

Anonymised version

Translation

C-463/19 — 1

Case C-463/19

Request for a preliminary ruling

Date lodged:

18 June 2019

Referring court:

Conseil de prud'hommes de Metz (France)

Date of the decision to refer:

15 May 2019

Applicant:

Syndicat CFTC du personnel de la Caisse primaire d'assurance maladie de la Moselle

Defendant:

Caisse primaire d'assurance maladie de Moselle

[OMISSIS]

[OMISSIS]

JUDGMENT of 15 May 2019

**Syndicat CFTC DU PERSONNEL DE LA
CAISSE PRIMAIRE D'ASSURANCE
MALADIE DE LA MOSELLE**

[OMISSIS]

57000 METZ

[OMISSIS]

APPLICANT

**LA CAISSE PRIMAIRE D'ASSURANCE
MALADIE DE MOSELLE**

[OMISSIS]

57751 METZ [OMISSIS]

[OMISSIS]

DEFENDANT

**MISSION NATIONALE DE CONTROLE ET
D'AUDIT DES ORGANISMES DE
SECURITE SOCIALE**

[OMISSIS]

54035 NANCY [OMISSIS]

not present, not represented,

INTERVENER

[FORMATION DE JUGEMENT] [OMISSIS]

[OMISSIS]

PROCEDURE

- Date of application: 27 December 2017

[OMISSIS]

Decision [OMISSIS] of 15 MAY 2019

[Or. 2] By application initiating proceedings of 27 December 2017 [OMISSIS], the CFTC [Confédération Française des Travailleurs Chrétiens (French Confederation of Christian Workers)] of the Caisse Primaire d'Assurance Maladie de la Moselle [local sickness insurance fund, Moselle, the 'CPAM'] brought legal proceedings before [le Conseil de Prud'hommes de Metz (Labour Tribunal, Metz) ('the Labour Court')] against the CPAM [OMISSIS].

The syndicat CFTC of the Caisse Primaire d'Assurance Maladie de la Moselle requests that the Labour Court:

[OMISSIS]

DECLARE that the refusal of the CPAM to grant Mr CY the leave provided for in Article 46 of the CCN [Convention Collective Nationale de Travail du Personnel des Organismes de Sécurité Sociale (National Collective Labour Agreement for Personnel of Social Security Organisations)] is discriminatory,

ORDER the CPAM to pay Mr CY compensation in the amount of EUR 4 661.83,

ORDER the CPAM to provide for a salary catch-up in respect of the 2016 financial year in the same way as that applied to employees of the organisation benefitting from Article 46 of the CCN.

If necessary, pursuant to Article 267 TFEU,

REFER the following question to the CJEU for a preliminary ruling:

'Should Directive 2006/54/EC, read in conjunction with Articles 8 and 157 TFEU, the general EU law principles of equal treatment and of the prohibition of discrimination, and Articles 20, 21(1) and 23 of the Charter of Fundamental Rights of the European Union, be interpreted as meaning that the provisions of Article 46 of the CCN, which grant female employees of social security organisations raising children on their own three months leave with half pay, one

and a half months leave with full pay or unpaid leave of up to a year after maternity leave, are excluded from the scope of application of that directive?’

[OMISSIS]

ORDER the CPAM to pay the CFTC [a procedural indemnity] and [OMISSIS] to bear the costs.

The CPAM contends that the Labour Court should:

Principally:

DECLARE that all of the claims made against the CPAM by the CFTC are inadmissible.

In the alternative:

DECLARE that the refusal of the CPAM to grant Mr CY the leave provided for in Article 46 of the CCN is by no means discriminatory.

REJECT the claims made on behalf of Mr CY by the CFTC against the CPAM.

REJECT the request made by the CFTC to refer a question to the Court of Justice of the European Union for a preliminary ruling.

REJECT the claim [for a procedural indemnity] made by the CFTC.

ORDER the CFTC to pay the CPAM [a procedural indemnity].

ORDER the CFTC to bear all the costs.

[OMISSIS]

[OMISSIS] [stages of the proceedings]

FACTS OF THE CASE, CLAIMS AND ARGUMENTS OF THE PARTIES

The applicant states:

The CFTC requests that the Labour Court find the refusal of the CPAM to allow Mr CY to benefit from the provisions of Article 46 of the CCN, which provides for educational leave for [care of a] child, be declared unenforceable because it is discriminatory, and order the CPAM to allow him to benefit from those provisions. The [CFTC] invokes Article L.1134-2 of the Code du Travail (Labour Code) in support of its argument which provides:

‘Trade union organisations representative of workers at the national, departmental or local authority level in overseas departments, in Saint

Barthémely and Saint Martin, or within the company may initiate proceedings against all actions resulting from the application of the provisions of Chapter II.

