JUDGMENT OF THE COURT (Third Chamber)

22 October 2009 *

In Case C-116/08,

REFERENCE for a preliminary ruling under Article 234 EC from the Hof van Cassatie (Belgium), made by decision of 25 February 2008, received at the Court on 17 March 2008, in the proceedings

Christel Meerts

v

Proost NV

THE COURT (Third Chamber),

composed of J.N. Cunha Rodrigues, President of the Second Chamber, acting as President of the Third Chamber, P. Lindh, A. Rosas, U. Lõhmus (rapporteur) and A. Ó Caoimh, Judges,

* Language of the case: Dutch.

Advocate General: J. Kokott,
Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 11 March 2009,

after considering the observations submitted on behalf of:

— Ms Meerts, by W. van Eeckhoutte, advocaat bij het Hof van Cassatie,

— Proost NV, by H. Geinger, advocaat bij het Hof van Cassatie,

— the Belgian Government, by L. Van den Broeck and C. Pochet, acting as Agents,

— the Greek Government, by E.-M. Mamouna, O. Patsopoulou, I. Bakopoulos and M. Apessos, acting as Agents,

— the French Government, by G. de Bergues and B. Messmer, acting as Agents,

— the Commission of the European Communities, by M. van Beek, acting as Agent,

after hearing the Opinion of the Advocate General at the sitting on 14 May 2009,

gives the following

Judgment

1 This reference for a preliminary ruling relates to the interpretation of Clause 2.4 to 2.7 of the framework agreement on parental leave concluded on 14 December 1995, which is annexed to 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), as amended by Council Directive 97/75/EC of 15 December 1997 (OJ 1998 L 10, p. 24), ('the framework agreement on parental leave').

2 The reference has been made in proceedings between Ms Meerts and her former employer, Proost NV, the appellant and the respondent in the main proceedings respectively, concerning the dismissal of Ms Meerts whilst she was on part-time parental leave.

Legal context

Community legislation

3 The purpose of Directive 96/34 is to put into effect the framework agreement on parental leave concluded between the general cross-industry organisations (the Union of Industrial and Employers' Confederations of Europe (UNICE), the European Centre of Enterprises with Public Participation and of Enterprises of General Economic Interest (CEEP) and the European Trade Union Confederation (ETUC)).

4 Under Article 2 of the directive, the final date for bringing into force the laws, regulations and administrative provisions necessary to comply with the directive was 3 June 1998 or 15 December 1999, depending on the Member States concerned.

5 The first recital in the preamble to the framework agreement on parental leave states:

'The … framework agreement [on parental leave] represents an undertaking by UNICE, CEEP and the ETUC to set out minimum requirements on parental leave …, as an important means of reconciling work and family life and promoting equal opportunities and treatment between men and women.'

6 Paragraph 5 of the general considerations of the framework agreement is worded as follows:

'Whereas the Council Resolution of 6 December 1994 recognises that an effective policy of equal opportunities presupposes an integrated overall strategy allowing for better organisation of working hours and greater flexibility, and for an easier return to working life, and notes the important role of the two sides of industry in this area and in offering both men and women an opportunity to reconcile their work responsibilities with family obligations'.

7 Paragraph 6 of the general considerations states:

'Whereas measures to reconcile work and family life should encourage the introduction of new flexible ways of organising work and time which are better suited to the changing needs of society and which should take the needs of both undertakings and workers into account'.

8 Clause 2 of the framework agreement on parental leave states:

'…

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:

(a) decide whether parental leave is granted on a full-time or part-time basis, in a piecemeal way or in the form of a time-credit system;

…

4. In order to ensure that workers can exercise their right to parental leave, Member States and/or management and labour shall take the necessary measures to protect workers against dismissal on the grounds of an application for, or the taking of, parental leave in accordance with national law, collective agreements or practices.

5. At the end of parental leave, workers shall have the right to return to the same job or, if that is not possible, to an equivalent or similar job consistent with their employment contract or employment relationship.

6. Rights acquired or in the process of being acquired by the worker on the date on which parental leave starts shall be maintained as they stand until the end of parental leave. At the end of parental leave, these rights, including any changes arising from national law, collective agreements or practice, shall apply.

