JUDGMENT OF THE COURT (Fourth Chamber)

20 September 2007 *

In Case C-116/06,

REFERENCE for a preliminary ruling under Article 234 EC from the Tampereen käräjäoikeus (Finland), made by decision of 24 February 2006, received at the Court on 28 February 2006, in the proceedings

Sari Kiiski

v

Tampereen kaupunki,

THE COURT (Fourth Chamber),

composed of K. Lenaerts, President of Chamber, R. Silva de Lapuerta, G. Arestis, J. Malenovský (Rapporteur) and T. von Danwitz, Judges,

Advocate General: J. Kokott,
Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 8 February 2007,

* Language of the case: Finnish.

after considering the observations submitted on behalf of:

— Ms Kiiski, by A. Vainio, asianajaja,

— the Tampereen kaupunki, by T. Kyöttilä, acting as Agent,

— the Finnish Government, by E. Bygglin and J. Himmanen, acting as Agents,

— the Italian Government, by I. M. Braguglia, acting as Agent, assisted by W. Ferrante, avvocato dello Stato,

— the Commission of the European Communities, by M. van Beek and M. Huttunen, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 15 March 2007,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 2 of Council Directive 76/207/EEC 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 (OJ 1976 L 39, p. 40) as amended by Directive 2002/73/EC of the European Parliament and of the Council of

23 September 2002 (OJ 2002 L 269, p. 15) ('Directive 76/207'), and the interpretation of Articles 8 and 11 of Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (10th individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) (OJ 1992 L 348, p. 1).

2 The reference was made in the course of proceedings between Ms Kiiski and the Tampereen kaupunki (City of Tampere) with regard to the latter's refusal to grant the applicant an alteration of the duration of her child-care leave.

Legal framework

Community legislation

3 According to Article 2 of Directive 76/207:

'1. For the purposes of the following provisions, the principle of equal treatment shall mean that there shall be no discrimination whatsoever on grounds of sex either directly or indirectly by reference in particular to marital or family status.

2. For the purposes of this Directive, the following definitions shall apply:

— direct discrimination: where one person is treated less favourably on grounds of sex than another is, has been or would be treated in a comparable situation,

— indirect discrimination: where an apparently neutral provision, criterion or practice would put persons of one sex at a particular disadvantage compared with persons of the other sex, unless that provision, criterion or practice is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary,

...

7. This Directive shall be without prejudice to provisions concerning the protection of women, particularly as regards pregnancy and maternity.

A woman on maternity leave shall be entitled, after the end of her period of maternity leave, to return to her job or to an equivalent post on terms and conditions which are no less favourable to her and to benefit from any improvement in working conditions to which she would be entitled during her absence.

Less favourable treatment of a woman related to pregnancy or maternity leave within the meaning of Directive 92/85/EEC shall constitute discrimination within the meaning of this Directive.

...'

4 Under Article 8 of Directive 92/85, entitled 'Maternity leave':

'1. Member States shall take the necessary measures to ensure that workers within the meaning of Article 2 are entitled to a continuous period of maternity leave of a least 14 weeks allocated before and/or after confinement in accordance with national legislation and/or practice.

2. The maternity leave stipulated in paragraph 1 must include compulsory maternity leave of at least two weeks allocated before and/or after confinement in accordance with national legislation and/or practice.'

5 Article 11 of Directive 92/85, entitled 'Employment rights', provides:

'In order to guarantee workers within the meaning of Article 2 the exercise of their health and safety protection rights as recognised in this Article, it shall be provided that:

(1) in the cases referred to in Articles 5, 6 and 7, the employment rights relating to the employment contract, including the maintenance of a payment to, and/or entitlement to an adequate allowance for, workers within the meaning of Article 2, must be ensured in accordance with national legislation and/or national practice;

(2) in the case referred to in Article 8, the following must be ensured:

(a) the rights connected with the employment contract of workers within the meaning of Article 2, other than those referred to in point (b) below;

(b) maintenance of a payment to, and/or entitlement to an adequate allowance for, workers within the meaning of Article 2;

(3) the allowance referred to in point 2(b) shall be deemed adequate if it guarantees income at least equivalent to that which the worker concerned would receive in the event of a break in her activities on grounds connected with her state of health, subject to any ceiling laid down under national legislations;

(4) Member States may make entitlement to pay or the allowance referred to in points 1 and 2(b) conditional upon the worker concerned fulfilling the conditions of eligibility for such benefits laid down under national legislation.

