



Press and Information

Court of Justice of the European Union
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Judgment in Case C-588/12
Lyreco Belgium NV v Sophie Rogiers

Where a worker is unlawfully dismissed during part-time parental leave, the fixed-sum protective award to which a full-time worker is entitled must be calculated on the basis of full-time salary

A calculation based on part-time salary makes nugatory much of the protective system established by EU law and affects the rights acquired by the worker

EU law¹ provides that workers must be protected against all unlawful dismissal resulting from an application for, or the taking of, parental leave and that they have the right to return to the same job or, if that is not possible, to an equivalent or similar job. The Belgian transposing law states that any employer who terminates an employment contract when there is no compelling or sufficient reason to do so is required to pay the worker fixed-sum protective compensation equal to six months' salary.

Ms Rogiers worked in Belgium as a full-time employee of the company Lyreco under an employment contract of indefinite duration. Ms Rogiers took maternity leave in 2009 which she extended by half-time parental leave of four months. At the beginning of the parental leave, Lyreco terminated Ms Rogiers' employment contract with a notice period of five months. The Belgian court ordered Lyreco to pay a fixed-sum protective award because there was no compelling or sufficient reason justifying unilateral termination of the employment contract during parental leave.

The *arbeidshof te Antwerpen* (Higher Labour Court, Antwerp, Belgium), before which an appeal has been brought, asks the Court of Justice whether, in such a situation, the fixed-sum award must be determined on the basis of the reduced salary earned by the worker at the date of his dismissal. Lyreco claims that the award must be calculated on the basis of the salary paid to Ms Rogiers at the date of dismissal, namely the salary corresponding to the half-time hours worked under the part-time parental leave.

In today's judgment, the Court considers that the Belgian fixed-sum protective award is a measure capable of protecting workers against unlawful dismissal due to an application for, or the taking of, parental leave. However, it states that protective measure would lose a great part of its effectiveness if the award were to be determined not on the basis of the full-time salary but on the basis of the reduced salary earned during part-time parental leave. As the Court had the opportunity to point out in a previous judgment², such a method of calculation would be likely not to have a deterrent effect sufficient to prevent the unlawful dismissal of workers and would render null the protective system put in place by EU law.

The Court declares that this assessment is supported by the fact that, in accordance with EU law, rights acquired by the worker on the date on which parental leave starts (namely all the rights and benefits derived from the employment relationship) are to be maintained as they stand until the end of parental leave. The Court considers that the right to a fixed-sum protective award in the event of the unilateral termination of a contract without compelling or sufficient reason is an acquired right,

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).

² Case [C-116/08 Meerts](#). See also Press Release No [93/09](#).

insofar as the award is payable on the basis of the employment which the worker carried out and which he would have continued to carry out but for the unfair dismissal.

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 European Union law or the validity of a European Union 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 a similar 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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