JUDGMENT OF THE COURT (Fourth Chamber)

21 May 2015 (*)

(Reference for a preliminary ruling — Social policy — Directive 92/85/EEC — Measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding — Article 11(2) and (4) — Established public servant assigned non-active status for personal reasons in order to work as a salaried employee — Refusal to grant her a maternity allowance on the ground that she has not completed, as a salaried employee, the minimum contribution period required in order to be eligible to receive certain social benefits)

In Case C-65/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the tribunal du travail de Nivelles (Belgium), made by decision of 20 December 2013, received at the Court on 10 February 2014, in the proceedings

Charlotte Rosselle

v

Institut national d'assurance maladie-invalidité (INAMI),

Union nationale des mutualités libres (UNM),

intervening party:

Institut pour l'égalité des femmes et des hommes (IEFH),

THE COURT (Fourth Chamber),

composed of L. Bay Larsen, President of the Chamber, K. Jürimäe, J. Malenovský, M. Safjan (Rapporteur) and A. Prechal, Judges,

Advocate General: E. Sharpston,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– Ms Rosselle, by L. Markey, avocate,

– Union nationale des mutualités libres (UNM), by A. Mollu,

– the Belgian Government, by M. Jacobs and C. Pochet, acting as Agents,

– the European Commission, by D. Martin, acting as Agent,

after hearing the Opinion of the Advocate General at the sitting on 18 December 2014,

gives the following

Judgment

1 This request for a preliminary ruling concerns 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) 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 request has been made in proceedings between Ms Rosselle, on the one hand, and the Institut national d'assurance maladie-invalidité (INAMI) and the Union nationale des mutualités libres (UNM), on the other, concerning the refusal to grant her a maternity allowance on the ground that she did not complete the minimum contribution period required under national law.

Legal context

EU legislation

Directive 89/391/EEC

3 Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work (OJ 1989 L 183, p. 1) provides, in Article 2(1):

‘This Directive shall apply to all sectors of activity, both public and private (industrial, agricultural, commercial, administrative, service, educational, cultural, leisure, etc.).’

4 Article 3(a) of that directive provides:

‘For the purposes of this Directive, the following terms shall have the following meanings:

(a) worker: any person employed by an employer, including trainees and apprentices but excluding domestic servants.’

5 Article 16(1) of that directive provides:

‘The Council, acting on a proposal from the Commission based on Article 118a of the Treaty, shall adopt individual Directives, inter alia, in the areas listed in the Annex.’

Directive 92/85

6 According to the 9th and 17th recitals in the preamble to Directive 92/85:

‘Whereas the protection of the safety and health of pregnant workers, workers who have recently given birth or workers who are breastfeeding should not treat women on the labour market unfavourably nor work to the detriment of directives concerning equal treatment for men and women;

...

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.’

7 Article 1(1) and (2) of Directive 92/85 provides:

‘1. The purpose of this Directive, which is the tenth individual Directive within the meaning of Article 16(1) of Directive [89/391] is to implement measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or who are breastfeeding.

2. The provisions of Directive [89/391], except for Article 2(2) thereof, shall apply in full to the whole area covered by paragraph 1, without prejudice to any more stringent and/or specific provisions contained in this Directive.’

8 Article 2 of Directive 92/85 sets out the following definitions:

‘For the purposes of this Directive:

(a) *pregnant worker* shall mean a pregnant worker who informs her employer of her condition, in accordance with national legislation and/or national practice;

(b) *worker who has recently given birth* shall mean a worker who has recently given birth within the meaning of national legislation and/or national practice and who informs her employer of her condition, in accordance with that legislation and/or practice;

(c) *worker who is breastfeeding* shall mean a worker who is breastfeeding within the meaning of national legislation and/or national practice and who informs her employer of her condition, in accordance with that legislation and/or practice.'

9 Article 8 of Directive 92/85, entitled 'Maternity leave', provides:

'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.

