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Lingua del documento :

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Provisional text

JUDGMENT OF THE COURT (Eighth Chamber)

25 February 2021 (*)

(Reference for a preliminary ruling – Social policy – Directive 2010/18/EU – Revised Framework Agreement on parental leave – National legislation making the grant of a right to parental leave subject to a condition of employment and to the mandatory affiliation in that regard of the worker to the social security scheme concerned on the date on which the child was born)

In Case C-129/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the Cour de cassation du Grand-Duché de Luxembourg (Court of Cassation of the Grand Duchy of Luxembourg, Luxembourg), made by decision of 27 February 2020, received at the Court on 9 March 2020, in the proceedings

XI

Caisse pour l'avenir des enfants,

THE COURT (Eighth Chamber),

composed of N. Wahl, President of the Chamber, A. Prechal (Rapporteur), President of the Third Chamber, and F. Biltgen, Judge,

Advocate General: G. Pitruzzella,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- XI, by Y. Kasel, avocat,
- the Caisse pour l'avenir des enfants, by A. Rodesch and R. Jazbinsek, avocats,
- the European Commission, by A. Szmytkowska and C. Valero, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of clauses 1.1, 1.2, 2.1 and 2.3(b) of the framework agreement on parental leave concluded on 14 December 1995, 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), ('Directive 96/34').

2 The request has been made in proceedings between XI and the Caisse pour l'avenir des enfants (Children's Future Fund) concerning the latter's refusal to grant XI a right to parental leave to take care of her twins on the ground that she had not been in paid employment on the day on which they were born.

Legal context

EU law

Directive 96/34

3 The purpose of Directive 96/34 was to put into effect the framework agreement on parental leave concluded between the Union of Industrial and Employers' Confederations of Europe (UNICE), the European Centre of Undertakings with Public Participation (CEEP) and the European Trade Union Confederation (ETUC).

4 Clause 1 of that framework agreement, entitled ‘Purpose and scope’, provided:

‘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.’

5 Clause 2 of the framework agreement, entitled ‘Parental leave’, was worded as follows:

‘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. Member States and/or management and labour may, in particular:

...

(b) make entitlement to parental leave subject to a period of work qualification and/or a length of service qualification which shall not exceed one year;

...’

Directive 2010/18/EU

6 Recital 1 of Council Directive 2010/18/EU of 8 March 2010 implementing the revised Framework Agreement on parental leave concluded by BUSINESSSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34 (OJ 2010 L 68, p. 13) is worded as follows:

‘Article 153 of the [TFEU] ... enables the [European] Union to support and complement the activities of the Member States, inter alia in the field of equality between men and women with regard to labour market opportunities and treatment at work.’

7 Article 3(1) of that directive provides:

‘Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive or shall ensure that the social partners have introduced the necessary measures by agreement by 8 March 2012 at the latest. ...’

8 Article 4 of Directive 2010/18 states:

‘Directive 96/34/EC shall be repealed with effect from 8 March 2012. ...’

9 Point I.8 of the Framework Agreement on parental leave (revised) of 18 June 2009, annexed to Directive 2010/18, (‘the revised Framework Agreement’) provides:

‘Whereas family policies should contribute to the achievement of gender equality and be looked at in the context of demographic changes, the effects of an ageing population, closing the generation gap, promoting women’s participation in the labour force and the sharing of care responsibilities between women and men.’

10 Clause 1 of the revised Framework Agreement, entitled ‘Purpose and scope’, provides:

‘1. This agreement lays down minimum requirements designed to facilitate the reconciliation of parental and professional responsibilities for working parents, taking into account the increasing diversity of family structures while respecting national law, collective agreements and/or practice.

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 and/or practice in force in each Member State.’

11 Clause 2 of the revised Framework Agreement, entitled ‘Parental leave’, provides:

‘1. This agreement entitles men and women workers to an individual right to parental leave on the grounds of the birth or adoption of a child to take care of that child until a given age up to eight years to be defined by Member States and/or social partners.

