



Press and Information

Court of Justice of the European Communities

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Judgment in Case C-116/08
Christel Meerts v Proost NV

COMPENSATION FOR DISMISSAL OF A FULL-TIME WORKER DISMISSED WHEN ON PART-TIME PARENTAL LEAVE IS TO BE CALCULATED ON THE BASIS OF HIS FULL-TIME SALARY

A reduction in the rights arising from the employment relationship in the event of parental leave could discourage workers from taking parental leave and could encourage employers to prefer to dismiss those workers who are on parental leave

The purpose of Directive 96/34¹ is to put into effect the framework agreement on parental leave concluded by the European cross-industry organisations. That framework agreement constitutes an undertaking by the two sides of industry to put in place, by setting out 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.

Ms Meerts had been employed on a full-time basis since September 1992 by Proost NV under an employment contract of indefinite duration. From November 1996, she took various forms of career break and, from 18 November 2002, she worked half-time as a result of parental leave, which was due to end on 17 May 2003.

On 8 May 2003, Ms Meerts was dismissed with immediate effect subject to payment of compensation for dismissal equal to ten months' salary, calculated on the basis of the salary she was receiving at the time, which was reduced by half because of the equivalent reduction in her working hours.

She challenged the amount of compensation for dismissal before the arbeidsrechtbank van Turnhout (Labour Court of Turnhout, Belgium). She claims that the compensation for dismissal should be calculated on the basis of the full-time salary which she would have been receiving if she had not reduced her working hours in connection with parental leave.

In that context, the Hof van Cassatie (the Belgian Court of Cassation), which had to decide the case, referred the matter to the Court of Justice for a preliminary ruling.

The Court noted that Clause 2.6 of the framework agreement on parental leave provides that rights acquired or in the process of being acquired by the worker on the date on which parental leave starts are to be maintained as they stand until the end of parental leave.

It is apparent from both the wording of Clause 2.6 and its context that that provision is intended to avoid the loss of or reduction in rights derived from an employment relationship, acquired or being acquired, to which the worker is entitled when he starts parental leave, and to ensure that, at the end of that leave, with regard to those rights, he will find himself in the same situation as that in which he was before the leave.

Having regard to the objective of equal treatment between men and women which is pursued by the framework agreement on parental leave, **the obligation to respect rights acquired or in the**

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), as amended by Council Directive 97/75/EC of 15 December 1997 (OJ 1998 L 10, p. 24).

process of being acquired must be interpreted as articulating a particularly important principle of Community social law which cannot be interpreted restrictively.

It is clear from the objectives of the framework agreement on parental leave that the concept of '[r]ights acquired or in the process of being acquired' in the framework agreement covers all the rights and benefits, whether in cash or in kind, derived directly or indirectly from the employment relationship, which the worker is entitled to claim from the employer at the date on which parental leave starts.

Such rights and benefits include all those relating to employment conditions, such as the right of a full-time worker on part-time parental leave to a notice period in the event of the employer's unilateral termination of a contract of indefinite duration, the length of which depends on the worker's length of service in the company and the aim of which is to facilitate the search for a new job.

That body of rights and benefits would be compromised if, where the statutory period of notice was not observed in the event of dismissal during part-time parental leave, a worker employed on a full-time basis lost the right to have the compensation for dismissal due to him determined on the basis of the salary relating to his employment contract.

Therefore, national legislation which would result in the rights flowing from the employment relationship being reduced in the event of parental leave could discourage workers from taking such leave and could encourage employers to dismiss workers who are on parental leave rather than other workers. This would run directly counter to the aim of the framework agreement on parental leave, one of the objectives of which is to make it easier to reconcile working and family life.

The Court concludes that the framework agreement on parental leave precludes, where an employer unilaterally terminates a worker's full-time employment contract of indefinite duration, without urgent cause or without observing the statutory period of notice, whilst the worker is on part-time parental leave, the compensation to be paid to the worker from being determined on the basis of the reduced salary being received when the dismissal takes place.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of Community law or the validity of a Community act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which the same issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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