal, finding it lawful, well-reasoned and justified.

13. In the meantime, on 2 July 2009 the applicant had stopped coming to his place of work. On 24 August 2009 he was dismissed from his post.

14. The applicant challenged his dismissal before the Syktyvkar Town Court, claiming, in particular, that he had stopped coming to work because he considered that he was entitled to parental leave.

15. On 26 February 2010 the Syktyvkar Town Court dismissed his claim. Relying on the judgment of 6 July 2009, as upheld on appeal on 10 August 2009, the court reiterated that the applicant was not entitled to parental leave. His dismissal for systematic absence from his place of work had been therefore a lawful disciplinary measure.

16. On 8 April 2010 the Supreme Court of the Komi Republic upheld the judgment on appeal, finding it lawful, well-reasoned and justified.

## II. APPLICATION No. 30771/11 (MARINTSEV v. RUSSIA)

17. At the material time the applicant was working as a tax police officer in the Sverdlovsk Regional Interior Department. His duties included prevention, detection and suppression of tax offences and participation in tax inspections. There were no restrictions on grounds of sex for holding that post.

18. On 25 March 2009 the applicant's wife gave birth to a son.

19. On 25 March 2010 the applicant was examined by a police medical panel. On 7 May 2010 he was informed that the medical panel had found him inept for police service and that he would soon be dismissed.

20. On 29 June 2010 the applicant asked his superior for parental leave until his son reached the age of eighteen months.

21. On 9 July 2010 the applicant was dismissed from his post for health reasons. He was informed of that decision on 12 July 2009.

22. On 7 August 2010 the applicant's request for parental leave was rejected with reference to section 54 of Regulation no. 4202-1 (see paragraph 58 below) because his child had not been left without maternal care. It was also noted that he had in any case been dismissed from the police service.

23. The applicant appealed to the Verkh-Istetskiy District Court against the denial of parental leave and his dismissal.

24. On 8 September 2010 the Verkh-Istetskiy District Court rejected his claims. Relying on section 54 of Regulation no. 4202-1, it found that, in contrast to policewomen, policemen were entitled to parental leave only where they had to bring up children left without maternal care. The applicant's son was not left without maternal care as his mother had resumed work for financial reasons. The District Court also found that the applicant's dismissal from his post had been lawful because his state of health was incompatible with police service.

25. On 18 November 2010 the Sverdlovsk Regional Court upheld the judgment on appeal, finding that it had been lawful, well-reasoned and justified.

## III. APPLICATION No. 50089/11 (MIKHAYLOV v. RUSSIA)

26. At the material time the applicant was working as an auditor in the internal audit unit of the St Petersburg Interior Department. He held the rank of lieutenant colonel. His duties included performing documentary audit inspections of interior departments and suggesting corrections for any breaches detected. There were no restrictions on grounds of sex for holding that post.

27. On 22 November 2009 the applicant's wife gave birth to a son.

28. On 11 June 2010 the applicant's wife was diagnosed with acute postnatal rheumatoid arthritis. She was prescribed a lengthy treatment and restrictions on physical activity.

29. On 29 June 2010 the applicant asked his superior for parental leave until his son's third birthday because his wife was unable to take care of him for medical reasons. His request was rejected with reference to section 54 of Regulation no. 4202-1 and on the grounds of lack of medical documents confirming that it was "totally impossible" for the child's mother to take care of him.

30. On 10 August 2010 a doctor recommended that the applicant's wife should not lift any objects exceeding 5 kg.

31. On 14 September 2010 the applicant again asked his superior for parental leave, referring to his wife's health problems.

32. By letters of 24 and 28 September 2010 the Human Resources Department of the St Petersburg Interior Department rejected his request, noting that the applicant's wife had been "advised" not to lift objects exceeding 5 kg rather than "formally prohibited" from doing so. There was therefore no evidence that it was "totally impossible" for her to take care of the child and that the child was deprived of maternal care.

33. The applicant challenged the refusals before the Smolnenskiy District Court of St Petersburg. He complained, in particular, of discrimination on grounds of sex.