2. The leave shall be granted for at least a period of four months and, to promote equal opportunities and equal treatment between men and women, should, in principle, be provided on a non-transferable basis. To encourage a more equal take-up of leave by both parents, at least one of the four months shall be provided on a non-transferable basis. ...’

12 Clause 3 of the revised Framework Agreement, entitled ‘Modalities of application’, is worded as follows:

‘1. The conditions of access and detailed rules for applying parental leave shall be defined by law and/or collective agreements in the Member States, as long as the minimum requirements of this agreement are respected. Member States and/or social partners may, in particular:

...

(b) make entitlement to parental leave subject to a period of work qualification and/or a length of service qualification which shall not exceed one year; Member States and/or social partners shall ensure, when making use of this provision, that in case of successive fixed term contracts, as defined in Council Directive 1999/70/EC [of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP (OJ 1999 L 175, p. 43)], with the same employer the sum of these contracts shall be taken into account for the purpose of calculating the qualifying period;

...’

13 Clause 8.4 of the revised Framework Agreement provides:

‘Member States shall adopt the laws, regulations and administrative provisions necessary to comply with the Council decision [making the requirements of the revised Framework Agreement mandatory] within a period of two years from its adoption or shall ensure that social partners introduce the necessary measures by way of agreement by the end of this period. ...’

Luxembourg law

14 Directive 96/34 was transposed into Luxembourg law by the loi du 12 février 1999 concernant la mise en œuvre du plan d'action national en faveur de l'emploi (Law of 12 February 1999 concerning implementation of the national action plan to promote employment) (*Mémorial A* 1999, p. 190). That law, inter alia, inserted into the loi modifiée du 16 avril 1979 fixant le statut général des fonctionnaires de l'État (amended Law of 16 April 1979 laying down the general regulations applicable to State officials) (*Mémorial A* 1979, p. 622; 'the amended Law of 16 April 1979') an Article 29*bis* relating to parental leave. That article provides, in the version applicable to the dispute in the main proceedings:

'A form of special leave, known as "parental leave", is hereby introduced, whereby leave shall be granted by reason of the birth or adoption of one or more children in respect of whom family allowances are paid and who, with respect to the person claiming parental leave, satisfy the conditions laid down in the second and third paragraphs of Article 2 of the loi modifiée du 19 juin 1985 concernant les allocations familiales et portant création de la caisse nationale des prestations familiales [(amended Law of 19 June 1985 on family allowances and creating the Caisse nationale des prestations familiales (National Family Benefits Fund))] [(*Mémorial A* 1985, p. 680)], so long as those children have not reached five years of age.

Any person ("the parent") may claim parental leave so long as that person:

...

– is lawfully employed in a workplace situated in the territory of the Grand Duchy of Luxembourg at the time of the birth or reception of the child or children to be adopted and is so employed without interruption for a continuous period of at least 12 months immediately preceding the start of the parental leave by one and the same public administration or establishment, with monthly working hours which are equal to at least half of the working hours normally applicable under statute, and who retains that status throughout the parental leave period;

– is insured on a compulsory and continuous basis in one of those capacities pursuant to Article 1(1), (2) and (10) of the Code de la sécurité sociale [(Social Security Code)];

...'

15 Article 29*ter* of the amended Law of 16 April 1979 provides:

'Each parent who satisfies the conditions laid down in Article 29*bis* shall be entitled, on application, to six months' parental leave per child. ...'

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

16 On 15 September 2011, XI concluded a fixed-term contract, due to expire on 26 January 2012, with the Grand Duchy of Luxembourg for the provision of teaching services in post-primary education.

17 On 26 January 2012, following the expiry of that fixed-term employment contract, XI's affiliation to the social security bodies was terminated and she was registered by her partner under the co-insurance scheme in his capacity as a State official.