These conditions may under no circumstances provide for periods of previous employment in excess of 12 months immediately prior to the presumed date of confinement.'

6 Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC (OJ 1996 L 145, p. 4), puts into effect the Framework Agreement on parental leave concluded on 14 December 1995 between those general cross-industry organisations ('framework agreement').

7 The framework agreement provides:

'...

9. Whereas the present agreement is a framework agreement setting out minimum requirements and provisions for parental leave, distinct from maternity leave, ...

...

Clause 1: Purpose and scope

1. This agreement lays down minimum requirements designed to facilitate the reconciliation of parental and professional responsibilities for working parents.

2. This agreement applies to all workers, men and women, who have an employment contract or employment relationship as defined by the law, collective agreements or practices in force in each Member State.

Clause 2: Parental leave

1. This agreement grants, subject to clause 2.2, men and women workers an individual right to parental leave on the grounds of the birth or adoption of a child to enable them to take care of that child, for at least three months, until a given age up to eight years to be defined by Member States and/or management and labour.

2. To promote equal opportunities and equal treatment between men and women, the parties to this agreement consider that the right to parental leave provided for under clause 2.1 should, in principle, be granted on a non-transferable basis.

3. The conditions of access and detailed rules for applying parental leave shall be defined by law and/or collective agreement in the Member States, as long as the minimum requirements of this agreement are respected. Member States and/or management and labour may, in particular:

...

(d) establish notice periods to be given by the worker to the employer when exercising the right to parental leave, specifying the beginning and the end of the period of leave;

...

...

7. Member States and/or management and labour shall define the status of the employment contract or employment relationship for the period of parental leave.

...'

National legislation

8 Under paragraph 3 of Chapter 4 of the Law on employment contracts [Työsopimuslaki (26.1.2001/55)], the employee may, on a justified ground, alter the date and duration of the child-care leave by notifying the employer at the latest a month before the change.

9 Under paragraphs 11 and 12 of Part V of the general municipal collective agreement governing the working conditions of officials and of contractual agents 2003-2004 (Kunnallinen yleinen virka- ja työehtosopimus' 2003-2004; 'the collective agreement'), an official is entitled, at his request, to have the dates and duration of child-care leave that has been granted altered, on unforeseeable and justified grounds. A justified ground is any unforeseeable and fundamental change in the conditions of caring for a child which the official was unable to take into account at the time when he applied for child-care leave.

10 Under the rules for application of the collective agreement, such justified grounds include, for example, the serious illness or death of the child or of the other parent, and divorce. On the other hand, a move to another place, the coming into existence of another employment relationship, or a new pregnancy, are not, in principle, considered to be justified grounds. The interruption of child-care leave requires the official to return to his activities.

The main proceedings and the questions referred for a preliminary ruling

11 Ms Kiiski is a teacher at Tampereen Lyseon Lukio (a high school in Tampere). She is employed by the Tampereen kaupunki which employed her in an employment

relationship under public law subject to the collective agreement. On 3 May 2004, the school's principal granted her the child-care leave which she had requested to enable her to care for her child, born in 2003, for the period from 11 August 2004 until 4 June 2005.

12 On becoming pregnant again, Ms Kiiski applied on 1 July 2004 for an alteration of the decision granting child-care leave so that her leave would in future run from 11 August 2004 until 22 December 2004.

13 However the principal of the high school indicated to her that her request failed to mention an unforeseeable and justified ground which would permit an alteration of the date of the child-care leave pursuant to the collective agreement. Ms Kiiski supplemented her request on 9 August 2004, stating that she was five weeks pregnant and that her pregnancy had caused a fundamental change in the conditions in which she could care for her child. She announced her intention to return to work from 23 December 2004, because in her opinion the child-care leave could not be cancelled altogether. The child's father intended himself to take such leave in the spring of 2005.

14 Ms Kiiski's request was rejected by the principal of the high school by decision of 19 August 2004, in which he contended, relying on the rules for implementation of the collective agreement and on Finnish case-law, that a new pregnancy did not constitute a justified ground for altering the duration of child-care leave.

15 The child's father did not obtain CPE in spring 2005, because under the general collective agreement concluded between the State and its officials and contractual agents (valtion yleinen virka- ja työehtosopimus), it can be obtained by only one parent at a time. Ms Kiiski then announced that she wished to interrupt her child-care leave on 31 January 2005 and to take her maternity leave from that date, in

order to enable her spouse to obtain child-care leave himself. The principal of the high school however rejected this new request on 10 December 2004, on the ground that the decision of the spouse's employer to refuse child-care leave was not a justified ground for the purposes of the collective agreement or of Finnish law.