34. On 14 December 2010 the Smolnenskiy District Court rejected the applicant's claims. Relying on section 54 of Regulation no. 4202-1, the court found that, in contrast to policewomen, policemen were entitled to parental leave only where they had to bring up children left without maternal care, that is to say in the event of the mother's death, withdrawal of parental authority, lengthy illness or other situation where the children lacked maternal care. Relying on the Constitutional Court's Ruling No. 566-O-O (see paragraph 59 below), the District Court held that that provision was compatible with the Constitution. It was therefore incumbent on the applicant to prove that his child had no maternal care. The medical documents submitted by the applicant did not prove that his wife was incapable of taking care of their son. She was not in hospital, nor was she disabled. There was therefore no evidence that the child was without maternal care. Accordingly, the denial of parental leave had been lawful and justified.

35. On 21 February 2011 the St Petersburg City Court upheld the judgment on appeal.

36. Meanwhile, on 17 November 2010 the applicant was dismissed from his post for systematic absence from work. He challenged his dismissal before the Smolninskiy District Court, claiming, in particular, that he had stopped coming to work because he considered that he was entitled to parental leave.

37. On 16 May 2011 the Smolnenskiy District Court rejected his claims. Relying on the judgment of 14 December 2010, as upheld on appeal on 21 February 2011, the court reiterated that the applicant was not entitled to parental leave. His dismissal for systematic absence from his place of work had been therefore a lawful disciplinary measure.

38. On 18 July 2011 the St Petersburg City Court upheld the judgment on appeal, finding that it had been lawful, well-reasoned and justified.

## IV. APPLICATION No. 22165/12 (MOROZOV v. RUSSIA)

39. At the material time the applicant was working as a tax police officer in the Novgorod Regional Interior Department. His duties included prevention, detection, suppression and investigation of tax offences. There were no restrictions on grounds of sex for holding that post.

40. On 27 May 2010 the applicant's wife gave birth to a son.

41. On 23 December 2010 the applicant's wife was diagnosed with postnatal varicose veins of the lower limbs. Her doctor advised her not to lift any objects exceeding 5 kg.

42. On 31 December 2010 the applicant asked his superior for parental leave until 27 November 2011. His request was rejected with reference to section 54 of Regulation no. 4202-1.

43. On 1 February 2011 the applicant stopped coming to his place of work because he considered that he was entitled to parental leave.

44. In reply to the applicant's complaint, the Novgorod Regional Prosecutor's Office found, on 19 May 2011, that the refusal of parental leave had been lawful because there was no evidence that the applicant's wife could not take care of the child.

45. On 31 May 2011 the applicant was dismissed from his post for systematic absence from work.

46. The applicant lodged a civil claim before the Novgorodskiy District Court against the Novgorod Regional Interior Department, challenging the refusal to grant parental leave. He claimed, in particular, that his wife could not take care of their child for health reasons, and enclosed his wife's medical documents. He also challenged his dismissal from post and requested monthly child-care allowances arrears.

47. On 23 August 2011 the applicant objected to the participation in the proceedings of the representative of the Novgorod Regional Prosecutor's Office. He submitted that the Novgorod Regional Prosecutor's Office had already stated its position on the issue in the letter of 19 May 2011 and was therefore biased. Relying on the Court's judgment in the case of *Menchinskaya v. Russia* (no. 42454/02, 15 January 2009), he also complained that the prosecutor's participation in the proceedings violated the principle of equality of arms guaranteed by Article 6 § 1 of the Convention. The applicant's objection was dismissed.

48. The Novgorodskiy District Court heard the applicant, his counsel and the representative of the Novgorod Regional Interior Department. The prosecutor also attended the hearing and expressed her position that the applicant's claims should be rejected.

49. On 14 October 2011 the Novgorodskiy District Court rejected the applicant's claims. Relying on section 54 of Regulation no. 4202-1 and on the Constitutional Court's Ruling No. 566-O-O (see paragraph 59 below), the District Court held that the refusal to grant parental leave to the applicant had been lawful and had not amounted to discrimination on grounds of sex. His dismissal for systematic absences from his place of work had been a lawful disciplinary measure.