18 On 4 March 2012, when she was unemployed, XI gave birth to twins.

19 On 14 June 2012, XI became entitled to unemployment benefits and was on that basis re-affiliated to the social security bodies.

20 After having concluded two fixed-term contracts with the Grand Duchy of Luxembourg on 15 September 2012 and 1 August 2013 for the provision of teaching services in post-primary education, XI entered, on 15 September 2014, into a contract of indefinite duration with that Member State for the same activities.

21 On 11 March 2015, XI submitted an application to take parental leave with a desired start date of 15 September 2015.

22 By decision of 20 March 2015, that application was rejected by the President of the Caisse nationale des prestations familiales, now the Caisse pour l'avenir des enfants, pursuant to Article 29*bis* of the amended Law of 16 April 1979, which makes the grant of parental leave subject to the condition that the worker is lawfully employed in a workplace and is affiliated in that regard to the social security scheme concerned at the time of the birth of the child, a condition which was not fulfilled by XI.

23 XI challenged that decision before the Governing Board of the Caisse nationale des prestations familiales on the ground that Article 29*bis* of the amended Law of 16 April 1979 was not compatible with the framework agreement on parental leave annexed to Directive 96/34.

24 By decision of 19 May 2015, the Governing Board of the Caisse nationale des prestations familiales confirmed the decision of 20 March 2015, taking the view, in essence, that, since XI had not been lawfully employed in a workplace or affiliated in that regard to the social security scheme concerned at the time of the birth of her children, she was not entitled to parental leave.

25 XI brought an action against the decision of 19 May 2015 before the Conseil arbitral de la sécurité sociale (Social Security Arbitration Board, Luxembourg), which, by decision of 27 October 2017, upheld that action. It found, inter alia, that the framework agreement annexed to Directive 96/34 made the right to parental leave dependent on worker status and the birth of a child, without, however, laying down a condition of employment and mandatory affiliation in that regard to the social security scheme concerned at the time of the birth of that child, and that the additional requirement of affiliation to that social security scheme at the time of the birth of the child was incompatible with, inter alia, the requirement of that framework agreement of a period of work or length of service not exceeding one year and with its aim of facilitating the reconciliation of professional and family life. The Caisse pour l'avenir des enfants appealed against the decision of 27 October 2017 to the Conseil supérieur de la sécurité sociale (Higher Social Security Board, Luxembourg).

26 By judgment of 17 December 2018, the Conseil supérieur de la sécurité sociale (Higher Social Security Board) varied the decision of 27 October 2017, holding, inter alia, that, in so far as clause 2.1 of the framework agreement annexed to Directive 96/34 introduces an individual right to parental leave on the grounds of the birth or adoption of a child, the benefit of that leave was reserved for workers who could prove worker status at the time of the birth or adoption of the child in respect of whom the benefit of parental leave had been sought.

27 XI brought an appeal against the judgment of 17 December 2018 before the referring court, which took the view that, in the light of the pleas raised by the parties to the main proceedings, the

outcome of the dispute before it depended on whether the clauses of the framework agreement annexed to Directive 96/34 precluded the application of Article 29*bis* of the amended Law of 16 April 1979.

28 In those circumstances, the Cour de cassation du Grand-Duché de Luxembourg (Court of Cassation of the Grand Duchy of Luxembourg, Luxembourg) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Must clauses 1.1, 1.2, 2.1 and 2.3(b) of the framework agreement on parental leave concluded on 14 December 1995 between the general cross-industry organisations UNICE, CEEP and the ETUC, which was implemented by [Directive 96/34], be interpreted as precluding the application of a provision of national law, such as Article 29*bis* of the amended Law of 16 April 1979 laying down the general regulations applicable to State officials in the version resulting from the Law of 22 December 2006 (*Mémorial A 2006*, [p.] 4838), which makes the grant of parental leave subject to the twofold condition that the worker is lawfully employed in a workplace and affiliated in that regard to the social security scheme, first, without interruption for a continuous period of at least 12 months immediately preceding the start of the parental leave and, secondly, at the time of the birth or of the reception of the child or children to be adopted, compliance with that second condition being required even if the birth or reception occurred more than 12 months before the start of the parental leave?’