16 Taking the view that she was the victim of unlawful discrimination, Ms Kiiski brought an action against her employer before the Tampeeren käräjäoikeus (Tampere District Court), in order to obtain compensation for the material and non-material damage which she claimed to have suffered. To support her action, she relied, in particular, on the Court's judgment in *Busch* (Case C-320/01 [2003] ECR I-2041). She argued that she had been the victim of unlawful direct and indirect discrimination on grounds of sex because of her new pregnancy, when her employer, not recognising her new pregnancy as a sufficient ground, refused any alteration of her child-care leave and, by so doing, prevented her from returning to work, and even from obtaining maternity leave.

17 The Tampereen kaupunki maintains that the interruption of child-care leave was not refused because of the occurrence of the new pregnancy but because, according to the collective agreement and Finnish case-law, that pregnancy did not constitute an unforeseeable and justified ground capable of justifying such an interruption. The new pregnancy did not cause fundamental and unforeseeable changes in the conditions in which she could care for her first child which would prevent her from looking after the child for a prolonged period.

18 The Tampereen kaupunki considered furthermore that the judgment in *Busch* was not applicable to this case. In any event, even if a presumption of discrimination arose, the city's response had been based on objective and legitimate grounds. In its view, the premature resumption of duties by an employee enjoying child-care leave always affects other employees and, in particular, their replacement.

19 In those circumstances, the Tampereen käräjäoikeus decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Is it direct or indirect discrimination contrary to Article 2 of Directive 76/207/EEC ..., for an employer to refuse to make changes to the date of child-care leave which has been granted to an employee or to interrupt that leave as a result of a new pregnancy of which the employee has become aware before the start of that leave, in accordance with the settled interpretation of national provisions according to which a new pregnancy is not generally an unforeseeable and justified ground on the basis of which the date and duration of child-care leave may be altered?

(2) May an employer sufficiently justify his conduct, described [in the first question], which possibly constitutes indirect discrimination, from the point of view of Directive [76/207], on the ground that ordinary rather than serious problems would arise in respect of teachers' working arrangements and continuity of teaching, or on the ground that the employer would under the national provisions have to compensate the person replacing the teacher on child-care leave for the loss of pay incurred if the teacher on child-care leave were to return to work before the end of their child-care leave?

(3) Can Directive 92/85 ... be applicable, and, if so, is the employer's conduct described [in the first question] contrary to Articles 8 and 11 of that directive, if, while remaining on child-care leave, the employee has lost her opportunity of enjoying the pay benefits of maternity leave based on her working relationship in the public sector?'

Questions referred for a preliminary ruling

First and third questions

20 It should be noted from the outset, first, that, according to the information provided by the referring court, it is Ms Kiiski's employer's refusal to interrupt the child-care leave she was enjoying which deprived her of the benefits linked to maternity leave provided for under Directive 92/85. Second, if Ms Kiiski's employer did not intend, for various reasons, to accede to her three successive requests, his refusal was always based, at least indirectly and implicitly, on the application of national provisions governing child-care leave which in general exclude pregnancy from the justified grounds authorising an alteration of the period of that leave. Finally, the contents of the case file submitted to the Court do not justify a finding that the child-care leave does not fall among the categories of parental leave covered by the regime provided for under the framework agreement.

21 In that context, the national court's first and third questions should be understood as seeking essentially to ascertain whether Article 2 of Directive 76/207, which prohibits all direct and indirect discrimination on grounds of sex with regard to working conditions, and Articles 8 and 11 of Directive 92/85, relating to maternity leave, preclude the application of national provisions governing child-care leave which in general exclude pregnancy, including the final phase of the pregnancy corresponding to the period of maternity leave, from the justified grounds authorising an alteration of the period of that child-care leave.

22 The answer thus sought presupposes first that the person who, like Ms Kiiski, claims the rights inherent in maternity leave, falls within the scope of Directive 92/85, that is to say that she is a 'pregnant worker' for the purposes of Article 2(a) of that Directive.

23 According to that provision, 'pregnant worker' means a pregnant worker who informs her employer of her condition, in accordance with national legislation and/or national practice.

24 It follows that the Community legislature, with a view to the implementation of Directive 92/85, intended to give the concept of 'pregnant worker' a Community meaning, even if, in respect of one element of that definition, namely that relating to the method of communication of her condition to her employer, it refers back to national legislation and/or national practice.

