

JUDGMENT OF THE COURT (Seventh Chamber)

16 May 2024 (*)

(Reference for a preliminary ruling – Social policy – Directive (EU) 2019/1158 – Balance between working life and private life of parents – Single-parent family – Equal treatment with two-parent families – Extension of maternity leave – Article 5 – Parental leave – Inadmissibility of the request for a preliminary ruling)

In Case C-673/22

REQUEST for a preliminary ruling under Article 267 TFEU from the Juzgado de lo Social No 1 de Sevilla (Social Court No 1, Seville, Spain), made by decision of 28 September 2022, received at the Court on 27 October 2022, in the proceedings

CCC

v

Tesorería General de la Seguridad Social (TGSS),

Instituto Nacional de la Seguridad Social (INSS),

THE COURT (Seventh Chamber),

composed of F. Biltgen, President of the Chamber, A. Prechal (Rapporteur), President of the Second Chamber, acting as Judge in the Seventh Chamber, and M.L. Arastey Sahún, Judge,

Advocate General: L. Medina,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the Tesorería General de la Seguridad Social (TGSS) and the Instituto Nacional de la Seguridad Social (INSS), by M. Sánchez Jiménez and A.R. Trillo García, acting as letrados,
- the Spanish Government, by I. Herranz Elizalde, acting as Agent,
- the European Commission, by I. Galindo Martín and E. Schmidt, 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 Article 5 of Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU (OJ 2019 L 188, p. 79).

2 This request has been made in proceedings between CCC, on the one hand, and the Tesorería General de la Seguridad Social (TGSS) (Social Security General Fund, Spain) and the Instituto Nacional de la Seguridad Social (INSS) (National Institute of Social Security, Spain), on the other hand, concerning those two bodies' refusal to extend CCC's maternity leave as a single parent with her child by 16 weeks.

Legal context

European Union law

Directive 92/85/EEC

3 Article 8, entitled 'Maternity leave', 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), 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.'

Directive 2019/1158

4 Recital 37 of Directive 2019/1158 is worded as follows:

'Notwithstanding the requirement to assess whether the conditions of access to and the detailed arrangements for parental leave should be adapted to the specific needs of parents in particularly disadvantaged situations, Member States are encouraged to assess whether conditions for access to, and the detailed arrangements for, exercising the right to paternity leave, carers' leave and flexible working arrangements should be adapted to particular needs, such as of those of single parents, adoptive parents, parents with a disability, parents of children with a disability or a long-term illness, or parents in particular circumstances, such as those related to multiple births and premature births.'

5 As set out in Article 3 of that directive, headed 'Definitions':

'1. For the purposes of this Directive, the following definitions apply:

(a) "paternity leave" means leave from work for fathers or, where and in so far as recognised by national law, for equivalent second parents, on the occasion of the birth of a child for the purposes of providing care;

(b) "parental leave" means leave from work for parents on the grounds of the birth or adoption of a child to take care of that child;

...'

6 Article 4 of that directive, entitled 'Paternity leave', provides:

'1. Member States shall take the necessary measures to ensure that fathers or, where and in so far as recognised by national law, equivalent second parents, have the right to paternity leave of 10 working days that is to be taken on the occasion of the birth of the worker's child. Member States may determine whether to allow paternity leave to be taken partly before or only after the birth of the child and whether to allow such leave to be taken in flexible ways.

2. The right to paternity leave shall not be made subject to a period of work qualification or to a length of service qualification.

3. The right to paternity leave shall be granted irrespective of the worker's marital or family status, as defined by national law.'

7 Article 5 of that directive, entitled 'Parental leave', provides:

'1. Member States shall take the necessary measures to ensure that each worker has an individual right to parental leave of four months that is to be taken before the child reaches a specified age, up to the age of eight, to be specified by each Member State or by collective agreement. That age shall be determined with a view to ensuring that each parent is able to exercise their right to parental leave effectively and on an equal basis.

2. Member States shall ensure that two months of parental leave cannot be transferred.

...

8. Member States shall assess the need for the conditions of access to and the detailed arrangements for the application of parental leave to be adapted to the needs of adoptive parents, parents with a disability and parents with children with a disability or a long-term illness.'

8 Article 20(1) of Directive 2019/1158 provides:

'Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 2 August 2022. ...'

Spanish law

The Workers' Statute

9 Article 48(4) of the Estatuto de los Trabajadores (Workers' Statute), in the version resulting from the Real Decreto Legislativo 2/2015, por el que se aprueba el texto refundido de la Ley del Estatuto de los Trabajadores (Royal Legislative Decree 2/2015 approving the consolidated text of the Law on the Workers' Statute) of 23 October 2015 (BOE No 255 of 24 October 2015, p. 100224) ('the Workers' Statute'), provides:

'The birth, which includes childbirth and care of a child under the age of 12 months, shall suspend the biological mother's employment contract for 16 weeks, of which the first 6 weeks following childbirth must be taken on a full-time basis, in order to ensure the protection of the mother's health.

The birth suspends the employment contract of the parent other than the biological mother for 16 weeks, of which the first 6 weeks following the birth must be taken on a full-time basis, in order to fulfil the care obligations laid down in Article 68 of the Civil Code.