2. The maternity leave stipulated in paragraph 1 must include compulsory maternity leave of at least two weeks allocated before and/or after confinement in accordance with national legislation and/or practice.'

10 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 recognised in 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.'

Belgian law

11 The consolidated Law of 14 July 1994 on compulsory health insurance and benefit insurance (loi du 14 juillet 1994 relative à l'assurance obligatoire soins de santé et indemnités coordonnée; *Moniteur belge* of 27 August 1994, p. 21524), in the version applicable to the dispute in the main proceedings ('the Law of 14 July 1994') provides, in Article 86(1):

'The following are persons entitled to allowances for incapacity for work as defined in Title IV, Chapter III, of the present law under the conditions laid down in that law:

(1)(a) workers subject to the compulsory benefit insurance, pursuant to the Law of 27 June 1969 amending the Decree-Law of 28 December 1944 concerning social security for workers [(loi du 27 juin 1969 révisant l'arrêté-loi du 28 décembre 1944 concernant la sécurité sociale des travailleurs)] including workers receiving an allowance (due as a result of unlawful termination of employment, unlawful termination of employment of staff representatives, unlawful termination of employment of union representatives or termination of employment by mutual agreement), during the period covered by that allowance;

(b) the aforementioned workers during the rest period referred to in Article 32, first paragraph, (4);

(c) workers in one of the situations referred to in Article 32, first paragraph, (3) and (5);

...

(2) workers who, during a period of incapacity for work (or of maternity protection), as defined by the present law, cease to be entitled persons under (1);

(3) at the expiry of the period of continued insurance referred to in Article 32, first paragraph, (6), workers who were entitled persons under (1), provided that they become unable to work (or are in a period of maternity protection at the latest the first working day following the expiry of the period of continued insurance).'

12 Article 112 of the Law of 14 July 1994 provides:

'The persons referred to in Article 86(1) are entitled to the maternity allowance as defined in Title V, Chapter III, of the present law under the conditions laid down therein.'

13 Article 116 of that law provides:

‘In order to be eligible for the allowances provided for in Title V, the persons referred to in Article 112 must satisfy the conditions laid down in Articles 128 to 132.

The conditions relating to the minimum contribution period laid down in Article 128 may be dispensed with or amended by Royal enactment, for the categories of person defined in that enactment, the opinion of the Allowances Service Management Committee having been obtained.’

14 Article 128 of that law is worded as follows:

‘1. In order to be eligible to receive the allowances provided for in Title IV, the entitled persons referred to in Article 86(1) must complete a minimum contribution period under the following conditions:

(1) they must have carried out, during a period of six months preceding the date on which they become entitled to the allowances, a number of working days as shall be determined by Royal enactment. The days of professional inactivity treated as equivalent to working days shall be determined by Royal enactment. Such an enactment shall also determine the meaning of “working day”;

(2) they must provide evidence, in conditions to be determined by Royal enactment, that the contributions in respect of allowances have actually been paid as regards the period in question; those contributions must amount to a minimum to be determined by Royal enactment or must, in conditions to be determined by such an enactment, be supplemented by personal contributions.

2. The circumstances in which the minimum contribution period may be dispensed with or reduced shall be determined by Royal enactment.

...’

15 Article 203 of the Royal Decree of 3 July 1996 implementing the Law of 14 July 1994 on compulsory medical care and benefit insurance (arrêté royal du 3 juillet 1996 portant exécution de la loi relative à l’assurance obligatoire soins de santé et indemnités, coordonnée le 14 juillet 1994; *Moniteur belge* of 31 July 1996, p. 20285), in the version applicable to the main proceedings (‘the Royal Decree of 3 July 1996’), provides:

‘For the purposes of Article 128(1) of the Law [of 14 July 1994], entitled persons must carry out, during a period of six months, at least 120 working days ...’