They may initiate such proceedings on behalf of an applicant for a job, internship or for a period of training within a company, or an employee, in accordance with the conditions laid down in Article L. 1134-1. It is not necessary for the trade union organisation to justify its authority to act on behalf of the interested party. It is sufficient for the interested party to have been informed of the proceedings in writing and not to have raised any objections against them within a period of 15 days from the day on which he was informed of the trade union organisation's intention to initiate proceedings.

The interested party may always intervene in the proceedings initiated by the trade union organisation.'

Mr CY is an employee of the CPAM carrying out the duties of a benefits inspector in the employee or executive category, level 03S of the CCN. He is the father of a little girl [Or. 4] born on 5 April 2016 and was not granted educational leave under Article 46 on the ground that such an entitlement is reserved for women.

In response to the request made by the Syndicat CFTC to extend the wording of that provision to include male employees, the management of the CPAM points out that: *'the literal application of Article 46 implies that contractual maternity leave is granted only to the mother (the word "employee" is in the feminine form). The father is not therefore entitled to maternity leave. That article is not discriminatory, in so far as Article 46 is ancillary to Article 45 which is granted only to women. Since a man is not entitled to benefit from Article 45, he cannot benefit from Article 46'*.

The CFTC contends that such an answer is based on a misinterpretation of the texts and is discriminatory on grounds of sex, which is prohibited both by EU law and French labour law.

It is therefore incorrect to claim that Article 46 is ancillary to Article 45.

Article 46 is not dependant on any physiological considerations, unlike Article 45 which refers to leave related to pregnancy and maternity and which provides for an entitlement to 16 weeks' statutory leave.

The application of Article 46 of the CCN by the CPAM amounts to double discrimination:

- With regard to employees:

Since male and female employees, fathers or mothers, are equally responsible for educating their children. Male employees of the CPAM should therefore be entitled to the same benefits (being allowed to spend time educating their child).

- With regard to the child:

Article 46 refers to the legitimate or natural child whereas Article 46a refers to the adoptive child. However, the two texts treat the child differently according to their ties of filiation:

The adoptive child may benefit from the presence of their father or mother, whereas the legitimate or natural child may not benefit from the presence of their father.

If only the father works within the institution, depending on whether the child is adopted or not, only the father of the adoptive child may benefit from educational leave.

The defendant contends:

[OMISSIS]

[OMISSIS] **[Or. 5]**

[OMISSIS] [invoking grounds for inadmissibility of national law] The Labour Court has therefore been asked, principally, to declare that all of the claims made by the CFTC are inadmissible.

In the alternative, the Labour Court is asked to declare that Article 46, which provides for three months leave with half pay, one and a half months leave with full pay or unpaid leave of up to a year and which the CFTC intends to claim on behalf of Mr CY, is undoubtedly integrated into contractual provisions relating to maternity. Article 46, subparagraph 1, of the CCN expressly refers to the leave provided for in the previous article of that agreement, namely Article 45, which concerns statutory maternity leave.

With regard to the judgment of 21 September 2017 of the Chambre Sociale de la Cour de Cassation (Court of Cassation, Social Division), it is established that a male employee is not entitled to benefit from the provisions of Article 46 of the CCN.

In addition, it is apparent that the arguments of the CFTC concerning cases of alleged discrimination on the basis of the ties of filiation of the child — depending on whether the child is a natural or adoptive child — are ineffective in the case in the main proceedings because the Labour Court is only called upon to hear a case of alleged discrimination between male and female employees, with regard to the application of Article 46 CCN, and not a case of discrimination involving a child on the basis of his/her ties of filiation, with regard to the application of Article 46 and 46a CCN.

So far as concerns the question referred for a preliminary ruling, the CFTC is clearly not seeking an interpretation of the aforementioned European directive, the

terms of which are, moreover, perfectly clear, but merely seeking a declaration of invalidity, at supranational level, of the provisions of Article 46 CCN, as applied by the *Chambre Sociale de la Cour de Cassation*, with regard to the general EU law principles of equal treatment and of the prohibition of discrimination.

