

SUMMARY

ECJ 13 February 2014, joined cases C-512/11 and C-513/11 (Terveys- ja sosiaalialan neuvottelujärjestö; TSN ry - v - Terveyspalvelualan Liitto ry and Ylemmät Toimihenkilöt; YTN ry - v - Teknologiateollisuus ry, Nokia Siemens Networks Oy), Working time and leave, Maternity and parental leave

Facts

Ms Kultarinta (the plaintiff in case C-512/11) went on maternity leave, during which she continued to receive full pay. Following her maternity leave, she took unpaid parental leave, as provided under Finnish law, for the period 19 March 2009 to 4 April 2011. In 2010 she notified her employer that she was pregnant again and therefore wished to interrupt her (unpaid) parental leave and to start a new period of (paid) maternity leave. Her employer agreed to the interruption of the parental leave but refused to pay her salary during the new period of maternity leave. This was in accordance with the relevant collective agreement, which provided that, in order to receive remuneration during a period of maternity leave, a worker must move directly from work (or paid leave) to maternity leave.

The case of Ms Novano (the plaintiff in case C-513/11) was similar to that of Ms Kultarinta.

National proceedings

Both plaintiffs brought an action before the Labour Court. It referred questions to the ECJ. The court asked whether Directive 2006/54 on equal treatment of men and women in employment (the 'Recast Directive') and Directive 92/85 (the 'Maternity Directive') preclude national provisions under which a worker moving from unpaid leave to maternity leave is not paid remuneration during the maternity leave.

ECJ's findings

Although the referring court has limited its questions to the interpretation of Directives 2006/54 and 92/85, its questions must be understood as relating to Directive 96/34 on parental leave (§ 32-35).

The choice of a worker to exercise her right to parental leave should not affect the conditions on which she may exercise her right to take a different form of leave (§ 48).

The effect of a condition such as that at issue in the main proceedings is to require a worker, when she decides to take a period of parental leave, to renounce paid maternity leave in advance in the event that she should need to interrupt her parental leave to take maternity leave immediately afterwards. Consequently, a worker would be dissuaded from taking such parental leave. Given that a new pregnancy is not always foreseeable, a worker is not always able to know at the time of her decision to take parental leave, whether she will need to take maternity leave during that leave. Accordingly, a condition such as that at issue in the main proceedings undermines the effectiveness of Directive 96/34 (§ 49-51).

Ruling

Directive 96/34 [...] must be interpreted as precluding a provision of national law, such as that provided for in the collective agreements at issue in the main proceedings, pursuant to which a pregnant worker who interrupts a period of unpaid parental leave within the meaning of that directive to take maternity leave within the meaning of Council Directive 92/85 with immediate effect [...] does not benefit from the remuneration to which she would have been entitled had that period of maternity leave been preceded by a minimum period of resumption of work.

Creator: European Court of Justice (ECJ)

Verdict at: 2014-02-13

Case number: C-512/11 and C-513/11