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

9 The Royal Decree of 29 October 1997 on the introduction of a right to parental leave in the form of a career break (*Moniteur belge* of 7 November 1997, p. 29930) transposed Directive 96/34 with regard to employees working in the private sector.

10 Pursuant to Article 2(1) of that Royal Decree, the worker has the right to take parental leave in order to care for his child. He has the following options:

— to suspend performance of his employment contract for a period of three months;

— or, if in full-time employment, to continue his employment on a part-time basis with a reduction in working hours of 50% for a period of six months;

— or, if in full-time employment, to continue his employment on a part-time basis with a reduction in working hours of one fifth for a period of 15 months.

11 The general legislative framework for the career break scheme is established in Chapter IV, Section 5, of the Law on financial stabilisation containing social provisions of 22 January 1985 (*Moniteur belge* of 24 January 1985, p. 699), as amended ('Law on financial stabilisation').

12 The worker who takes parental leave on the basis of the Royal Decree of 29 October 1997 receives a career break allowance pursuant to Articles 100 and 102 of the Law on financial stabilisation, paid by the Office national de l'emploi (Belgian National Employment Office) under the Royal Decree of 2 January 1991 on payment of career break allowances *(Moniteur belge* of 12 January 1991, p. 691).

13 Article 101 of the Law on financial stabilisation provides:

'In the event that performance of the employment contract is suspended... or in the event that working hours are reduced..., the employer may not take any action unilaterally to terminate the employment relationship unless there is urgent cause as provided for in Article 35 of the Law of 3 July 1978 on employment contracts?(*Moniteur belge* of 22 August 1978, p. 9277; 'Law on employment contracts')?, or there is a sufficient ground for doing so.

…

That prohibition shall cease three months after the end of the suspension of performance of the employment contract or of the reduction in working hours.

The employer, who despite the provisions of the first paragraph terminates the employment contract where there is no urgent cause or sufficient ground to do so, shall pay the worker fixed-sum compensation equal to six months' salary, without prejudice to any compensation payable to the worker for breach of the employment contract.

…'

14 Article 102 of the Law on financial stabilisation provides:

'An allowance shall be paid to a worker who agrees with his employer a reduction in working hours of 1/5, 1/4, 1/3 or 1/2 of the normal full-time working hours or who requests the application of a collective employment agreement with similar rules or who invokes the provisions of Article 102a.

…'

15 Under Article 103 of that law:

'In the event of unilateral termination of the employment contract by the employer, the notice period applicable in respect of a worker who has reduced his working hours … shall be calculated as if the worker had not reduced his hours. The length of that notice period shall also be taken into account in determining the compensation [for dismissal] referred to in Article 39 of the Law [on employment contracts.]'

16 The questions of labour law relating to parental leave which are not governed by the Law on financial stabilisation, the Royal Decree of 29 October 1997 or the Royal Decree of 2 January 1991 continue to be governed by the general law on employment contracts, in particular the Law on employment contracts.

17 Article 39(1) of that law states:

‘In the case of a contract of indefinite duration, the party terminating the contract without urgent cause or without observing the period of notice laid down in Articles 59, 82, 83, 84 and 115 is required to pay the other party compensation equal to the current salary for the duration of the period of notice or for the period of notice remaining. The compensation shall however always be equal to the current salary for the duration of the period of notice where the contract is terminated by the employer in breach of Article 38(3) of this Law or Article 40 of the Law on employment of 16 March 1971.

The compensation shall include not only the current salary, but also the benefits acquired under the contract.’

18 Pursuant to Article 82(4) of the Law on employment contracts, notice periods are to be calculated on the basis of the number of years of service at the time when the notice begins to run.

The main proceedings and the question referred for a preliminary ruling

19 It is apparent from the case-file before the Court that Ms Meerts had been employed on a full-time basis since September 1992 by Proost NV under an employment contract of indefinite duration. From November 1996, she had various forms of career break and, from 18 November 2002, worked half-time as a result of parental leave, which was due to end on 17 May 2003.

20 On 8 May 2003, Ms Meerts was dismissed with immediate effect subject to payment of compensation for dismissal equal to 10 months' salary, calculated on the basis of the salary she was receiving at the time, which was reduced by half because of the equivalent reduction in her working hours.