Consideration of the question referred

29 By its question, the referring court asks, in essence, whether clauses 1.1, 1.2, 2.1 and 2.3(b) of the framework agreement on parental leave, annexed to Directive 96/34, must be interpreted as precluding the grant of parental leave from being made subject to the twofold condition that the worker is lawfully employed in a workplace and affiliated in that regard to the social security scheme concerned, first, without interruption for a period of at least 12 months immediately preceding the start of that parental leave and, secondly, at the time of the birth of the child or children or of the reception of the child or children to be adopted.

30 According to settled case-law, 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 referring court with an answer which will be of use to it and enable it to determine the case before it (judgment of 21 October 2020, *Eco TLC*, C-556/19, EU:C:2020:844, paragraph 20 and the case-law cited). In the present case, it is for the Court to determine at the outset whether the dispute in the main proceedings is governed by Directive 96/34 or by Directive 2010/18, which repeals and replaces Directive 96/34, and, if necessary, to reformulate the question referred.

31 In that regard, it should be borne in mind that a new rule of law applies from the entry into force of the act introducing it, and, while it does not apply to legal situations that have arisen and become definitive under the old law, it does apply to their future effects, and to new legal situations. It is otherwise, subject to the principle of the non-retroactivity of legal acts, only if the new rule is accompanied by special provisions which specifically lay down its conditions of temporal application. In particular, procedural rules are generally taken to apply from the date on which they enter into force, as opposed to substantive rules, which are usually interpreted as applying to situations existing before their entry into force only in so far as it follows clearly from their terms, their objectives or their general scheme that such an effect must be given to them (judgment of 26 March 2015, *Commission v Moravia Gas Storage*, C-596/13 P, EU:C:2015:203, paragraphs 32 and 33 and the case-law cited).

32 In the present case, it is common ground that the conditions for granting a right to parental leave are substantive rules which are to apply from the entry into force of the act introducing them. Pursuant to Article 4 of Directive 2010/18, Directive 96/34 was repealed with effect from 8 March 2012. Furthermore, pursuant to Article 3(1) of Directive 2010/18 and clause 8.4 of the revised Framework Agreement, that date was the date by which the Member States had to comply with the provisions of Directive 2010/18 and of that framework agreement or, as the case may be, ensure that the social partners had introduced the necessary measures in that regard. Consequently, and since XI's application to take parental leave was submitted on 11 March 2015, with a desired start date of 15 September 2015, that application is governed by the provisions of Directive 2010/18. The fact that XI's twins were born on 4 March 2012 is irrelevant in that regard. On that date, XI had not made an application for parental leave in accordance with clause 2.3(b) of the framework agreement annexed to Directive 96/34, as transposed into Luxembourg law by the amended Law of 16 April 1979.

33 Since Directive 2010/18 is applicable to the dispute in the main proceedings and clauses 1.1, 1.2, 2.1 and 2.3(b) of the framework agreement annexed to Directive 96/34 correspond, in essence, to clauses 1.1, 1.2, 2.1 and 3.1(b) of the revised Framework Agreement, it is necessary to reformulate the question referred as seeking, in essence, an interpretation of those clauses of the revised Framework Agreement.

34 As a preliminary point, it should be borne in mind that it is apparent from the Court's settled case-law that, in interpreting a provision of EU law, it is necessary to consider not only its wording, but also the context in which it occurs and the objectives pursued by the rules of which it is part (judgments of 16 July 2015, *Maïstrellis*, C-222/14, EU:C:2015:473, paragraph 30, and of 3 October 2019, *Wasserleitungsverband Nördliches Burgenland and Others*, C-197/18, EU:C:2019:824, paragraph 48 and the case-law cited).

