JUDGMENT OF THE COURT (First Chamber)

19 June 2014 (*)

(Reference for a preliminary ruling — Article 45 TFEU — Directive 2004/38/EC — Article 7 — 'Worker' — Union citizen who gave up work because of the physical constraints of the late stages of pregnancy and the aftermath of childbirth)

In Case C-507/12,

REQUEST for a preliminary ruling under Article 267 TFEU from the Supreme Court of the United Kingdom, made by decision of 31 October 2012, received at the Court on 8 November 2012, in the proceedings

Jessy Saint Prix

v

Secretary of State for Work and Pensions,

intervening party:

AIRE Centre,

THE COURT (First Chamber),

composed of A. Tizzano (Rapporteur), President of the Chamber, A. Borg Barthet, E. Levits, M. Berger and S. Rodin, Judges,

Advocate General: N. Wahl,

Registrar: M.-A. Gaudissart, Head of Unit,

having regard to the written procedure and further to the hearing on 14 November 2013,

after considering the observations submitted on behalf of:

– Ms Saint Prix, by R. Drabble QC, instructed by M. Spencer, Solicitor,

– AIRE Centre, by J. Stratford QC, and M. Moriarty, Barrister, instructed by D. Das, Solicitor,

– the United Kingdom Government, by V. Kaye and A. Robinson, acting as Agents, assisted by B. Kennelly and J. Coppel, Barristers,

– the Polish Government, by B. Majczyna and M. Szpunar, acting as Agents,

– the European Commission, by C. Tufvesson, and by J. Enegren and M. Wilderspin, acting as Agents,

– the EFTA Surveillance Authority, by X. Lewis, and by M. Moustakali and C. Howdle, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 12 December 2013,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of 'worker' for the purposes of Article 45 TFEU and Article 7 of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77, and corrigenda OJ 2004 L 229, p. 35, and OJ 2005 L 197, p. 34).

2 The request has been made in the context of proceedings between Ms Saint Prix and the Secretary of State for Work and Pensions ('the Secretary of State') concerning the latter's refusal to grant income support to Ms Saint Prix.

Legal context

EU law

3 Recitals 2 to 4 and 31 in the preamble to Directive 2004/38 read as follows:

'(2) The free movement of persons constitutes one of the fundamental freedoms of the internal market, which comprises an area without internal frontiers, in which freedom is ensured in accordance with the provisions of the [EC] Treaty.

(3) Union citizenship should be the fundamental status of nationals of the Member States when they exercise their right of free movement and residence. It is therefore necessary to codify and review the existing Community instruments dealing separately with workers, self-employed persons, as well as students and other inactive persons in order to simplify and strengthen the right of free movement and residence of all Union citizens.

(4) With a view to remedying this sector-by-sector, piecemeal approach to the right of free movement and residence and facilitating the exercise of this right, there needs to be a single legislative act to amend Council Regulation (EEC) No 1612/68 of 15 October 1968 on freedom of movement for workers within the Community [(OJ English Special Edition 1968(II), p. 475), as amended by Regulation (EEC) No 2434/92 of 27 July 1992 (OJ 1992 L 245, p. 1)], and to repeal the following acts: Council Directive 68/360/EEC of 15 October 1968 on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families [(OJ Engish Special Edition 1968(II), p. 485)], Council Directive 73/148/EEC of 21 May 1973 on the abolition of restrictions on movement and residence within the Community for nationals of Member States with regard to establishment and the provision of services [(OJ 1973 L 172, p. 14)], Council Directive 90/364/EEC of 28 June 1990 on the right of residence [(OJ 1990 L 180, p. 26)], Council Directive 90/365/EEC of 28 June 1990 on the right of residence for employees and self-employed persons who have ceased their occupational activity [(OJ 1990 L 180, p. 28)] and Council Directive 93/96/EEC of 29 October 1993 on the right of residence for students [(OJ 1993 L 317, p. 59)].

...

(31) This Directive respects the fundamental rights and freedoms and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In accordance with the prohibition of discrimination contained in the Charter, Member States should implement this Directive without discrimination between the beneficiaries of this Directive on grounds such as sex, race, colour, ethnic or social origin, genetic characteristics, language, religion or beliefs, political or other opinion, membership of an ethnic minority, property, birth, disability, age or sexual orientation'.

4 Article 1(a) of Directive 2004/38 states:

'This Directive lays down:

(a) the conditions governing the exercise of the right of free movement and residence within the territory of the Member States by Union citizens and their family members'.

5 Article 7 of that directive, entitled 'Right of residence for more than three months', provides in paragraphs 1 and 3:

'1. All Union citizens shall have the right of residence on the territory of another Member State for a period of longer than three months if they:

(a) are workers or self-employed persons in the host Member State ...

...