21 She challenged the amount of that compensation for dismissal before the arbeidsrechtbank van Turnhout (Labour Court of Turnhout), claiming that Proost NV should be ordered to pay compensation for dismissal calculated on the basis of the full-time salary which she would have been receiving if she had not reduced her working hours in connection with parental leave.

22 Her application was dismissed by judgment of 22 November 2004. On appeal, the Arbeidshof te Antwerpen (Antwerp Higher Labour Court) upheld that judgment. In her further appeal, Ms Meerts submits that both at first instance and on appeal the courts interpreted national law without regard to the provisions of Directive 96/34.

23 In those circumstances the Hof van Cassatie (Court of Cassation) decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'Are Clauses 2.4, 2.5, 2.6 and 2.7 of the framework agreement on parental leave … to be interpreted as meaning that, where an employer unilaterally terminates an employment contract without urgent cause or without compliance with the statutory period of notice at a time when the worker is availing himself of arrangements for reduced working hours, the payment in lieu of notice that is due to the worker must be determined by reference to the basic salary calculated on the basis that the worker had not reduced his working hours as a form of parental leave in accordance with Clause [2].3(a) of [that] agreement?'

Admissibility

24 The Belgian Government and the Commission of the European Communities contend that, in the order for reference, the Hof van Cassatie does not set out the reasons why it considers that an answer from the Court is necessary for it to give judgment in the main proceedings. The Commission is of the opinion that, insofar as the national court only briefly states the pleas and the grounds of the appeal of the appellant in cassation and confines itself to quoting extracts from the judgment on appeal, that order does not comply with the requirements relating to the admissibility of a reference for a preliminary ruling as defined in the case-law.

25 It should be recalled that, according to settled case-law, it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court (see, in particular, Case C-415/93 *Bosman* [1995] ECR I-4921, paragraph 59, and Case C-466/04 *Acereda Herrera* [2006] ECR I-5341, paragraph 47).

26 Nevertheless, the Court cannot give a preliminary ruling on a question referred where it is quite obvious that the interpretation of Community law sought by the national court bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to that question (see, to that effect, in particular, *Bosman*, paragraph 61; *Acereda Herrera*, paragraph 48, and Joined Cases C-94/04 and C-202/04 *Cipolla and Others* [2006] ECR I-11421, paragraph 25).

27 In that regard, the order for reference must set out the precise reasons why the national court was unsure as to the interpretation of Community law and why it considered it necessary to refer questions to the Court for a preliminary ruling. Against that background, it is essential that the national court provide at the very least some explanation of the reasons for the choice of the Community provisions which it requires

to be interpreted and of the link it establishes between those provisions and the national legislation applicable to the dispute in the main proceedings (see, in particular, order in Case C-167/94 *Grau Gomis and Others* [1995] ECR I-1023, paragraph 9; Joined Cases C-453/03, C-11/04, C-12/04 and C-194/04 *ABNA and Others* [2005] ECR I-10423, paragraph 46; and Case C-380/05 *Centro Europa 7* [2008] ECR I-349, paragraph 54).

28 In the present case the Court has sufficient information to enable it to give an answer that will be of use to the national court.

29 First, the order for reference sets out, briefly but precisely, the facts which gave rise to the main proceedings and the applicable national law. It makes it clear that this dispute arises from the unilateral termination by Proost NV of the full-time employment contract with Ms Meerts without observing the statutory period of notice, at a time when she was on half-time parental leave. The dispute relates to the compensation to which she is entitled on that ground, as that compensation was determined by the employer on the basis of the reduced salary which she was receiving by reason of parental leave and not on the basis of the salary corresponding to full-time work.

30 Second, the order for reference sets out the Community legislation of which the referring court seeks an interpretation and explains the link between that legislation and the national legislation applicable in the main proceedings.

31 In these circumstances, the objection raised by the Belgian Government and the Commission cannot be accepted, and thus the reference for a preliminary ruling is admissible.

