SUMMARY

ECJ 21 May 2015, case C-65/14 (Charlotte Rosselle –v- INAMI and UNM), Maternity and parental leave

Facts

Mrs Rosselle was a teacher in the Flemish Community. She was a public servant. On 1 September 2009 she (i) obtained non-active status in order to teach a language immersion classes in the French Community, "non-active" meaning that she continued to be a public servant but without pay for the time being and (ii) became a salaried employee, teaching in language immersion classes in the French Community. She was already pregnant on 1 September 2009. She went on maternity leave on 11 January 2010. She applied to the sickness insurance fund to which she was affiliated, the UNM, for a maternity allowance. Her application was turned down because she did not satisfy the requirement under Belgian law that a worker must have worked for at least 120 days as a salaried employee in the six months preceding her maternity leave. Belgian law exempts dismissed public servants from this requirement, but not non-active public servants.

National proceedings

Mrs Rosselle appealed against the rejection of her application to the *Tribunal de travail de Nivelles*, which asked the ECJ whether Belgian law infringes Maternity Directive 92/85 and/or Sex Discrimination Directive 2006/54.

ECJ's findings

Directive 92/85 requires the Member States to ensure that workers are entitled to a continuous period of maternity leave of at least 14 weeks, during which they must receive an "adequate" allowance. Article 11(4) provides that that allowance may be made conditional upon the worker fulfilling certain eligibility conditions, adding: "These conditions may under no circumstances provide for periods of employment in excess of 12 months immediately prior to the presumed date of confinement" (§29-36).
Directive 92/85 is the tenth individual directive pursuant to Framework Directive 89/391 on occupational safety and health. Thus, the provisions of the Framework Directive also apply to Directive 92/85. One of those provisions is that it applies to all sectors of activity, both public and private (§37).
In some language versions, the second paragraph of Article 11(4) of Directive 92/85 refers to periods (plural) of previous employment. The other versions do not exclude the possibility that there may be more than one previous period of employment (§38-39).
Directive 92/85 does not lay down any condition as to the nature of previous periods of employment (§40).
It follows that a Member State may not impose a new six-month minimum contribution requirement prior to eligibility for a maternity allowance merely because the employment status of the worker has changed (§41-42).
Moreover, to require a new minimum contribution period upon each change of employment status could undermine the minimum level of protection under Directive 92/85 (§43-46).
Given the above, there is no need to address Directive 2006/54 (§50).

Ruling

The second subparagraph of Article 11(4) of Council Directive 92/85 must be interpreted as precluding a Member State from refusing to grant a worker a maternity allowance on the ground that, as an established public servant having obtained non-active status for personal reasons in order to work as a salaried employee, she has not completed, in the context of her work as a salaried employee, the minimum contribution period required under national law in order to be eligible to receive that maternity allowance, even if she has worked for over 12 months immediately prior to the presumed date of confinement.

Creator: European Court of Justice (ECJ)
Verdict at: 2015-04-21
Case number: C-65/14