3. For the purposes of paragraph 1(a), a Union citizen who is no longer a worker or self-employed person shall retain the status of worker or self-employed person in the following circumstances:

(a) he/she is temporarily unable to work as the result of an illness or accident;

(b) he/she is in duly recorded involuntary unemployment after having been employed for more than one year and has registered as a job-seeker with the relevant employment office;

(c) he/she is in duly recorded involuntary unemployment after completing a fixed-term employment contract of less than a year or after having become involuntarily unemployed during the first 12 months and has registered as a job-seeker with the relevant employment office. In this case, the status of worker shall be retained for no less than six months;

(d) he/she embarks on vocational training. Unless he/she is involuntarily unemployed, the retention of the status of worker shall require the training to be related to the previous employment.'

6 Article 16(1) and (3) of the same directive provides:

'1. Union citizens who have resided legally for a continuous period of five years in the host Member State shall have the right of permanent residence there. ...

...

3. Continuity of residence shall not be affected by temporary absences not exceeding a total of six months a year, or by absences of a longer duration for compulsory military service, or by one absence of a maximum of 12 consecutive months for important reasons such as pregnancy and

childbirth, serious illness, study or vocational training, or a posting in another Member State or a third country.'

United Kingdom law

7 The legislation which governs income support is the Social Security Contributions and Benefits Act 1992 and the Income Support (General) Regulations 1987.

8 Income support is a means-tested benefit granted to various categories of persons which include, by virtue of regulation 4ZA of those Regulations, in conjunction with paragraph 14(b) of Schedule IB thereto, women who are or have 'been pregnant but only for the period commencing 11 weeks before [their] expected week of confinement and ending 15 weeks after the date on which [their] pregnancy ends'.

9 The granting of income support requires, inter alia, according to section 124(l)(b) of the Social Security Contributions and Benefits Act 1992, that the income of the beneficiary should not exceed the prescribed 'applicable amount'. Where that amount is 'nil', no benefit is granted.

10 Under paragraph 17 of Schedule 7 to the Income Support (General) Regulations 1987, the applicable amount prescribed for a 'person from abroad' is 'nil'.

11 Regulation 21AA(1) of those regulations defines a 'person from abroad' as being 'a claimant who is not habitually resident in the United Kingdom …'.

12 According to regulation 21AA(2) of those regulations, to be considered as habitually resident in the United Kingdom, the income support claimant must have a 'right to reside' in that Member State.

13 According to regulation 21AA(4) of those regulations:

'A claimant is not a person from abroad if he is —

(a) a worker for the purposes of [Directive 2004/38];

(b) a self-employed person for the purposes of that Directive;

(c) a person who retains a status referred to in sub-paragraph (a) or (b) pursuant to Article 7(3) of that Directive;

(d) a person who is a family member of a person referred to in sub-paragraph (a), (b) or (c) within the meaning of Article 2 of that Directive;

(e) a person who has a right to reside permanently in the United Kingdom by virtue of Article 17 of that Directive.'

The dispute in the main proceedings and the questions referred for a preliminary ruling

14 Ms Saint Prix is a French national who entered the United Kingdom on 10 July 2006 where she worked, mainly as a teaching assistant, from 1 September 2006 until 1 August 2007. She then enrolled on a Post-Graduate Certificate in Education course at the University of London, the envisaged period of study being from 17 September 2007 until 27 June 2008.

15 During that period she became pregnant, with an expected date of confinement of 2 June 2008.

16 On 22 January 2008, hoping to find work in secondary schools, Ms Saint Prix registered with an

employment agency and, on 1 February 2008, she withdrew from the course that she had been attending at the University of London. As no secondary school work was available, she took agency positions working in nursery schools. On 12 March 2008, when she was nearly six months pregnant, Ms Saint Prix stopped that work, however, on the grounds that the demands of caring for nursery school children had become too strenuous for her. She looked for a few days, without success, for work that was more suited to her pregnancy.

17 On 18 March 2008, that is, 11 weeks before her expected date of confinement, Ms Saint Prix made a claim for income support. As that claim was refused by the Secretary of State by decision of 4 May 2008, she brought an appeal before the First Tier Tribunal.

18 On 21 August 2008, namely three months after the premature birth of her child, Ms Saint Prix resumed work.

19 By decision of 4 September 2008, the First Tier Tribunal upheld her appeal. However, on 7 May 2010, the Upper Tribunal upheld the appeal brought by the Secretary of State against that decision. The Court of Appeal confirmed the decision of the Upper Tribunal and Ms Saint Prix then brought the matter before the referring court.

20 That court asks whether a pregnant woman who temporarily gives up work because of her pregnancy is to be considered a 'worker' for the purposes of the freedom of movement for workers as laid down in Article 45 TFEU and of the right of residence conferred by Article 7 of Directive 2004/38.