Concerning the question referred for a preliminary ruling

32 As a preliminary point, it should be borne in mind that, by its question, the referring court seeks an interpretation of Clause 2.4 to 2.7 of the framework agreement on parental leave in the context of proceedings relating to the calculation of the compensation for dismissal payable on the ground that the employer failed to observe the statutory period of notice.

33 It is apparent, however, from the wording of Clause 2 that under point 4 it seeks to protect workers against dismissal on the grounds of an application for, or the taking of, parental leave and under point 5 it recognises the right of workers, at the end of parental leave, to return to the same job or to an equivalent or similar job.

34 It follows that, by its question, the national court is essentially asking whether Clause 2.6 and 2.7 of the framework agreement on parental leave must be interpreted as precluding, where an employer unilaterally terminates a worker's full-time employment contract of indefinite duration, without urgent cause or without observing the statutory period of notice, whilst the worker is on part-time parental leave, the compensation to be paid to the worker from being determined on the basis of the reduced salary being received when the dismissal takes place.

35 As is apparent from the first paragraph in the preamble to the framework agreement on parental leave and from paragraph 5 of its general considerations, the framework agreement constitutes an undertaking by the two sides of industry, represented by the general cross-industry organisations, namely UNICE, CEEP and the ETUC, to introduce, through minimum requirements, measures to promote equal opportunities and treatment between men and women, by offering them an opportunity to reconcile their work responsibilities with family obligations.

36 It is also clear from paragraph 6 of the general considerations of the framework agreement that measures to reconcile work and family life should encourage the introduction in the Member States of new flexible ways of organising work and time which are better suited to the changing needs of society, taking the needs of both undertakings and workers into account.

37 The framework agreement on parental leave is in line with the fundamental objectives enshrined in paragraph 16 of the Community Charter of the Fundamental Social Rights of Workers on equal treatment for men and women, to which the framework agreement refers and which is also mentioned in Article 136 EC, objectives which are associated with the improvement of living and working conditions and with the existence of proper social protection for workers, in the present case those who have applied for or taken parental leave.

38 From that point of view, Clause 2.6 of the framework agreement on parental leave states that rights acquired or in the process of being acquired by the worker on the date on which parental leave starts are to be maintained as they stand until the end of parental leave.

39 It is apparent from both the wording of Clause 2.6 and its context that that provision is intended to avoid the loss of or reduction in rights derived from an employment relationship, acquired or being acquired, to which the worker is entitled when he starts parental leave, and to ensure that, at the end of that leave, with regard to those rights, he will find himself in the same situation as that in which he was before the leave (see, to that effect, Case C-537/07 *Gómez-Limón Sánchez-Camacho* [2009] ECR I-6525, paragraph 39).

40 It is true that the concept of '[r]ights acquired or in the process of being acquired' referred to in Clause 2.6 is not defined in the framework agreement on parental leave and nor does that agreement refer to the law of the Member States for the definition of that concept.

41 However, it follows from the need for uniform application of Community law and the principle of equality that the terms of a provision of Community law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an autonomous and uniform interpretation throughout the European Community, having regard to the context of the provision and the objective pursued by the legislation in question (see, in particular, Case 327/82 *Ekro* [1984] ECR 107, paragraph 11; Case C-323/03 *Commission* v *Spain* [2006] ECR I-2161, paragraph 32, and Case C-13/05 *Chacón Navas* [2006] ECR I-6467, paragraph 40).

42 Having regard to the objective of equal treatment between men and women which is pursued by the framework agreement on parental leave, as recalled in paragraph 35 above, Clause 2.6 must be interpreted as articulating a particularly important principle of Community social law which cannot therefore be interpreted restrictively (see, by analogy, Case C-173/99 *BECTU* [2001] ECR I-4881, paragraph 43; Case C-307/05 *Del Cerro Alonso* [2007] ECR I-7109, paragraph 38; Case C-268/06 *Impact* [2008] ECR I-2483, paragraph 114; and Joined Cases C-350/06 and C-520/06 *Schultz-Hoff* [2009] ECR I-179, paragraph 22).

43 It is clear from the objectives of the framework agreement on parental leave, recalled in paragraphs 35 to 37 above, that the concept of '[r]ights acquired or in the process of being acquired' within the meaning of Clause 2.6 of the framework agreement covers all the rights and benefits, whether in cash or in kind, derived directly or indirectly from the employment relationship, which the worker is entitled to claim from the employer at the date on which parental leave starts.