35 As regards, in the first place, the question of whether those clauses of the revised Framework Agreement preclude national legislation which makes the grant of a right to parental leave subject to the condition that the parent is employed without interruption for a period of at least 12 months immediately prior to the start of that parental leave, it must be observed that it is apparent from the wording of clause 3.1(b) of the revised Framework Agreement that the Member States may make the grant of parental leave subject to the condition of a prior period of work that may not exceed one year. Given the use of the words 'period of work' in the first part of that provision and the fact that that provision provides, in the second part, that the sum of successive fixed-term contracts with the same employer is to be taken into account for the purpose of calculating that period, the Member States may require that the period in question be continuous. In addition, since an application for parental leave seeks to secure, on the part of the applicant, a suspension of his or her employment relationship (see, to that effect, judgment of 19 September 2013, *Hliddal and Bornand*, C-216/12 and C-217/12, EU:C:2013:568, paragraph 53), the Member States may require that the prior period of work immediately precedes the start of the parental leave. Accordingly, clauses 1.1, 1.2, 2.1 and 3.1(b) of the revised Framework Agreement do not preclude national legislation which makes the grant of a right to parental leave subject to the condition that the parent concerned is employed without interruption for a period of at least 12 months immediately preceding the start of that parental leave.

36 As regards, in the second place, the question of whether those clauses of the revised Framework Agreement preclude national legislation which makes the grant of a right to parental leave subject to the condition that the parent is employed at the time of the birth of the child or children or the reception of the child or children to be adopted, it must be observed that, under clause 2.1 of that framework agreement, the right to parental leave is an individual right to which

men or women workers are entitled on the grounds of the birth or adoption of a child to enable the parent to take care of that child until a given age to be defined by Member States but which may not, however, exceed eight years.

37 Furthermore, under clauses 1.1 and 1.2 of the revised Framework Agreement, the latter lays down minimum requirements designed to facilitate the reconciliation of parental and professional responsibilities for working parents and applies to all workers, men and women, who have an employment contract or employment relationship as defined by the law, collective agreements and/or practice in force in each Member State.

38 Moreover, as stated in paragraph 35 of the present judgment, clause 3.1(b) of the revised Framework Agreement allows Member States to make entitlement to parental leave subject to a period of work qualification and/or a length of service qualification which may not exceed one year.

39 It follows that the birth or adoption of a child and the worker status of his or her parents are conditions giving rise to a right to parental leave under the revised Framework Agreement.

40 However, contrary to what the Caisse pour l'avenir des enfants observes, it cannot be inferred from those conditions governing the grant of a right to parental leave that the parents of the child in respect of whom that leave is sought must be workers at the time of the birth or adoption of that child.

41 The context and objectives of the revised Framework Agreement preclude such an interpretation.

42 As stated in recital 1 of Directive 2010/18, that directive forms part of the context of Article 153 TFEU, which enables the European Union to support and complement the activities of the Member States, inter alia in the field of the improvement of living and working conditions and in the field of the provision of proper social protection for workers.

43 Furthermore, as is apparent from recital 8 of Directive 2010/18, the first paragraph of the preamble to the revised Framework Agreement and paragraph 3 of the general considerations of that framework agreement, which refers to Articles 23 and 33 of the Charter of Fundamental Rights of the European Union, the objective of that framework agreement is both to promote equality between men and women with regard to labour market opportunities and treatment at work across the European Union and to enable working parents better to reconcile their professional, private and family life. Those objectives are reiterated in clauses 1.1 and 2.2 of the revised Framework Agreement.

44 Having regard to that context and those objectives, the individual right of each working parent to parental leave on the grounds of the birth or adoption of a child, enshrined in clause 2.1 of the revised Framework Agreement, must be interpreted as articulating a particularly important EU social right which, moreover, is laid down in Article 33(2) of the Charter of Fundamental Rights. It follows that that right cannot be interpreted restrictively (see, to that effect, judgment of 27 February 2014, *Lyreco Belgium*, C-588/12, EU:C:2014:99, paragraph 36 and the case-law cited).