25 As to the concept of worker, it must be borne in mind that, according to settled case-law, it may not be interpreted differently according to each national law but has a Community meaning. That concept must be defined in accordance with objective criteria which distinguish the employment relationship by reference to the rights and duties of the persons concerned. The essential feature of an employment relationship is that, for a certain period of time, a person performs services for and under the direction of another person, in return for which he receives remuneration (see, in particular, Case 66/85 *Lawrie-Blum* [1986] ECR 2121, paragraphs 16 and 17; Case C-176/96 *Lehtonen and Castors Braine* [2000] ECR I-2681, paragraph 45; Case C-138/02 *Collins* [2004] ECR I-2703, paragraph 26; Case C-456/02 *Trojani* [2004] ECR I-7573, paragraph 15; and Case C-392/05 *Alevizos* [2007] ECR I-3505, paragraph 67).

26 Moreover, the Court has held that the sui generis nature of the employment relationship under national law cannot have any consequence in regard to whether or not the person is a worker for the purposes of Community law (see Case 53/81 *Levin* [1982] ECR 1035, paragraph 16; Case 344/87 *Bettray* [1989] ECR 1621, paragraphs 15 and 16; Case C-188/00 *Kurz* [2002] ECR I-10691, paragraph 32; and *Trojani*, paragraph 16).

27 While it is not disputed that Ms Kiiski, before enjoying her child-care leave, was in an employment relationship having the essential feature referred to in paragraph 25 of this judgment and was therefore a worker for the purposes of Community law, it is also necessary, in order for her to be able to claim the rights made available by Directive 92/85, that she did not lose that status as a result of her enjoyment of child-care leave.

28 In that regard, it must be pointed out, in the first place, that Directive 92/85 does not exclude from its scope the situation of workers who already enjoy leave such as child-care leave.

29 It is true that Directive 92/85 aims, in accordance with the first, fifth and sixth recitals of its preamble, to improve the working environment in order to protect the health and safety of workers, especially the pregnant woman at work. Nevertheless, according to the 14th recital to the preamble of that Directive, the Community legislature took the view that the vulnerability of pregnant workers, workers who have recently given birth or who are breastfeeding made a right to maternity leave necessary.

30 While the Community legislature thereby intended in particular to protect pregnant workers, in a general manner, from the risks which they could face during their employment, by giving them a right to maternity leave which enables them temporarily to leave their jobs, it is common ground that it did not subject this right to the condition that the pregnant woman who claims enjoyment of that leave must herself be in a situation in which she is exposed to such a risk.

31 The fact that Directive 92/85 aims to improve the protection of pregnant women at work cannot therefore itself justify the assumption that the Community legislature intended to exclude a worker from the enjoyment of that leave if, at the time when she wishes to take up such leave, she has already left her job for a temporary period because she is enjoying another form of leave.

32 It should be pointed out, in the second place, that according to paragraph 7 of Clause 2 of the framework agreement, the Member States and/or management and labour are to define the status of the employment contract or of the employment relationship for the period of parental leave provided for under that agreement. It follows that the Community legislature, in adopting Directive 96/34 which puts into effect that agreement, considered that the working relationship between the worker and his employer was maintained during the period of child-care leave. As a result, the beneficiary of such leave remains, during that period, a worker for the purposes of Community law.

33 It is moreover not contested that, when the decision of 10 December 2004 was taken — a decision which, according to the national court, had the effect of depriving her in part of her right to payment or to an adequate allowance as provided for by Article 11 of Directive 92/85 — Ms Kiiski had informed her employer of her pregnancy in accordance with national legislation or national practice. At that date, she accordingly fell within the scope of that Directive.

34 It is necessary therefore to ascertain whether the rules governing child-care leave, in particular those defining the conditions under which the duration of that leave can be altered, were capable of depriving Ms Kiiski of the rights inherent in maternity leave.

35 In that regard, it should be recalled that paragraph 1 of Clause 2 of the framework agreement grants men and women workers an individual right to leave of at least three months' duration. That leave is granted to parents to enable them to take care of their child. It may be taken until the child has reached a given age up to eight years (see Case C-519/03 *Commission* v *Luxembourg* [2005] ECR I-3067, paragraphs 31 and 32).

36 It should also be recalled that, as stated in paragraph 32 of this judgment, the framework agreement confers on the Member States and/or management and labour the responsibility for defining the status of the employment contract or employment relationship for the period of leave provided for under that framework agreement.