21 In that regard, the referring court states that neither Article 45 TFEU nor Article 7 of that directive defines 'worker'.

22 The referring court thus considers, in essence, that whereas, when adopting that directive, the EU legislature intended to codify the existing legislation and case-law, it nevertheless did not intend to exclude further development of the concept of 'worker' that takes into account situations not expressly considered when it was adopted. The Court may, therefore, taking into account special circumstances such as those characterising pregnancy and the immediate aftermath of childbirth, decide to extend this concept to pregnant women who give up work for a reasonable period.

23 In those circumstances the Supreme Court decided to stay the proceedings and to refer the following questions to the Court:

'1. Is the right of residence conferred upon a "worker" in Article 7 of [Directive 2004/38] to be interpreted as applying only to those (i) in an existing employment relationship, (ii) (at least in some circumstances) seeking work, or (iii) covered by the extensions in Article 7(3) [of that directive], or is [Article 7 of that directive] to be interpreted as not precluding the recognition of further persons who remain "workers" for this purpose?

2. (a) If the latter, does it extend to a woman who reasonably gives up work, or seeking work, because of the physical constraints of the late stages of pregnancy (and the aftermath of childbirth)?

(b) If so, is she entitled to the benefit of the national law's definition of when it is reasonable for her to do so?'

Consideration of the questions referred

24 By its questions, which it is appropriate to consider together, the referring court asks, in essence,

whether EU law, and in particular Article 45 TFEU and Article 7 of Directive 2004/38, are to be interpreted as meaning that a woman who gives up work, or seeking work, because of the physical constraints of the late stages of pregnancy and the aftermath of childbirth, retains the status of 'worker' within the meaning of those articles.

25 In order to answer those questions, it should be stated at the outset that it is apparent from recitals 3 and 4 in the preamble to that directive that the aim of the directive is to remedy the sector-by-sector piecemeal approach to the primary and individual right of Union citizens to move and reside freely within the territory of the Member States, in order to facilitate the exercise of that right by providing a single legislative act codifying and revising the instruments of EU law which preceded that directive (see, to that effect, *Ziolkowski* and *Szeja*, C-424/10 and C-425/10, EU:C:2011:866, paragraph 37).

26 In that regard, it is apparent from Article 1(a) of Directive 2004/38 that that directive is intended to set out the conditions governing the exercise of that right, which include, where residence is desired for a period of longer than three months, in particular the condition laid down in Article 7(1)(a) of that directive that Union citizens must be workers or self-employed persons in the host Member State (see, to that effect, *Brey*, C-140/12, EU:C:2013:565, paragraph 53 and the case-law cited).

27 Article 7(3) of Directive 2004/38 provides that, for the purposes of paragraph 7(1)(a) of that directive, a Union citizen who is no longer a worker or self-employed person shall nevertheless retain the status of worker or self-employed person in specific cases, namely where he is temporarily unable to work as the result of an illness or accident, where, in certain situations, he is in involuntary unemployment, or where, under specified conditions, he embarks on vocational training.

28 However, Article 7(3) of Directive 2004/38 does not expressly envisage the case of a woman who is in a particular situation because of the physical constraints of the late stages of her pregnancy and the aftermath of childbirth.

29 In that regard, the Court has consistently held that pregnancy must be clearly distinguished from illness, in that pregnancy is not in any way comparable with a pathological condition (see to that effect, inter alia, *Webb*, C-32/93, EU:C:1994:300, paragraph 25 and the case-law cited).

30 It follows that a woman in the situation of Ms Saint Prix, who temporarily gives up work because of the late stages of her pregnancy and the aftermath of childbirth, cannot be regarded as a person temporarily unable to work as the result of an illness, in accordance with Article 7(3)(a) of Directive 2004/38.

31 However, it does not follow from either Article 7 of Directive 2004/38, considered as a whole, or from the other provisions of that directive, that, in such circumstances, a citizen of the Union who does not fulfil the conditions laid down in that article is, therefore, systematically deprived of the status of 'worker', within the meaning of Article 45 TFEU.

32 The codification, sought by the directive, of the instruments of EU law existing prior to that directive, which expressly seeks to facilitate the exercise of the rights of Union citizens to move and reside freely within the territory of the Member States, cannot, by itself, limit the scope of the concept of worker within the meaning of the FEU Treaty.

33 In that regard, it must be noted that, according to the settled case-law of the Court, the concept of 'worker', within the meaning of Article 45 TFEU, in so far as it defines the scope of a fundamental freedom provided for by the FEU Treaty, must be interpreted broadly (see, to that effect, *N.*, C-46/12, EU:C:2013:97, paragraph 39 and the case-law cited).

