JUDGMENT OF THE COURT (Third Chamber)

13 February 2014(*)

(Social policy – Directive 92/85/EEC – Protection of the safety and health of workers – Pregnant workers and workers who have recently given birth or are breastfeeding – Maternity leave – Maintenance of payment and/or entitlement to an adequate allowance – Directive 96/34/EC – Framework Agreement on parental leave – Individual right to parental leave on the grounds of the birth or adoption of a child – Working and remuneration conditions – National collective agreement – Female workers having taken maternity leave after interruption of a period of unpaid parental leave – Refusal to pay a salary during the maternity leave)

In Joined Cases C-512/11 and C-513/11,

TWO REQUESTS for a preliminary ruling under Article 267 TFEU from the Työtuomioistuin (Finland), made by decision of 28 September 2011, received at the Court on 3 October 2011, in the proceedings

Terveys- ja sosiaalialan neuvottelujärjestö TSN ry

v

Terveyspalvelualan Liitto ry,

supported by:

Mehiläinen Oy (C-512/11),

and

Ylemmät Toimihenkilöt YTN ry

v

Teknologiateollisuus ry,

Nokia Siemens Networks Oy (C-513/11),

THE COURT (Third Chamber),

composed of M. Ilešič, President of the Chamber, K. Lenaerts, Vice-President of the Court, acting as Judge of the Third Chamber, A. Ó Caoimh (Rapporteur), C. Toader and E. Jarašiūnas Judges,

Advocate General: J. Kokott,

Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 8 November 2012,

after considering the observations submitted on behalf of:

– Terveys- ja sosiaalialan neuvottelujärjestö TSN ry and Ylemmät Toimihenkilöt YTN ry, by A. Vainio and T. Lehtinen, asianajajat,

– Terveyspalvelualuan Liitto ry and Mehiläinen Oy, by M. Kärkkäinen, asianajaja,

– Teknologiateollisuus ry and Nokia Siemens Networks Oy, by S. Koivistoinen and J. Ikonen, asianajajat,

– the Finnish Government, by J. Heliskoski, acting as Agent,

– the Estonian Government,, by M. Linntam, acting as Agent,

– the Spanish Government, by A. Rubio González, acting as Agent,

– the United Kingdom Government, by S. Ossowski, acting as Agent, and S. Lee, Barrister,

– the European Commission, by I. Koskinen and C. Gheorghiu, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 21 February 2013,

gives the following

Judgment

1 These requests for a preliminary ruling relate, in essence, to the interpretation 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), 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) and Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (OJ 2006 L 204, p. 23).

2 The requests have been made in proceedings between, on the one hand, Terveys- ja sosiaalialan neuvottelujärjestö TSN ry (trade union in the health and social sector; 'TSN') and Terveyspalvelualan Liitto ry (trade union in the health services sector), supported by Mehiläinen Oy ('Mehiläinen') and, on the other, between Ylemmät Toimihenkilöt (YTN) ry (senior officials' trade union) and Teknologiateollisuus ry (Technological industry association) and Nokia Siemens Networks Oy ('Nokia Siemens') concerning the refusal by the respective employers of two Finnish female workers, on the basis of collective agreements applicable to them, to pay their remuneration, as provided for in those agreements during their maternity leave, on the ground that those workers had interrupted unpaid parental leave.

Legal context

European Union law

Directive 92/85

3 The recitals 1 and 17 in the preamble to Directive 92/85 read as follows:

‘Whereas Article 118 a of the [EEC] Treaty provides that the Council must adopt, by means of directives, minimum requirements to encourage improvements, especially in the working environment, as regards the health and safety of workers;

…

Whereas, moreover, provision concerning maternity leave would also serve no purpose unless accompanied by the maintenance of rights linked to the employment contract and or entitlement to an adequate allowance’.

4 Article 8 of Directive 92/85, entitled ‘Maternity leave’, provides, in paragraph 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.’

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 recognized under this Article, it shall be provided that:

…

(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 legislation;

(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.’

Directive 96/34

6 Directive 96/34 puts into effect the framework agreement on parental leave concluded on 14 December 1995 by the general cross-industry organisations (‘the framework agreement’).

7 The preamble to the framework agreement annexed to Directive 96/34 states:

‘The … framework agreement represents an undertaking by Unice, CEEP and the ETUC to set out minimum requirements on parental leave and time off from work on grounds of force majeure, as an important means of reconciling work and family life and promoting equal opportunities and treatment between men and women’.

8 Clause 1 of the framework agreement, entitled ‘Purpose and scope’, is worded as follows:

‘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.’