45 Thus, it has been held that, notwithstanding the fact that birth is a condition giving rise to a right to parental leave, that right is not linked to the date on which the child was born, with the result that it is not necessary for that birth to have occurred after the date of entry into force of Directive 96/34 in a Member State in order for the parents of that child to be able to avail themselves of a right to parental leave under that directive (see, to that effect, judgments of 14 April

2005, *Commission v Luxembourg*, C-519/03, EU:C:2005:234, paragraph 47, and of 16 September 2010, *Chatzi*, C-149/10, EU:C:2010:534, paragraph 50).

46 Excluding parents who were not working at the time of the birth or adoption of their child would have the effect of precluding the possibility for those parents to take parental leave at a later point in time in their lives when they are employed again, parental leave which they would need to take in order to reconcile their family and professional responsibilities. Such an exclusion would therefore be contrary to the individual right of every worker to parental leave.

47 Furthermore, it should be stated that the twofold condition imposed by Luxembourg legislation, which requires the worker to be employed in a workplace and insured in that regard not only for a continuous period of at least 12 months immediately preceding the start of the parental leave, but also at the time of the birth or reception of the child or children, leads, in actual fact, where the birth or reception has occurred more than 12 months before the start of the parental leave, to an extension of the required period of work and/or length of service, which cannot, however, under clause 3.1(b) of the revised Framework Agreement, exceed one year.

48 Accordingly, having regard to the context and objectives of the revised Framework Agreement, which are set out in paragraph 43 of the present judgment, clauses 1.1, 1.2, 2.1 and 3.1(b) of that framework agreement cannot be interpreted as meaning that a Member State can make a parent's right to parental leave subject to the condition that that parent is working at the time of the birth or adoption of his or her child.

49 Contrary to what the Caisse pour l'avenir des enfants submits, such an interpretation does not constitute discrimination between parents who are unemployed and parents who are working at the time of the birth of their child on the ground that the former could make their own arrangements to take care of their child whereas the latter could not take care of their child at the time of birth without being granted parental leave.

50 Apart from the fact that such an argument does not take into consideration the fact that mothers are granted maternity leave at the time of the birth of their children, the purpose of the grant of parental leave is not to enable a parent to take care of his or her child only at the time of the birth of that child and shortly thereafter, but also at a later stage during childhood, a period which, under clause 2.1 of the revised Framework Agreement, lasts until the age of eight. It follows that the possibility that a parent has, at the time of the birth of his or her child, of making his or her own arrangements to take care of that child is irrelevant for the purpose of assessing whether there is a right to parental leave and that no discrimination can be legitimately alleged on that basis.

51 In the light of all of the foregoing, the answer to the question referred is that clauses 1.1, 1.2, 2.1 and 3.1(b) of the revised Framework Agreement must be interpreted as not precluding national legislation which makes the grant of a right to parental leave subject to the condition that the parent concerned is employed without interruption for a period of at least 12 months immediately preceding the start of the parental leave. By contrast, those clauses preclude national legislation which makes the grant of a right to parental leave subject to the condition that the parent has the status of a worker at the time of the birth or adoption of his or her child.

Costs

52 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Eighth Chamber) hereby rules:

Clauses 1.1, 1.2, 2.1 and 3.1(b) of the Framework Agreement on parental leave (revised) of 18 June 2009, annexed to Council Directive 2010/18/EU of 8 March 2010 implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC, must be interpreted as not precluding national legislation which makes the grant of a right to parental leave subject to the condition that the parent concerned is employed without interruption for a period of at least 12 months immediately preceding the start of the parental leave. By contrast, those clauses preclude national legislation which makes the grant of a right to parental leave subject to the condition that the parent has the status of a worker at the time of the birth or adoption of his or her child.

[Signatures]

* Language of the case: French.