16 Article 205(1)(6) of that Royal Decree provides:

‘The following shall be exempt from the minimum contribution period for entitlement to allowances for incapacity for work:

...

(6) persons who, in the period of 30 days following the date on which their voluntary resignation as an established public servant takes effect, acquire the status of entitled person within the meaning of Article 86(1)(1)(a) or (c) of the Law [of 14 July 1994], provided that they were employed during a continuous period of at least six months as a public servant. If they were employed for a period of less than six months in that capacity, that period shall be taken into consideration for the calculation of the minimum contribution period provided for in Article 128 of the Law [of 14 July 1994].'

17 Articles 203 and 205 of the Royal Decree of 3 July 1996 are in Title III, Chapter III, Sections 1 and 2, of that judgment.

18 Article 7(1) of the Law of 20 July 1991 on social and other provisions (loi du 20 juillet 1991 portant des dispositions sociales et diverses; *Moniteur belge* of 1 August 1991, p. 16951), in the version applicable to the main proceedings, provides:

'This Chapter is applicable to any person:

– whose employment relationship in a public service or any other body governed by public law comes to an end because it is terminated unilaterally by the authority or because the instrument of appointment is annulled, withdrawn, abrogated or not renewed,

– and who, because of that employment relationship, is not subject to the provisions of the Law of 27 June 1969 amending the Decree-Law of 28 December 1944 concerning social security for salaried workers, in so far as they concern the employment and unemployment scheme and the compulsory sickness and invalidity insurance scheme.'

19 Article 10(1) of that law provides:

'The employer shall pay to the National Office for Social Security or to the National Office for Social Security of Regional and Local Authorities for the benefit of those entitled under the present Chapter:

(1) the contributions due by the employer and the worker for the period corresponding to the number of working days that the person dismissed must normally prove having regard to the applicable age category in order to be eligible to receive unemployment benefit pursuant to the legislation on unemployment;

(2) the contributions due by the employer and the worker, calculated on the basis of a six-month period, in order for the person concerned to be entitled to benefit from the compulsory health and invalidity insurance scheme, benefits scheme, and maternity assurance.'

The dispute in the main proceedings and the question referred

20 In September 2003 Ms Rosselle began working as a teacher in Ternat (Belgium), and she was appointed as an established public servant by the Flemish Community in September 2008.

21 Ms Rosselle obtained non-active status for personal reasons in order to teach in language immersion classes in the French Community, as from 1 September 2009, as a salaried employee.

22 Ms Rosselle continued to work as a salaried employee until her maternity leave started, on 11 January 2010. She gave birth on 2 February 2010.

23 Ms Rosselle applied to the UNM, the entity to which she was affiliated, for a maternity allowance as from 11 January 2010.

24 On 23 February 2010, the UNM rejected that request on the ground that Ms Rosselle had changed her status on 1 September 2009, by becoming a salaried employee after having been an established public servant. Under Belgian law, in order to be eligible to receive a maternity allowance, a minimum contribution period of six months must be completed, a condition which Ms Rosselle had not fulfilled as a salaried employee.

25 Ms Rosselle brought an action against that decision before the tribunal du travail de Nivelles (Labour Court, Nivelles), invoking inter alia Directive 92/85.

26 The referring court emphasises that, in the case of an established public servant who has resigned or has been dismissed, Belgian law provides for an exemption from the minimum contribution period required in order to be eligible to receive certain social benefits. However, no such exemption exists in the case of an established public servant assigned non-active status for personal reasons, as regards inter alia the allowance pertaining to maternity leave.

27 In those circumstances the tribunal du travail de Nivelles decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Do Sections 1 and 2 of Title III, Chapter III, of the Royal Decree of 3 July 1996 infringe Directive 92/85 and Directive 2006/54 in failing to provide for an exemption from the minimum contribution period for a public servant assigned non-active status for personal reasons who is on maternity leave, whereas such an exemption is provided for a public servant who has resigned or has been dismissed?’