50. The applicant appealed. He complained of discrimination on grounds of sex. He submitted, in particular, that equivalent posts in his unit were held by policewomen who were entitled to parental leave. He also complained that the public prosecutor's intervention in support of the respondent's position had violated his rights under Article 6 § 1 of the Convention. Lastly, the applicant objected to the participation of a prosecutor in the appeal hearing.

51. The Novgorod Regional Court heard the applicant, his counsel and the representative of the Novgorod Regional Interior Department. It also heard the prosecutor, who argued that the applicant's appeal was to be dismissed.

52. On 7 December 2011 the Novgorod Regional Court upheld the judgment of 14 October 2011 on appeal, finding that it had been lawful, well-reasoned and justified. It found that the applicant had not submitted any evidence that his wife was unable to take care of the child. The applicant and his wife, who had resumed her work, lived and brought up their child together. It followed that the applicant's child was not left without maternal care. The Regional Court further held that the prosecutor had lawfully participated in the proceedings in accordance with Article 45 § 3 of the Code of Civil Procedure (see paragraph 62 below).

53. On 9 July 2012 a judge of the Supreme Court of the Russian Federation refused to refer the applicant's cassation appeal to the Civil Chamber of that Court for an examination, finding no significant violations of substantive or procedural law which influenced the outcome of the proceedings.

# RELEVANT LEGAL FRAMEWORK

## I. PARENTAL LEAVE

54. The Russian Constitution guarantees equality of rights and freedoms of everyone regardless of, in particular, sex, social status or employment position. Men and women have equal rights and freedoms and equal opportunities (Article 19 §§ 2-3).

55. The Constitution also guarantees protection of motherhood and the family by the State. The care and upbringing of children is an equal right and obligation of both parents (Article 38 §§ 1-2).

56. The Labour Code of 30 December 2001 provides that women are entitled to a so-called "pregnancy and delivery leave" (maternity leave) of 70 days before the childbirth and 70 days after it (Article 255). Further, women are entitled to a three-year "child-care leave" (parental leave). Parental leave may also be taken in full or in part by the father of the child, his/her grandmother, grandfather, a guardian or any relative who is actually taking care of the child. The person on parental leave retains his/her employment position. The period of parental leave is counted for seniority purposes (Article 256).

57. The Federal Law on Obligatory Social Insurance of Sick Leave or Maternity Leave (Law no. 255-FZ of 29 December 2006) provides that while on maternity leave the woman must receive a maternity allowance, payable by the State Social Insurance Fund, amounting to 100% of her salary (section 11). During the first year and a half of the parental leave the

person who is taking care of the child receives monthly child-care allowances, payable by the State Social Insurance Fund, amounting to 40% of the salary (section 11.2). During the second year and a half of the parental leave no social-insurance benefits or allowances are payable.

58. Regulation no. 4202-1 of 23 December 1992 on service in the agencies of the Ministry of the Interior of the Russian Federation (in force until 1 January 2012) provided that personnel of such agencies were entitled to maternity and parental leave in accordance with the laws in force (section 45). Female personnel of those agencies who were pregnant or were bringing up children, as well as male personnel bringing up children left without maternal care (in the event of the mother's death, withdrawal of parental authority, lengthy illness or other situations where the children were without maternal care), were entitled to social benefits guaranteed by laws and other legal acts to such categories of the population of the Russian Federation (section 54).