9 Clause 2 of the framework agreement, entitled ‘Parental leave’, provides:

‘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 8 years to be defined by Member States and/or management and labour.

…

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. …

…

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. …

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

…’

10 Clause 4.1 of the framework agreement provides that Member States may apply or introduce more favourable provisions than those set out in this agreement.

Finnish law

Applicable laws

– The Law on employment contracts

11 Under Chapter 4, Paragraph 3, of the Law on employment contracts (Työsopimuslaki (55/2001)), workers are entitled to parental education/childcare leave in order to care for their child, or for another other child permanently living under the same roof, which may last until the child reaches the age of three.

12 Chapter 4, Paragraph 8, of that Law provides that the employer is not required to pay a salary to the worker for the periods of family-related leave.

– The Law on sickness insurance

13 Chapter 9 of the Law on sickness insurance (Sairausvakuutuslaki (1224/2004)) provides, in the first subparagraph of Paragraph 1, that a worker is entitled to a daily parental allowance provided he has resided in Finland for at least 180 days without interruption before the presumed date of confinement or before the placing of the child, within the meaning of Paragraph 11, in the insured person's household.

14 Chapter 9, Paragraph 3, of that Law provides for the payment of the daily maternity allowance for 105 working days.

15 The first subparagraph of Chapter 9, Paragraph 8, thereof states that the right to parental allowance begins immediately after the payment of the maternity allowance has ceased. The parental allowance is paid either to the mother or to the father, in accordance with the parents wish.

The applicable collective agreements

16 Terveyspalvelualan Liitto ry and TSN entered into a collective agreement which was valid from 1 February 2010 to 31 January 2011 ('the collective agreement for the health service sector'), which covers the parties to Case C-512/11.

17 Article 21(3) of the collective agreement for the health service sector provides that the worker is entitled to her full salary for 72 days provided she has been employed for at least three months without interruption before the start of the leave. If the worker starts a new maternity leave during one of the unpaid leaves provided for under that agreement, the salary in question is not paid during one of those unpaid leaves, unless otherwise provided in the legislation. Nevertheless, at the end of that period of leave and if the maternity leave has not been fully used, the maternity allowance is paid for the remainder of the period thereof.

18 It is apparent from the order for reference in Case C-512/11 that Article 21 of the collective agreement for the health service sector is interpreted as meaning that, in order to receive remuneration during a period of maternity leave, a worker must move directly from work or paid leave to the maternity leave.

19 Teknologiateollisuus ry and Ylemmät Toimihenkilöt (YTN) ry ('YTN') entered into a collective agreement which was valid for the period from 2 July 2007 to 30 April 2010 ('the collective agreement for the technology industry sector'), which covers the parties in Case C-513/11

20 Article 8 of the collective agreement for the technology industry sector states, inter alia:

'The worker shall be granted as maternity leave the period in which maternity allowance is regarded as due to her under the Law on sickness insurance. During the maternity leave, full pay is paid for three months, provided that her employment relationship has continued without interruption for at least six months before the confinement.'

21 It is apparent from the order for reference in Case C-513/11, and from the observations submitted to the Court by TSN and Nokia Siemens, that Article 8 of the collective agreement for the technology industry sector has consistently been applied in such a way as to mean that, in order to receive pay during a period of maternity leave, a worker must move directly from work or paid leave to the maternity leave.

The main proceedings and the question referred for a preliminary ruling

Case C-512/11

22 Following an initial period of maternity leave, Ms Kultarinta, a nurse employed by Mehiläinen Oy, one of the main health and social services suppliers in Finland, took unpaid parental education/childcare leave for the period between 7 January 2010 and 11 April 2012.

23 Being pregnant for a second time, she notified her employer of her intention to interrupt the parental education/childcare leave to take a new period of maternity leave from 9 April 2010.

24 Mehiläinen accepted the interruption to the parental education/childcare leave but refused to pay 72 days' allowance, equating to her full salary, during the second period of maternity leave because that period had started when Ms Kultarinta was on unpaid parental education/childcare leave.

Case C-513/11

25 Ms Novamo, employed by Nokia Siemens, went on maternity leave on 8 March 2008, followed by a period of unpaid parental education/childcare leave from 19 March 2009 to 4 April 2011.

26 In 2010 she notified her employer that she was pregnant, that she wished to interrupt her unpaid parental education/childcare leave and start her maternity leave on 24 May 2010. Nokia Siemens accepted Ms Novamo's notification concerning the interruption of her parental education/childcare leave but refused to pay her salary during the maternity leave on the ground that the new period of maternity leave had started while she was on unpaid parental education/childcare leave.