37 Since the grant of such leave affects the organisation of the business or of the service for which the worker enjoying that leave is employed and may in particular necessitate recruitment of a replacement, it is reasonable that national law should attach strict conditions to the grant of any alterations of the period of such leave.

38 Nevertheless, considering that the framework agreement aims to make available to men and women workers an individual right to parental leave on the grounds of the birth or adoption of a child to enable them to take care of that child, it is also reasonable that, with a view to obtaining an alteration of the period of that leave, the worker should be able to rely on events occurring after the application for or grant of leave, which, incontestably, make it impossible for him to look after the child under the conditions originally foreseen.

39 With regard to the main proceedings, the collective agreement, first, grants the official concerned, on unforeseeable and justified grounds, the right to obtain, at his request, an alteration of the date and duration of the child-care leave which he has been granted. Second, the collective agreement recognises as a justified ground any unforeseeable and fundamental change in the conditions of child-care which could not be taken into account at the time when the child-care leave application was made.

40 As regards the rules for application of the collective agreement, they cite, as justified grounds thus envisaged, events such as the serious illness or death of a child or of the other parent, and divorce. On the other hand, those rules do not, in principle, recognise a move to another place, the coming into existence of another employment relationship, or a new pregnancy as unforeseeable and justified grounds.

41 While a move to another place or the coming into existence of another employment relationship, which depend only on the volition of the persons concerned, may justifiably be regarded as not unforeseeable, pregnancy cannot, in that respect, be compared to such events.

42 Being essentially unforeseeable, pregnancy is comparable rather to events such as the serious illness or death of the child or of the other parent, and to divorce.

43 Those events, considered by the rules at issue in the main proceedings to be unforeseeable, constitute in each case fundamental changes to family life and to relationships between the parents on the one hand, and between the parents and the child on the other hand, characterised by the loss of or a substantial diminution in the availability of one of the members of that family, or by the loss of or substantial diminution in the genuine ability of the parent concerned to bring up the child or for it to be brought up. Those events therefore prevent the child from being cared for under the conditions of child-care foreseen at the time when child-care leave was requested, in accordance with the purpose of such leave.

44 It cannot be disputed that pregnancy changes family relationships and that the risks which are associated with it, whether for the mother or for the fœtus in the womb, affect the availability of the person concerned and their ability to bring up the child during the child-care leave. That being said, pregnancy does not appear, as such, to bring about, in principle, fundamental changes or changes of such importance so as to make it impossible to care for the child in the conditions envisaged at the time when the child-care leave was requested.

45 It cannot, however, be ignored that pregnancy follows its own inevitable course and that, during the final period which precedes childbirth and in the first weeks following it, the woman concerned faces changes of an order that will prevent her, in her circumstances, from looking after her first child.

46 It is precisely that inevitable course which the Community legislature took into account when making available to pregnant workers a special right, that is to say a right to maternity leave of the kind provided for in Directive 92/85, which is intended, first, to protect a woman's biological condition during and after pregnancy and, second, 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 (see, to that effect, Case C-366/99 *Griesmar* [2001] ECR I-9383, paragraph 43; Case C-342/01 *Merino Gómez* [2004] ECR I-2605, paragraph 32; and *Commission* v *Luxembourg*, paragraph 32).

47 The Member States must therefore, in accordance with Article 8 of Directive 92/85, take the necessary measures to ensure that the women workers concerned are entitled to a continuous period of maternity leave of at least 14 weeks.

48 In that regard, it follows from the fifth and sixth recitals of the preamble to Directive 92/85 that the Community legislature intended to adhere to the objectives of the Community Charter of the fundamental social rights of workers, adopted at the Strasbourg European Council on 9 December 1989. Article 136 also refers to the European Social Charter signed at Turin on 18 October 1961 and revised at Strasbourg on 3 May 1996, to which in its original or revised version or both, all Member States are parties. Article 8 of the European Social Charter concerning the

right of employed women to protection of maternity, aims to provide them with a right to maternity leave of at least 12 weeks (original version) or at least 14 weeks (revised version).

49 In those circumstances, the right to maternity leave granted to pregnant workers must be regarded as a particularly important mechanism of protection under employment law. The Community legislature thus considered that the fundamental changes to the living conditions of the persons concerned during the period of at least 14 weeks preceding and after childbirth constituted a legitimate ground on which they could suspend their employment, without the public authorities or employers being allowed in whatever way to call the legitimacy of that ground into question.