59. In its decision no. 566-O-O of 16 April 2009 the Constitutional Court found that section 54 of Regulation no. 4202-1 was compatible with the Constitution. It held as follows:

> "2.1 Service in the agencies of the Ministry of the Interior is a special type of public service which ensures the protection of the 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 possess a special legal status. When establishing a special legal status for the personnel of the agencies in question, the Federal legislature is entitled, within its discretionary powers, to set up limitations on their civil rights and freedoms and to assign special duties warranted by the objectives and organisational functioning of Ministry of the Interior agencies and by the particular nature of their activities.
>
> The imposition by the Federal legislature of limitations on the rights and freedoms of persons serving in Ministry of the Interior agencies is not in itself incompatible with the Constitution.
>
> ... by signing a contract for service in such an agency a citizen ... voluntarily chooses a professional activity which entails limitations on his civil rights and freedoms inherent in that type of public service.
>
> ... by voluntarily choosing this type of service citizens agree to the conditions and limitations related to the acquired legal status.
>
> 2.2. ... personnel of Ministry of the Interior agencies who are fathers are prohibited from combining the performance of their service duties with taking care, by taking parental leave, of children who have maternal care. This prohibition is based, firstly, on the special legal status of the personnel of the agencies, and, secondly, on the constitutionally important aims justifying limitations on human rights and freedoms in connection with the necessity to create appropriate conditions for the efficient professional activity of [such] personnel who are fulfilling their duty to protect public safety and order. It cannot be regarded as a breach of their constitutional rights or freedoms, including their right to take care of, and bring up, children guaranteed by Article 38 § 2 of the Constitution of the Russian Federation.

> Therefore, the legal provisions contained in section 54 § 7 of [Regulation no. 4202-1] – which grant entitlement to the legal and social guarantees provided by the laws of the Russian Federation, including the right to parental leave, for personnel of Ministry of the Interior agencies who are fathers raising children without maternal care only – do not breach the applicant's constitutional rights."

60. Decision no. 377-O-O of 5 March 2009 contained similar reasoning. It held in addition:

> "The imposition by the Federal legislature of limitations on the rights and freedoms of citizens serving in Ministry of the Interior agencies ... is in accordance with ILO Discrimination (Employment and Occupation) Convention No. 111 of 25 June 1958, which provides that any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination (Article 1 § 2) ...
>
> 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. Therefore, 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 and cannot be regarded as a breach of their constitutional rights or freedoms, including their right to take care of, and bring up, children guaranteed by Article 38 § 2 of the Constitution of the Russian Federation.
>
> Moreover, by granting, on an exceptional basis, the right to parental leave only to the personnel of Ministry of the Interior agencies who are mothers or fathers raising children left without maternal care, the legislature took into account, firstly, the special social role of women associated with motherhood and, secondly, the necessity to provide care to children left without maternal care. Therefore, the legislature's decision cannot be regarded as breaching the principles of equality of human rights and freedoms or equality of rights of men and women, as guaranteed by Article 19 §§ 2 and 3 of the Constitution of the Russian Federation."

61. Regulation no. 4202-1 was replaced on 30 November 2011 by Federal Law no. 342-FZ on service in the Ministry of the Interior agencies of the Russian Federation, in force from 1 January 2012. Its Article 56 § 8 provides that female personnel of Ministry of the Interior agencies who are pregnant or are bringing up children, as well as male personnel bringing up children who lack maternal care (owing to the mother's death, withdrawal of parental authority, lengthy illness or other situations where the children have no maternal care for objective reasons), are entitled to parental leave in accordance with labour legislation. Such personnel are also entitled to the related social benefits in accordance with labour legislation and other laws, provided that they do not contradict Federal Law no. 342-FZ.

## II. PARTICIPATION OF A PUBLIC PROSECUTOR IN THE PROCEEDINGS

62. The Code of Civil Procedure provides that a prosecutor participates in the proceedings and expresses his/her position in cases concerning

evictions, dismissals, compensation for health damage and other cases provided for by this Code or other Federal laws (Article 45 § 3).

# THE LAW

## I. JOINDER OF THE APPLICATIONS

63. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

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

64. The applicants complained that the refusal to grant them parental leave amounted to discrimination on grounds of sex. They 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

65. 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 applicants

66. Mr Gruba and Mr Martintsev argued that they had been victims of discrimination on grounds of sex. Mr Martintsev stressed, in particular, that he had lodged his request for parental leave before his dismissal from police service.

