

The night work prohibition for women, in France and Europe, in 1991

Ulla Wikander

The European Community introduced in 1976 a guideline for the common labour market, according to which men and women should be treated equally when it comes to possibilities of employment, professional education and promotions as well as when it comes to work conditions.¹

In the summer of 1991 the Court of Justice of the European Communities decided that the night work prohibition for women, that was national law in both France and Italy, was contrary to this directive.

The decision was the outcome of a schism between Alfred Stoeckel, the director of a video and cassettes firm: SA, Suma, Obenheim, France and the French State. Stoeckel had employed 77 women on a night shift and been told by French authorities that it was illegal, according to French labour legislation, Article L 213-1. In defending his case in France, Stoeckel pointed to the directives of the Common Market. Then the French authorities took this affair to the Court of Justice of the European Community. The state wanted to have the French labour market legislation tested against the labour market directives for the Common Market. The Court made it clear that the French state, as well as the Italian, had to conform to the directives of the Common Market and abolish the night work prohibition for women.

A complication turned out to be that the French state had accepted the ILO convention of night work prohibition for women. The state had in 1891 renewed its formal attachment to that convention (ILO convention No 89, from July 9, 1948) which was to be renewed every 10 years.

Which were the arguments on the two sides and from the Court of Justice of the European Community in 1991? The French representative brought forward the fact that a night work prohibition was not general but limited to selected kinds of industrial work; its intention was not to hinder women to get employment but contrary to protect female manual workers for their own good. Several cases of night work for women had also been allowed after special agreements with the trade unions. He also referred to the ILO convention No 89, which gave possibilities of exemptions from the convention. Still he maintained that it was right to preserve possibilities to object to night work for women.

¹ Directive 76/207/CEE article 5, 9 Febr. 1976.

The Italian state representative said that there were no medical evidences that night work was more harmful to women than to men, except from periods when women were pregnant or during a certain period after giving birth. However, there were social reasons for the prohibition of women's night work; firstly, women were more than men exposed to risks of violence or sexual assaults; secondly, women had an extra load of work which was their duty, because they had responsibilities towards their family. Of course, discrimination of women was not in the interest of the Italian state, but was it in the interest of the state to make the working conditions for women worse than they already were?

The European Court was explicit: women should not be protected *generally* because of their biology; special protection was valid only when they were pregnant or recently had given birth. Whatever the reasons once for introducing the night work prohibition for women, it was not valid any longer. If there were any real dangers at a workplace, that were threatening women more than men, employers should take measures to correct the situation. Concerning the so called family responsibilities of women, the Court said it was not the business of the Court to regulate the organisation of the family duties or to decide in which way responsibilities were to be share in a family. To exclude women from night work could indeed be considered a source of discrimination.

The Court was not pleased with the fact that the French state had not given notice when it was due (in February 1991) that it wanted to break with the ILO convention No 89. As the situation was at the moment of the trial, the French state was formally tied to the convention for another ten year. But the Court claimed that the directive of the Community should be considered above the ILO convention and that the French state thus had the right to ignore it.

Added to these opinions should be the wishes of the women in the SUMA factory; a majority of them were willing to work at night and had no complaints. The question about the night work in this factory seems to have been raised by a factory inspector, who had taken the case to the French police authorities in Illkirch, France. The French police was the authority that had brought the case further to the Court of Justice of the then European Community, seated in Luxemburg.²

² Arrêt de la Cour du 25 Juillet 1991. Égalité de traitement entre hommes et femmes – Interdiction législative du travail de nuit des femmes.