The CJEU has had the opportunity to point out, on several occasions, that it does not have the jurisdiction to examine the compatibility of national law, including the case-law of the Member States, with EU law. Likewise, the CJEU is not competent to interpret national law and has observed that it is for the national court to interpret national law in the light of EU law.

Accordingly, the Labour Court cannot uphold the request submitted by CFTC, before issuing a ruling, that a question be referred to the CJEU for a preliminary ruling. **[Or. 6]**

ACCORDINGLY, THE LABOUR COURT:

Having regard to the documents relating to the procedure, supporting documents and annexes submitted by the parties, Having regard to the application initiating proceedings submitted by the applicant dated 21 December 2017,

Having regard to the forms of order sought by the CFTC of 18 June 2018 [OMISSIS] Having regard to the forms of order sought by the CPAM of 8 October 2018, [OMISSIS]

To which it refers for a more detailed statement of the facts and pleas in law advanced by the parties in accordance with Article 455 of the Code de procédure civile (Civil Procedure Code).

Admissibility

[OMISSIS]

[OMISSIS] [consideration of admissibility]

Consequently, the Labour Court considers that the procedure is in line with the provisions of Article L. 1134-2 of the Code du Travail [Labour Code] and finds the application submitted by the CFTC is admissible.

Consideration of the question referred

Having regard to the decision of the Cour de cassation of 21 September 2017, which, by decision containing a statement of principle, declared that the objective of the leave provided for in Article 46 CCN is ‘*to grant supplementary maternity leave*’.

Having regard to the provisions of Article 2 and Article 3(2) of the Treaty establishing the European Community and the case-law of the Court of Justice of the European Union according to which equality between men and women is

proclaimed as a 'task' and mission of the Community imposing the positive obligation to promote such equality in all its activities. [Or. 7]

Having regard to Articles 21 and 23 of the Charter of Fundamental Rights of the European Union which also prohibit any discrimination on grounds of sex and enshrine the right to equal treatment between men and women in all areas, including employment, work and pay.

Having regard to Article 267 TFEU which provides that 'the Court of Justice of the European Union is to have jurisdiction to give preliminary rulings concerning:

- the interpretation of the Treaties;
- the validity and interpretation of acts of the institutions, bodies, offices or agencies of the Union;

Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court to give a ruling thereon.'

In the light of the discussions and documents put before it,

The Labour Court decides, before issuing a ruling, to refer the following question to the CJEU for a preliminary ruling:

'Should Directive 2006/54/EC, read in conjunction with Articles 8 and 157 TFEU, the general EU law principles of equal treatment and of the prohibition of discrimination, and Articles 20, 21(1) and 23 of the Charter of Fundamental Rights of the European Union, be interpreted as meaning that the provisions of Article 46 of the Convention collective nationale française des organismes de sécurité sociale, which grant female employees of social security organisations raising children on their own three months leave with half pay, one and a half months leave with full pay or unpaid leave of up to a year after maternity leave, are excluded from the scope of application of that directive?'

Consequently, the Labour Court decides to stay the proceedings as to the substantive issues of the action brought by the CFTC.

ON THOSE GROUNDS

The bureau de jugement du Conseil des Prud'hommes de Metz, Section Activités Diverses (Adjudication Panel of the Labour Tribunal, Metz, Miscellaneous Activities Chamber), giving judgment in open court in *inter partes* proceedings and before issuing a ruling, after consideration in accordance with the law,

DECLARES the request brought by the CFTC is admissible,

UPHOLDS the request of the CFTC to refer a question to the Court of Justice of the European Union for a preliminary ruling, **[Or. 8]**

Having regard to Article 267 TFEU,

REFERS the following question to the Court of Justice of the European Union for a preliminary ruling:

‘Should Directive 2006/54/EC, read in conjunction with Articles 8 and 157 TFEU, the general EU law principles of equal treatment and of the prohibition of discrimination, and Articles 20, 21(1) and 23 of the Charter of Fundamental Rights of the European Union, be interpreted as meaning that the provisions of Article 46 of the Convention collective nationale française des organismes de sécurité sociale, which grant female employees of social security organisations raising children on their own three months leave with half pay, one and a half months leave with full pay or unpaid leave of up to a year after maternity leave, are excluded from the scope of application of that directive?’

Consequently,

STAYS the proceedings as to the substantive issues pending the decision of the Court of Justice of the European Union,

DECLARES that the proceedings shall be continued at the initiative of the parties following the decision of the Court of Justice of the European Union,

[OMISSIS]