67. Mr Mikhaylov submitted that his wife could not take care of their child because of her illness. He had therefore had no choice but to ask for parental leave. The refusal of parental leave had amounted to discrimination for the following reasons. Mr Mikhaylov argued that for the purposes of parental leave policemen were in an analogous situation to other parents: both policewomen and civilian men and women. Policemen were, however, treated differently from all other parents: policewomen's and civilian men's and women's entitlement to parental leave was unconditional, while policemen's entitlement to parental leave was conditional on lack of maternal care for the child. Mr Mikhaylov submitted that the Constitutional Court had justified that difference in treatment by "the special social role of women associated with motherhood" (see paragraph 60 above). That argument was based on gender stereotypes. Granting a priority entitlement to parental leave to women had the effect of perpetuating inequality between the sexes because it was disadvantageous both to women's careers and to men's family life.

68. Mr Mikhaylov further submitted that the Government had not substantiated their allegation that placing policemen on the same footing as policewomen as regards their 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 arrest offenders (see paragraph 70 below). The examples of authorisation of parental leave for male police officers submitted by the Government were not numerous. They showed that only a small number of male police officers were willing to take parental leave. Moreover, policewomen often performed the same duties as policemen. The statistics submitted by the Government (see paragraph 70 below) showed that women constituted more than half of the police staff in certain police departments. Although those policewomen had an unconditional entitlement to parental leave, there was no evidence that it had a negative effect on the operational effectiveness of those departments. Mr Mikhaylov therefore concluded that the Government had not provided a reasonable and objective justification for the difference in treatment. Although he accepted that certain restrictions on police officers' entitlement to parental leave could be justified by the requirements of police service, he suggested that they should depend on the police officer's hierarchical

position, qualifications, duties and responsibilities rather than on the sex. Lastly, Mr Mikhaylov argued that he had not waived his right not to be discriminated against in an unequivocal manner in signing his police service contract. In any event, in view of the fundamental importance of the prohibition of discrimination on grounds of sex, such a waiver would be inacceptable (*D.H. and Others v. the Czech Republic* [GC], no. 57325/00, § 204, ECHR 2007-IV).

69. Mr Morozov also argued that he had not waived his right to parental leave in signing his police service contract. Firstly, neither the police service contract nor the police oath mentioned that policemen renounced their entitlement to parental leave. Secondly, in his opinion, such a waiver, if it was to be valid, would also have to be signed by the policeman's wife, who was to renounce her husband's help and assume alone the role of taking care of their children.

**(b) The Government**

70. The Government submitted that there were no restrictions on grounds of sex for holding the posts held by the applicants: those posts could be held by policewomen, provided they were physically fit for service. Policewomen were, however, a minority, accounting for 21.1% of the total police force. They were distributed unevenly among the various departments: for example, women occupied 9.6% of posts in the road police department, 12.7 % of posts in the anti-extremism department, 35.7% of posts in the forensic experts department, 58.9% of posts in the investigation department, and 73% of posts in the police inquiries department. Therefore, the placing of male police officers on the same footing as female police officers as regards their 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 arrest offenders.

71. The Government further argued that police personnel 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. The choice of police career was voluntary and, in signing a police service contract and taking the oath of allegiance, police officers accepted the legal provisions imposing special duties and limitations on them. 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.

72. The Government also submitted that, in contrast to legal 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 entitlement to 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 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 parental authority was restricted, the mother's serious illness prevented her from taking care of the children, the mother was a foreigner and had no residence permit, the mother was on a long-term business trip or the child was being raised by the father after the parents' divorce. 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 any reason.

73. As regards the particular circumstances of the present applications, the domestic authorities considered that the applicants' children had not been left without maternal care. In particular, Mr Mikhaylov's wife's illness had not disabled her and did not require a lengthy hospital stay. Mr Morozov had not mentioned his wife's illness in his request for parental leave and had not enclosed any medical documents. The domestic courts found that he had not proved that his child had been left without maternal care. The denials of parental leave in the case of each of the applicants had therefore been lawful, proportionate to legitimate aims and had not amounted to discrimination on grounds of sex. The Government also claimed that Mr Marintsev had lodged a request for parental leave with the aim of avoiding dismissal from service. They also stressed that Mr Gruba, Mr Mikhaylov and Mr Morozov had been subsequently dismissed from the service for systematic absence.