27 In both cases, the applicants in the main proceedings brought an action before the Työtuomioistuin (Labour Court) against the respective employers of Ms Kultarinta and Ms Novamo in order to obtain compensation for the damage which the workers considered they had suffered as victims of unlawful treatment.

28 It is clear from the orders for reference that the maternity allowance provided for in the Law on sickness insurance, to which Ms Kultarinta and Ms Novamo were entitled during their maternity leave, was in an amount corresponding to the daily sickness allowance, while their employers should normally pay them the difference between that allowance and the salary provided for in the national collective agreements.

29 It follows from the orders for reference that, in the view of the Työtuomioistuin, Directives 92/85 and 2006/54 raise questions of interpretation which affect the interpretation provision of the collective agreements at issue in the main proceedings or the assessment of their validity. In addition, in the view of the referring court, there is no established guidance in the case-law of the Court of Justice as regards the assessment of the position of a woman who is pregnant or on maternity leave in the light of the prohibition of sex discrimination.

30 In those circumstances, the Työtuomioistuin has decided to stay the proceedings and to refer, in essence, the same question to the Court for a preliminary ruling in the two cases in the main proceedings:

'Do Directive 2006/54 … and Council Directive 92/85 … preclude national provisions of a collective agreement, or the interpretation of those provisions, under which a worker moving from unpaid leave ("hoitovapaa") to maternity leave is not paid remuneration during maternity leave in accordance with the collective agreement?'

31 By order of the President of the Court of 17 November 2011, Cases C-512/11 and C-513/11 were joined for the purposes of the written and oral procedure and of the judgment.

Consideration of the question referred

32 In the procedure laid down by Article 267 TFEU providing for cooperation between national courts and the Court of Justice, it is for the latter to provide the national court with an answer which will be of use to it and enable it to determine the case before it. To that end, the Court may have to reformulate the questions referred to it. Moreover, the Court has a duty to interpret all provisions of European Union law which national courts require in order to decide the actions pending before them, even if those provisions are not expressly indicated in the questions referred to the Court of Justice by those courts (see, inter alia, Case C-45/06 *Campina* [2007] ECR I-2089, paragraphs 30 and 31; Case C-243/09 *Fuß* [2013] ECR, paragraph 39; and Case C-342/12 *Worten* [2013] ECR, paragraph 30).

33 Consequently, even if, formally, the referring court has limited its questions to the interpretation of Directives 92/85 and 2006/54, that does not prevent this Court from providing the referring court with all the elements of interpretation of European Union law that may be of assistance in adjudicating in the case pending before it, whether or not the referring court has referred to them in the wording of its questions. It is, in this regard, for the Court to extract from all the information provided by the national court, in particular from the reasoning of the decision to make the reference, the points of European Union law which require interpretation in view of the subject-matter of the dispute (see, by analogy, *Fuß*, paragraph 40, and *Worten*, paragraph 31).

34 In the present case, with a view to giving a useful answer to the question referred, it is necessary to take into account Directive 96/34 on the framework agreement and the implementation of measures to promote equal opportunities and treatment between men and women, by offering them an opportunity to reconcile their work responsibilities with family obligations, even though the orders for reference do not expressly refer to that directive.

35 Thus, the question referred must be understood, in essence, as asking whether Directive 96/34 is to 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, with immediate effect, a maternity leave within the meaning of Directive 92/85 does not benefit from the maintenance of 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.

36 Firstly, it must be borne in mind that, although Article 11(2) and (3) of Directive 92/85 does not entail an obligation to maintain in full the remuneration during the maternity leave, the European Union legislature none the less sought to ensure that a worker receives, during her maternity leave, an income at least equivalent to the sickness allowance provided for by national social security legislation in the event of an interruption in her activities on health grounds (Case C-411/96 *Boyle and Others* [1998] ECR I-6401, paragraph 32).

37 Nevertheless, that directive, which lays down minimum provisions, does not in any way prevent the Member States from providing for higher protection for those workers, by maintaining or laying down more favourable measures for the protection of the female workers provided that they are compatible with the provisions of European Union law (see, to that effect, Case C-438/99 *Jiménez Melgar* [2001] ECR I-6915, paragraph 37). No provision of Directive 92/85 therefore prevents the Member States or, where appropriate, management and labour from providing that a pregnant worker should continue to receive all the pay components to which she was entitled before her pregnancy and maternity leave.