50 As follows from the Court's case law referred to in paragraph 46 of this judgment, the protection granted to mothers in the form of maternity leave aims to help them avoid multiple burdens. During the final stages of her pregnancy, the generous care which has to be given to the first child in accordance with the objective of the parental leave provided for under the framework agreement, constitutes for the mother a multiple burden of a comparable kind and degree. It is therefore quite reasonable to require that such a burden be capable of being avoided by allowing the person concerned, on the basis of their pregnancy, to alter the period of that leave.

51 On the basis of the foregoing, it follows that the period of at least 14 weeks preceding and after childbirth must be regarded as a situation which restricts the achievement of the purpose of the parental leave provided for under the framework agreement and therefore as a justified ground for authorising an alteration of the period of that leave.

52 Pregnancy is, however, in general excluded by provisions of national law such as those at issue in the main proceedings from the justified grounds listed, whereas the serious illness or death of the child or of the other parent, and divorce, are listed as such justified grounds for authorising an alteration of the period of child-care leave.

53 In those circumstances, by not treating in an identical manner a situation which, with regard to the objective of the parental leave provided for under the framework agreement and the restrictions which may compromise its achievement, is in fact comparable to that resulting from the serious illness or death of the child or of the spouse, or from divorce, such provisions prove to be discriminatory, without such treatment being objectively justified.

54 According to settled case-law, observance of the principles of equality and non-discrimination requires that comparable situations must not be treated differently and that different situations must not be treated in the same way unless such treatment is objectively justified (see, in particular, Case C-248/04 *Koninklijke Coöperatie Cosun* [2006] ECR I-10211, paragraph 72, and Case C-303/05 *Advocaten voor de Wereld* [2007] ECR I-3633, paragraph 56).

55 Because discriminatory treatment resulting from provisions such as those at issue in the main proceedings are capable of affecting women only, those provisions, which define the conditions applicable to the employment relationship maintained during the child-care leave, constitute direct discrimination on grounds of sex prohibited by Article 2 of Directive 76/207 (see, to that effect, *Busch*, paragraph 38).

56 Moreover, the Court has already held that a period of leave guaranteed by Community law cannot affect the right to take another period of leave guaranteed by that law (*Commission* v *Luxembourg*, paragraph 33, and Case C-124/05 *Federatie Nederlandse Vakbeweging* [2006] ECR I-3423, paragraph 24).

57 Community law therefore precludes a decision of an employer such as that taken in this case on 10 December 2004, the consequence of which is that a pregnant worker is not permitted to obtain, at her request, an alteration of the period of her child-care leave at the time when she requests her maternity leave and which thus deprives her of the rights inherent in that maternity leave which result from Articles 8 and 11 of Directive 92/85.

58 In the light of the foregoing, the answers to the first and third questions referred must be that Article 2 of Directive 76/207, which prohibits all direct and indirect discrimination on grounds of sex as regards working conditions, and Articles 8 and 11 of Directive 92/85 concerning maternity leave, preclude national provisions governing child-care leave which, in so far as they fail to take into account changes affecting the worker concerned as a result of pregnancy during the period of at least 14 weeks preceding and after childbirth, do not allow the person concerned to obtain at her request an alteration of the period of her child-care leave at the time when she claims her rights to maternity leave and thus deprive her of the rights attaching to that maternity leave.

On the second question

59 An answer to the second question was requested only should the Court find that the national provisions in question in the main proceedings constitute indirect discrimination.

60 The finding in paragraph 55 of the present judgment makes clear that national provisions such as those in question in the main proceedings constitute, for the purposes of Article 2(2) of Directive 76/207, direct and not indirect discrimination.

61 An answer to the second question is not, therefore, required.

Costs

62 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fourth Chamber) hereby rules:

Article 2 of Council Directive 76/207/EEC 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, as amended by Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002, which prohibits all direct and indirect discrimination on grounds of sex as regards working conditions, and Articles 8 and 11 of Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (10th individual Directive within the meaning of Article 16(1) of

Directive 89/391/EEC), which govern maternity leave, preclude provisions of national law concerning child-care leave which, in so far as they fail to take into account changes affecting the worker concerned as a result of pregnancy during the period of at least 14 weeks preceding and after childbirth, do not allow the person concerned to obtain at her request an alteration of the period of her child-care leave at the time when she claims her rights to maternity leave and thus deprive her of the rights attaching to that maternity leave.

[Signatures]