*2. The Court's assessment*

74. For a summary of the relevant general principles, see *Konstantin Markin* (cited above, §§ 124-27).

75. In *Konstantin Markin* case 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 (see *Konstantin Markin,* cited above, § 130).

76. 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 a parent concerned to stay at home to look after an infant personally. Whilst being aware of the differences which might exist between mother and 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).

77. It follows from the above that for the purposes of parental leave the applicants, policemen, were in an analogous situation to policewomen.

78. Furthermore, the Court does not lose sight of the differences between the present case and the *Konstantin Markin* case. The applicant in the *Konstantin Markin* case, being a serviceman, had been completely excluded from entitlement to parental leave, although servicewomen were entitled to such leave. Conversely, policemen such as the applicants in the present case, are entitled to apply for parental leave if their children are left without maternal care (see paragraphs 58 and 61 above). Russian law therefore provides for an exception to the rule that male police personnel are not entitled to parental leave. The fact remains, however, that policemen are treated differently from policewomen: policemen have a conditional right to three years' parental leave, while policewomen are unconditionally entitled to such leave. It must therefore be ascertained whether the difference in treatment between policemen and policewomen was objectively and reasonably justified under Article 14.

79. The Court notes that the Russian Constitutional Court and the Government advanced several arguments to justify the difference in treatment between policemen and policewomen as regards entitlement to parental leave. The Court will examine them in turn.

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 (see paragraph 71 above), 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 (see paragraphs 59 and 60 above). 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 (see paragraph 70 above).

83. The Court accepts that maintaining the operational effectiveness of the police is a legitimate aim (see paragraph 70 above) 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 (see paragraph 60 above). 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 (see paragraph 70 above). 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.

86. The present case shows the difficulties a policeman may encounter even in cases where his particular family situation requires him to assume the role of the primary caregiver for his child. Indeed, Mr Mikhaylov and Mr Morozov were refused parental leave despite the fact that their wives were not fully able to take care of the children on account of health issues (see paragraphs 28, 30 and 41 above). In Mr Mikhaylov's case the domestic authorities found that his wife's illness did not make it "totally impossible" for her to take care of the child, in particular because she was not in hospital or disabled, and that the child was therefore not deprived of maternal care (see paragraphs 32 and 34 above). In Mr Morozov's case the domestic authorities also found that the wife's medical certificates were insufficient evidence to show that she was unable to take care of the child, given that she had resumed work and the family lived together (see paragraph 52 above). The exception to the rule that policemen are not entitled to parental leave therefore appears to be interpreted strictly.

87. Most importantly, in refusing to grant parental leave to each of the four applicants, the domestic authorities did not refer to any circumstances showing that their temporary departure on parental leave 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 one hand, and on the other, the applicants' right not to be discriminated against on grounds of sex as regards access to parental leave.

88. Lastly, in so far as the Government claimed that Mr Marintsev had lodged a request for parental leave with the aim of avoiding dismissal from service (see paragraph 73 above), this was raised for the first time in the proceedings before the Court and the domestic courts never mentioned it in their decisions. It is not the Court's task to take the place of the national authorities and establish relevant facts or supply its own analysis of those facts. As regards the Government's submission that the other three applicants had been dismissed from service for systematic absence, the Court notes that these applicants had argued that they had stopped coming to work because they considered that they were entitled to parental leave (see paragraphs 14, 36 and 43 above). In these circumstances, the fact that they were dismissed does not render moot their complaints relating to the refusal of parental leave.

89. 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 applicants were the victims, amounted to discrimination on grounds of sex.

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

## III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

91. Mr Morozov (application no. 22165/12) complained about the public prosecutor's participation in the proceedings. He relied on Article 6 § 1, the relevant parts of which read as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

### A. Admissibility

92. 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

93. Mr Morozov argued that because of the public prosecutor's participation in the proceedings and his support of the position of the adverse party, the principle of the equality of arms between the parties had been breached.