Consideration of the question referred

28 By its question, the referring court asks, in essence, whether Directive 92/85 and Directive 2006/54 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.

Directive 92/85

29 Pursuant to Article 8(1) of Directive 92/85, Member States are to take the necessary measures to ensure that workers are entitled to a continuous period of maternity leave of at least 14 weeks allocated before and/or after confinement in accordance with national legislation and/or practice.

30 According to the settled case-law of the Court, the right to maternity leave granted to pregnant workers must be regarded as a particularly important mechanism of protection under employment law. The EU legislature thus considered that the fundamental changes to the living conditions of the persons concerned during the period of at least 14 weeks preceding and after childbirth constituted a legitimate ground on which they could suspend their employment, without the public authorities or employers being allowed in any way to call the legitimacy of that ground into question (judgments in *Kiiski*, C-116/06, EU:C:2007:536, paragraph 49; in *Betriu Montull*, C-5/12, EU:C:2013:571, paragraph 48; and in *D.*, C-167/12, EU:C:2014:169, point 32).

31 It can be seen from Article 11(2)(b) of Directive 92/85 that, in order to guarantee workers the exercise of their health and safety protection rights as recognised in that article, it is provided that, in the case of maternity leave, maintenance of a payment to, and/or entitlement to an adequate allowance for, workers is to be ensured.

32 In that respect, Article 11(4) of Directive 92/85 provides that Member States may make entitlement to pay or the maternity allowance referred to in point 2(b) of that article conditional upon the worker concerned fulfilling the conditions of eligibility for such benefits laid down under national legislation, but those conditions may in no circumstances provide for periods of previous employment in excess of 12 months immediately prior to the presumed date of confinement.

33 In the present case, the order for reference states that under the national legislation at issue in the main proceedings, the worker concerned must, in order to be eligible to receive a maternity allowance, have completed a minimum contribution period, which entails, inter alia, having worked for at least 120 working days during the six months preceding the date on which she becomes entitled to the maternity allowance.

34 However, that legislation does not provide for an exemption from the minimum contribution period required in order to obtain that maternity allowance in the case, such as that in the main proceedings, of an established public servant assigned non-active status for personal reasons in order to work as a salaried employee, unlike the situation which applies to established public servants who resign or are dismissed.

35 Thus, in the main proceedings, between the date on which Ms Rosselle became a salaried employee after having been an established public servant and the presumed date of confinement, she did not complete, as a salaried employee, the six-month minimum contribution period required under Belgian law. Accordingly, even though Ms Rosselle had worked continuously as a teacher for several years before taking her maternity leave, she was denied any maternity allowance.

36 It must therefore be examined whether the second subparagraph of Article 11(4) of Directive 92/85 precludes a Member State from imposing a new six-month contribution period when an established public servant, such as Ms Rosselle, is assigned non-active status in order to work as a salaried employee, even though that public servant has worked for more than 12 months immediately prior to the presumed date of confinement.

37 As a preliminary point, it must be noted that, as indicated in Article 1(1) and (2) thereof, Directive 92/85 is the tenth individual Directive within the meaning of Article 16(1) of Directive 89/391 and that the provisions of the latter directive, except for Article 2(2) thereof, apply in full to the whole area covered by Article 1(1) of Directive 92/85. Under Article 2(1) of Directive 89/391, that directive applies to all sectors of activity, both public and private. Article 3(a) of Directive 89/391 defines a 'worker' as any person employed by an employer, including trainees and apprentices but excluding domestic servants.

38 It must be pointed out that the wording of the second subparagraph of Article 11(4) of Directive 92/85, refers to 'periods of previous employment' in the plural in several language versions of that provision. That is the case, inter alia, in Spanish ('períodos de trabajo previo'), English ('periods of previous employment'), French ('périodes de travail préalable'), Italian ('periodi di lavoro preliminare') and Portuguese ('períodos de trabalho').