44 Such rights and benefits include all those relating to employment conditions, such as the right of a full-time worker on part-time parental leave to a period of notice in the event of the employer's unilateral termination of a contract of indefinite duration, the length of which depends on the worker's length of service in the company and the aim of which is to facilitate the search for a new job.

45 Clause 2.7 of the framework agreement on parental leave refers to the Member States and/or to management and labour for the determination of the status of the employment contract or employment relationship during the period of parental leave, including the extent to which the worker may, during that period, continue to acquire rights vis-à-vis the employer. On the basis of the purpose and structure of the framework agreement, that reference is to be understood without prejudice to Clause 2.6, which states that '[r]ights acquired or in the process of being acquired by the worker on the date on which parental leave starts shall be maintained as they stand until the end of parental leave'.

46 That body of rights and benefits would be compromised if, where the statutory period of notice was not observed in the event of dismissal during part-time parental leave, a worker employed on a full-time basis lost the right to have the compensation for dismissal due to him determined on the basis of the salary relating to his employment contract.

47 As the Advocate General observes in points 54 and 55 of her Opinion, national legislation which would result in the rights flowing from the employment relationship being reduced in the event of parental leave could discourage workers from taking such leave and could encourage employers to dismiss workers who are on parental leave rather than other workers. This would run directly counter to the aim of the framework agreement on parental leave, one of the objectives of which is to make it easier to reconcile working and family life.

48 At the hearing, the Belgian Government explained that, in its view, in accordance with the national legislation applicable, where a worker employed on a full-time basis and on full-time parental leave, the maximum duration of which is three months, was dismissed without notice, his compensation would be determined on the basis of the salary relating to his contract, whereas if the dismissal concerns a worker also employed on a full-time basis, but on part-time parental leave, whether this corresponds to half or one fifth of normal working hours, the salary to be taken into consideration is that being received during parental leave, on the ground that, during that period, his full-time employment contract is converted into a part-time employment contract.

49 According to that government, that measure is justified, since there would be discrimination if two workers employed on a full-time basis, one on part-time parental leave and the other working full-time, were entitled in the event of dismissal to receive equivalent compensation, since two different situations would be treated in the same way.

50 Such an argument cannot be accepted.

51 It is true that, whilst on part-time parental leave, a worker employed under a full-time contract does not work the same number of hours as someone working full-time. However, that does not mean that the two workers are in a different position in relation to the initial employment contract with their employer.

52 Under national legislation such as that applicable in the main proceedings, the full-time worker, whilst on part-time parental leave, continues to acquire years of service in the company, which are taken into account in calculating the statutory period of notice in the event of dismissal, as if he had not reduced his working hours.

53 In addition, the argument of the Belgian Government does not take into account the fact that during part-time parental leave the full-time worker receives, in addition to the salary relating to the hours that he continues to work, a fixed allowance, paid by the Office national de l'emploi, which is deemed to compensate for the reduction in salary.

54 Furthermore, the period during which a full-time worker is on part-time parental leave is of limited duration.

55 Finally, in the two cases compared by the Belgian Government, the unilateral termination by the employer would relate to a full-time employment contract.

56 It therefore follows that Clause 2.6 and 2.7 of the framework agreement on parental leave must be interpreted as precluding, where an employer unilaterally terminates a worker's full-time employment contract of indefinite duration, without urgent cause or without observing the statutory period of notice, whilst the worker is on part-time parental leave, the compensation to be paid to the worker from being determined on the basis of the reduced salary being received when the dismissal takes place.

Costs

57 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 (Third Chamber) hereby rules:

Clause 2.6 and 2.7 of the framework agreement on parental leave concluded on 14 December 1995, which is annexed to Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC, as amended by Council Directive 97/75/EC of 15 December 1997, must be interpreted as precluding, where an employer unilaterally terminates a worker's full-time employment contract of indefinite duration, without urgent cause or without observing the statutory period of notice, whilst the worker is on

part-time parental leave, the compensation to be paid to the worker from being determined on the basis of the reduced salary being received when the dismissal takes place.

[Signatures]