94. The Government submitted that the prosecutor's participation in the proceedings had been lawful under Article 45 § 3 of the Civil Procedure Code because the applicant had challenged his dismissal from service (see paragraph 62 above). It had neither violated the principle of equality of arms nor in any other way impaired the fairness of the trial, as the courts had not been bound by the prosecutor's arguments. The applicant had enjoyed all the relevant procedural rights. He was not a vulnerable person as he had a law degree and was, moreover, assisted by counsel. The prosecutors who participated in the applicant's case had no personal interest in the proceedings and had never expressed an opinion on the case.

95. The Court has previously found, in the specific Russian context, that support by the prosecutor's office for one of the parties in civil proceedings may be justified in certain circumstances, for instance for the protection of vulnerable persons who are assumed to be unable to protect their own interests, where numerous citizens are affected by the wrongdoing concerned, or where identifiable State assets or interests need to be protected. However, in the absence of any particular reason which would justify the prosecutor's participation in a civil case, such participation may breach the principle of the equality of arms (see *Menchinskaya v. Russia*, no. 42454/02, §§ 30-40, 15 January 2009, and *Korolev v. Russia (no. 2)*, no. 5447/03, §§ 29-38, 1 April 2010).

96. Turning to the circumstances of the present case, the Court observes that Mr Morozov's opponent in the proceedings in question was a State agency, the Novgorod Regional Interior Department. Its interests before the national courts were defended by its representative. The prosecutor chose to support its position and argued that the applicant's claims should be rejected.

97. The Court notes that while the prosecutor had legal grounds under the domestic legislation to join the proceedings, the instant case did not present any special circumstances relating to the protection of vulnerable persons or State interests justifying such intervention (see, by contrast, *Batsanina v. Russia*, no. 3932/02, § 27, 26 May 2009).

98. Furthermore, the Court sees no reason to speculate on what effect the prosecutor's intervention may have had on the course of the proceedings; however it finds that the mere repetition of the Interior Department's arguments by the prosecutor was meaningless unless it had been aimed at reinforcing the Interior Department's position and thereby influencing the

court in its favour (see, for a similar reasoning, *Menchinskaya,* cited above, § 38, and *Korolev*, cited above, § 37).

99. The foregoing considerations are sufficient to enable the Court to conclude that in the specific Russian context the principle of the equality of arms, requiring a fair balance between the parties, was not respected in the present case.

100. There has accordingly been a violation of Article 6 § 1 of the Convention in respect of Mr Morozov (application no. 22165/12).

## IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

101. 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."

### A. Damage

102. Mr Gruba claimed 10,000,000 Russian roubles (RUB; approximately 129,870 euros (EUR)) in respect of non-pecuniary damage. Mr Marintsev claimed EUR 1,000 in respect of non-pecuniary damage and EUR 19,454 in respect of pecuniary damage, representing the parental leave allowances he would have received if he had been granted parental leave, as well as loss of salary. Mr Mikhaylov claimed EUR 10,000 in respect of non-pecuniary damage. He also claimed EUR 28,878.84 and RUB 1,942,963.50 in respect of pecuniary damage, representing parental leave allowances he would have received if he had been granted parental leave, as well as loss of salary, related benefits and old-age pension rights. Mr Morozov claimed EUR 5,500 in respect of non-pecuniary damage.

103. The Government submitted that the claims for non-pecuniary damage were excessive. There was no causal link between the violation alleged and the claims for pecuniary damage submitted by Mr Marintsev and Mr Mikhaylov. Those claims were not in any event properly substantiated.

104. The Court does not discern any causal link between the violation found and the loss of salary, related benefits and old-age pension rights alleged by Mr Marintsev and Mr Mikhaylov; it therefore rejects this claim. The Court further finds that there is a causal link between the violation found and the refusal of parental leave allowance claimed by Mr Marintsev and Mr Mikhaylov. However, Mr Marintsev did not substantiate his claim; the Court therefore rejects it. On the other hand, it awards EUR 1,196 to Mr Mikhaylov in respect of parental leave allowances he would have

received if he had been granted parental leave, plus any tax that may be chargeable.