39 Other language versions, including the Danish, German and Dutch versions, do not exclude the possibility that there may be several periods of previous employment.

40 Furthermore, neither the second subparagraph of Article 11(4) of Directive 92/85 nor any other provision of that directive lays down any condition as to the nature of those periods of employment.

41 In those circumstances, the 'periods of previous employment' referred to in the second subparagraph of Article 11(4) of Directive 92/85 cannot be limited solely to the employment ongoing prior to the presumed date of confinement. Those periods of employment must be understood as comprising the various successive posts occupied by the worker concerned prior to that date, including for different employers and under various employment statuses. The only requirement laid down in that provision is that the person concerned should have held one or several posts during the period required by national law in order to be eligible for the maternity allowance, pursuant to that directive.

42 It thus follows from the wording of the second paragraph of Article 11(4) of Directive 92/85 that a Member State may not impose a new six-month minimum contribution period prior to eligibility for a maternity allowance merely because the employment status or post of the worker concerned has changed.

43 According to the Court's settled case-law, 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 in *Merck*, 292/82, EU:C:1983:335, paragraph 12; in *TNT Express Nederland*, C-533/08, EU:C:2010:243, paragraph 44; and in *Utopia*, C-40/14, EU:C:2014:2389, paragraph 27).

44 In that respect, it should be borne in mind that the objective of Directive 92/85, which was adopted on the basis of Article 118a of the EEC Treaty, is to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or who are breastfeeding (judgments in *Paquay*, C-460/06, EU:C:2007:601, paragraph 27; in *Danosa*, C-232/09, EU:C:2010:674, paragraph 58; and *D.*, C-167/12, EU:C:2014:169, paragraph 29).

45 In that context, and as can be seen from the 17th recital in the preamble to Directive 92/85, in view of the risk that the provisions relating to maternity leave would be ineffective if rights connected with the employment contract were not maintained, the EU legislature provided, in Article 11(2)(b) of Directive 92/85, that maintenance of a payment to, and/or entitlement to an adequate allowance for workers to whom the directive applies must be ensured in the case of the maternity leave referred to in Article 8 of that directive (see, to that effect, judgment in *Boyle and Others*, C-411/96, EU:C:1998:506, paragraph 30).

46 To require a new minimum contribution period upon each change of employment status or post would amount to undermining the minimum level of protection laid down in Article 11(2) of Directive 92/85 where the worker concerned has not completed the six-month minimum contribution period in her new post, even though she has completed periods of employment in excess of 12 months immediately prior to the presumed date of confinement.

47 Lastly, the Belgian government claims that the national legislation at issue in the main proceedings does not require that the worker concerned occupy the same post during the six months prior to confinement, but rather requires that she occupy, for at least six months, one or several posts entitling her to allowances in the context of the social security scheme for salaried employees. A post in the public service does not involve the payment of contributions to the social security scheme for salaried employees.

48 In that respect, it suffices to note that, in the event that the worker concerned has changed post and become a salaried employee after having been an established public servant during the period referred to in the second subparagraph of Article 11(4) of

Directive 92/85, it is for each Member State to ensure the coordination of the various bodies that may be involved in the payment of the maternity allowance.

49 In those circumstances, it must be held that, under the second subparagraph of Article 11(4) of Directive 92/85, a Member State may not refuse 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.

Directive 2006/54

50 Having regard to the answer given to the question in the light of Directive 92/85, it is not necessary to answer that same question in the light of Directive 2006/54.

51 In view of the foregoing, the answer to the question referred is that the second paragraph of Article 11(4) of Directive 92/85 must be interpreted as precluding a Member State from granting 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.

Costs

52 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 (Fourth Chamber) hereby rules:

The second subparagraph of Article 11(4) 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) must be interpreted as precluding a Member State from granting 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.

[Signatures]

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* Language of the case: French.