34 Accordingly, the Court has held that any national of a Member State, irrespective of his place of residence and of his nationality, who has exercised the right to freedom of movement for workers and who has been employed in a Member State other than that of his residence falls within the scope of Article 45 TFEU (see, inter alia, *Ritter-Coulais*, C-152/03, EU:C:2006:123, paragraph 31, and *Hartmann*, C-212/05, EU:C:2007:437, paragraph 17).

35 The Court has thus also held that, in the context of Article 45 TFEU, a person who, for a certain period of time, performs services for and under the direction of another person in return for which he receives remuneration must be considered to be a worker. Once the employment relationship has ended, the person concerned, as a rule, loses the status of worker, although that status may produce certain effects after the relationship has ended, and a person who is genuinely seeking work must also be classified as a worker (*Caves Krier Frères*, C-379/11, EU:C:2012:798, paragraph 26 and the case-law cited).

36 Consequently, and for the purposes of the present case, it must be pointed out that freedom of movement for workers entails the right for nationals of Member States to move freely within the territory of other Member States and to stay there for the purposes of seeking employment (see, inter alia, *Antonissen*, C-292/89, EU:C:1991:80, paragraph 13).

37 It follows that classification as a worker under Article 45 TFEU, and the rights deriving from such status, do not necessarily depend on the actual or continuing existence of an employment relationship (see, to that effect, *Lair*, 39/86, EU:C:1988:322, paragraphs 31 and 36).

38 In those circumstances, it cannot be argued, contrary to what the United Kingdom Government contends, that Article 7(3) of Directive 2004/38 lists exhaustively the circumstances in which a migrant worker who is no longer in an employment relationship may nevertheless continue to benefit from that status.

39 In the present case, it is clear from the order for reference, a finding not contested by the parties in the main proceeding, that Ms Saint Prix was employed in the territory of the United Kingdom before giving up work, less than three months before the birth of her child, because of the physical constraints of the late stages of pregnancy and the immediate aftermath of childbirth. She returned to work three months after the birth of her child, without having left the territory of that Member State during the period of interruption of her professional activity.

40 The fact that such constraints require a woman to give up work during the period needed for recovery does not, in principle, deprive her of the status of 'worker' within the meaning Article 45 TFEU.

41 The fact that she was not actually available on the employment market of the host Member State for a few months does not mean that she has ceased to belong to that market during that period, provided she returns to work or finds another job within a reasonable period after confinement (see, by analogy, *Orfanopoulos and Oliveri*, C-482/01 and C-493/01, EU:C:2004:262, paragraph 50).

42 In order to determine whether the period that has elapsed between childbirth and starting work again may be regarded as reasonable, the national court concerned should take account of all the specific circumstances of the case in the main proceedings and the applicable national rules on the duration of maternity leave, in accordance with Article 8 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 (tenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) (OJ 1992 L 348, p. 1).

43 The approach adopted in paragraph 41 of the present judgment is consistent with the objective

43 The approach adopted in paragraph 41 of the present judgment is consistent with the objective pursued by Article 45 TFEU of enabling a worker to move freely within the territory of the other Member States and to stay there for the purpose of employment (see *Uecker and Jacquet*, C-64/96 and C-65/96, EU:C:1997:285, paragraph 21).

44 As the Commission contends, a Union citizen would be deterred from exercising her right to freedom of movement if, in the event that she was pregnant in the host State and gave up work as a result, if only for a short period, she risked losing her status as a worker in that State.

45 Furthermore, it must be pointed out that EU law guarantees special protection for women in connection with maternity. In that regard, it should be noted that Article 16(3) of Directive 2004/38 provides, for the purpose of calculating the continuous period of five years of residence in the host Member State allowing Union citizens to acquire the right of permanent residence in that territory, that the continuity of that residence is not affected, inter alia, by an absence of a maximum of 12 consecutive months for important reasons such as pregnancy and childbirth.

46 If, by virtue of that protection, an absence for an important event such as pregnancy or childbirth does not affect the continuity of the five years of residence in the host Member State required for the granting of that right of residence, the physical constraints of the late stages of pregnancy and the immediate aftermath of childbirth, which require a woman to give up work temporarily, cannot, a fortiori, result in that woman losing her status as a worker.

47 In the light of all the foregoing considerations, the answer to the questions referred for a preliminary ruling by the referring court is that Article 45 TFEU must be interpreted as meaning that a woman who gives up work, or seeking work, because of the physical constraints of the late stages of pregnancy and the aftermath of childbirth retains the status of 'worker', within the meaning of that article, provided she returns to work or finds another job within a reasonable period after the birth of her child.

Costs

48 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 (First Chamber) hereby rules:

Article 45 TFEU must be interpreted as meaning that a woman who gives up work, or seeking work, because of the physical constraints of the late stages of pregnancy and the aftermath of childbirth retains the status of 'worker', within the meaning of that article, provided she returns to work or finds another job within a reasonable period after the birth of her child.

[Signatures]

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* Language of the case: English.