105. In respect of non-pecuniary damage, the Court awards the following amounts, which take into account the limits imposed by the principle *ne ultra petitum*, plus any tax that may be chargeable:

Mr Gruba: EUR 7,500;

Mr Marintsev: EUR 1,000;

Mr Mikhaylov: EUR 7,500;

Mr Morozov: EUR 5,500.

### B. Costs and expenses

106. Relying on a legal fee agreement, Mr Gruba claimed EUR 1,200 for legal fees. The Government submitted that Mr Gruba had not presented any documents confirming that the legal fees had been paid.

107. Relying on payment invoices, Mr Marintsev claimed RUB 11,600 (some EUR 145) for legal fees. He also claimed EUR 766.50 for potential participation of his lawyer at a hearing before the Court and EUR 9,509.40 representing 10% of the total claim to be paid to his lawyer. The Government submitted that the costs of any potential participation at the hearing before the Court were not supported by any documents. The claim for a contingency legal fee was unenforceable.

108. Relying on a legal fee agreement, Mr Mikhaylov claimed EUR 4,150 for legal fees. The Government submitted that Mr Mikhaylov had not submitted any documents confirming that the legal fees had been paid.

109. Relying on a legal fee agreement and payment invoices, Mr Morozov claimed EUR 703.05 in respect of legal fees incurred in the domestic proceedings and postal and translation expenses in the Court proceedings. The Government argued that the legal fees incurred by Mr Morozov in the domestic proceedings were not recoverable in the Court proceedings.

110. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the following amounts, plus any taxes that may be chargeable to the applicants:

Mr Gruba: EUR 1,200;

Mr Marintsev: EUR 145;

Mr Mikhaylov: EUR 4,150;

Mr Morozov: EUR 406.

### C. Default interest

111. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

## FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Declares* the applications admissible;

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

4. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of Mr Morozov (application no. 22165/12);

5. *Holds*
   (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 1,196 (one thousand one hundred and ninety-six euros) to Mr Mikhaylov, plus any tax that may be chargeable, in respect of pecuniary damage;
      (ii) EUR 7,500 (seven thousand five hundred euros) to Mr Gruba and Mr Mikhaylov each, EUR 1,000 (one thousand euros) to Mr Marintsev and EUR 5,500 (five thousand five hundred euros) to Mr Morozov, in respect of non-pecuniary damage, plus any tax that may be chargeable on the above amounts;
      (iii) EUR 1,200 (one thousand two hundred euros) to Mr Gruba, EUR 145 (one hundred and forty-five euros) to Mr Marintsev, EUR 4,150 (four thousand one hundred and fifty euros) to Mr Mikhaylov and EUR 406 (four hundred and six euros) to Mr Morozov, in respect of costs and expenses, plus any tax that may be chargeable to the applicants;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 6 July 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

{signature_p_2}

Milan Blaško
Registrar

Paul Lemmens
President

# APPENDIX

List of cases:

| No. | Application no. | Case name | Lodged on | Applicant<br>Date of Birth<br>Place of Residence<br>Nationality | Represented by |
|---|---|---|---|---|---|
| 1. | 66180/09 | Gruba v. Russia | 24/11/2009 | **Aleksandr Valeryevich GRUBA**<br>1979<br>Syktyvkar<br>Russian | Mr K. MARKIN |
| 2. | 30771/11 | Marintsev v. Russia | 21/04/2011 | **Oleg Vladimirovich MARINTSEV**<br>1969<br>Sverdlovskaya Region<br>Russian | Mr Y. SKOROKHODOV |
| 3. | 50089/11 | Mikhaylov v. Russia | 03/08/2011 | **Aleksandr Valeryevich MIKHAYLOV**<br>1967<br>St Petersburg<br>Russian | Mr A. TELESIN |
| 4. | 22165/12 | Morozov v. Russia | 14/03/2012 | **Aleksey Vladimirovich MOROZOV**<br>1970<br>Novgorod<br>Russian | |