38 With regard to the rights connected with the parental leave provided for in Directive 96/34, including unpaid parental leave, such as that at issue in the main proceedings, it must be borne in mind that that directive has two distinct objectives. Firstly, the framework agreement constitutes an undertaking by management and labour 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 (Case C-116/08 *Meerts* [2009] ECR I-10063, paragraph 35, and Case C-149/10 *Chatzi* [2010] ECR I-8489, paragraph 56).

39 Secondly, the framework agreement enables new parents to interrupt their professional activities to devote themselves to their family responsibilities, whilst giving them the assurance, set out in clause 2.5 of that agreement, that they will be entitled to return to the same job, or, if that is not possible, an equivalent or similar post consistent with that worker's employment contract or relationship at the end of the leave. The Court has held that that provision required the return to the employment post at the end of the leave on the same conditions as those existing when the leave was taken (see, to that effect, Case C-7/12 *Riežniece* [2013] ECR, paragraph 32).

40 In this case, it is apparent from the file before the Court that, during their first period of maternity leave, the workers in question in the main proceedings were entitled, by virtue of the collective agreements applicable to them, to the maintenance of their remuneration, at least for a certain period. Having subsequently taken an unpaid parental leave, those workers interrupted that leave in order immediately to take a second period of maternity leave in respect of which they were refused the right to maintenance of their remuneration, on the ground that that second period of maternity leave had interrupted a period of unpaid leave and had not therefore been preceded by any period of resumption of work.

41 In those circumstances, it is necessary to examine to what extent European Union law permits the taking of that parental leave to affect the conditions on which the subsequent maternity leave is taken as regards, in a case such as those in the main proceedings, the maintenance of the remuneration provided for in the rules of the national law at issue.

42 In that regard, it is established case-law that a period of leave guaranteed by European Union law cannot affect the right to take another period of leave guaranteed by that law (Case C-519/03 *Commission* v *Luxembourg* [2005] ECR I-3067, paragraph 33; Case C-124/05 *Federatie Nederlandse Vakbeweging* [2006] ECR I-3423, paragraph 24; and Case C-116/06 *Kiiski* [2007] ECR I-7643, paragraph 56).

43 As is apparent from the file submitted to the Court, the provisions at issue in the main proceedings did not prevent Ms Kultarinta or Ms Novamo from interrupting their unpaid parental leave in order subsequently to take maternity leave.

44 However, the applicants in the main proceedings claim that the interests of Ms Kultarinta and Ms Novamo have been affected in a manner incompatible with European Union law, since by exercising their right to those two different periods of leave, those workers were deprived of the maintenance of their remuneration by the collective agreements at issue. The entitlement to continued remuneration is deprived of its effect by the application of the requirement to resume work before taking another period of maternity leave.

45 The defendants in the main proceedings are of the view that the contested provision in those collective agreements is intended to protect pregnant workers. It attenuates the economic disadvantages of taking maternity leave and thus promotes the protection of the special relationship between the worker and her child following pregnancy and childbirth.

46 For its part, the Commission points out that the maternity allowances provided for during the maternity leave of the workers at issue in the main proceedings meet the minimum requirements of Article 11(3) of Directive 92/85.

47 It follows from the case-law referred to in paragraphs 37 and 42 of this judgment that the methods

of application of a system, such as that at issue in the main proceedings, relating to the remuneration due to a worker during a period of maternity leave under Article 11(2) of Directive 92/85 must be compatible with the provisions of European Union law, including those relating to parental leave.

48 In that regard, 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, in this case maternity leave. However, in the main proceedings, taking unpaid parental leave inevitably means that a worker who needs to take maternity leave immediately after that parental leave loses part of her remuneration.

49 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 in advance a paid maternity leave as provided for in the applicable collective agreements 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.

50 In that context and as the Court has already held, account must be taken of the fact that a new pregnancy is not always foreseeable (see, to that effect, *Kiiski*, paragraphs 40 and 41). It follows that a worker is not always able to know, at the time of her decision to take parental leave or even at the start of that leave, whether she will need to take maternity leave during that leave.

51 It must therefore be held that a condition such as that at issue in the main proceedings has the effect of dissuading a worker from deciding to exercise her right to parental leave, having regard to the effect which that decision could have on a period of maternity leave which interrupts that parental leave. Accordingly, such a condition undermines the effectiveness of Directive 96/34.

52 Consequently, the answer to the question referred is that Directive 96/34 is to 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, with immediate effect, a maternity leave within the meaning of Directive 92/85 does not benefit from the maintenance of 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.

Costs

53 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:

Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC 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, with immediate effect, a maternity leave within the meaning 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) does not benefit from the maintenance of 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.

[Signatures]

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* Language of the case: Finnish.