...

Once the first six weeks following childbirth have elapsed, the suspension of the contract of each of the parents, on the ground of care to be given to the child, may be shared according to the parents' wishes, in respect of periods of weekly leave to be taken cumulatively or interrupted and taken from the end of the compulsory suspension following childbirth until the child reaches the age of 12 months. However, the biological mother may exercise this right up to four weeks before the expected date of childbirth. ...

...'

The General Law on Social Security

10 Article 177, entitled 'Protected situations', of the texto refundido of the Ley General de la Seguridad Social (consolidated text of the General Law on Social Security), as approved by Real Decreto Legislativo 8/2015 (Royal Legislative Decree 8/2015) of 30 October 2015 (BOE No 261 of 31 October

2015, p. 103291) ('the General Law on Social Security'), in the version applicable at the time of the facts in the main proceedings, provides:

'For the purposes of the allowance granted on the birth of a child in order to care for the child, provided for in this section, the birth, adoption, custody and placement in foster care of the child shall be regarded as protected situations, in accordance with the Civil Code or the Civil Law of the Autonomous Communities governing the placement (provided that, in the latter case, its duration is not less than one year), during the periods of leave granted in respect of those situations, in accordance with the provisions of Article 48(4), (5) and (6) of the [Workers' Statute], and Article 49(a), (b) and (c) of the [texto refundido de la Ley del Estatuto Básico del Empleado Público (consolidated text of the Law on the basic regulations relating to public employees)].'

11 Article 178 of the General Law on Social Security, entitled 'Beneficiaries', provides:

'1. Persons covered by this general scheme, whatever their sex, who take the leave referred to in the preceding article, shall be entitled to the allowance paid on the birth of the child in order to care for the child, provided that they satisfy the general condition laid down in Article 165(1) and the other conditions laid down by regulation, and that they have completed the following minimum contribution periods:

- (a) If the worker is under 21 years of age on the date of the birth, or on the date of the administrative decision to place the child in a foster family or to grant custody for the purposes of adoption, or the judicial decision confirming the adoption, no minimum period of contribution is required.
- (b) If the worker has reached the age of 21 and is under 26 years of age on the date of birth, or on the date of the administrative decision to place the child into foster care or to grant custody for the purposes of adoption, or the judicial decision confirming the adoption, the minimum contribution period required shall be 90 days during the seven years immediately preceding the start of the leave. The abovementioned condition is deemed to be satisfied if, in the alternative, the person concerned can show that he or she has made contributions for 180 days during his or her working life prior to that date.
- (c) If the worker is 26 years of age on the date of the birth, or on the date of the administrative decision to place the child into foster care or to grant custody for the purposes of adoption or the judicial decision confirming the adoption, the minimum contribution period required shall be 180 days during the seven years immediately preceding the start of the leave. That condition is deemed to be satisfied if, in the alternative, the person concerned can show that he or she has made contributions for 360 days during his or her working life prior to that date.

2. In cases of birth, the age indicated in the previous paragraph will be the age reached by the person concerned at the time of the start of the leave, the date of childbirth being taken as the reference point for the purpose of verifying any required minimum contribution period.

...'

12 Article 179 of that law contains the rules applicable to determine the financial allowance which must be paid.

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

13 On 5 November 2021, the applicant gave birth to a child. She and her child form a single-parent family. As an employee affiliated to the Spanish general social security scheme, she applied to the INSS for maternity benefit.

14 By decisions of 10 and 14 December 2021, the INSS granted her the allowance provided for by that scheme for the duration of her maternity leave from 5 November 2021 to 24 February 2022.

- 15 On 22 February 2022, the applicant in the main proceedings applied to the INSS for an extension of that 16 week leave on account of her family situation as a single parent. In support of that request, she claimed that the Spanish legislation governing parental leave discriminates against children born into single-parent families as compared with children born into two-parent families, in so far as the former do not benefit, like the latter, from the 16-week period during which, in two-parent families, the parent other than the biological mother looks after the children.
- 16 The INSS and the TGSS rejected that application on the ground that Article 177 of the General Law on Social Security determines the parents entitled to parental leave on an individual basis and in the light of compliance with the conditions required for the grant of the benefits at issue. As such, in two-parent families, recognition of the right to parental leave is not automatic since each parent must satisfy, on an individual basis, the statutory conditions for recognition of those benefits. Accordingly, the automatic award, to the biological mother of a child born into a single-parent family, of the full period of parental leave which parents in a two-parent family could take (namely, the 16 weeks of her own leave plus the 16 weeks which would be granted to the parent other than the biological mother) would constitute discrimination in respect of two-parent families in which each of the parents is not automatically granted the right to 16 weeks' parental leave.
- 17 Following the rejection of the request of the applicant in the main proceedings, she brought an action against the INSS and the TGSS before the Juzgado de lo Social No 1 de Sevilla (Social Court No 1, Seville, Spain), the referring court, in order to obtain an extension of her maternity leave with allowances to cover a period of 32 weeks.
- 18 That court is uncertain whether the Spanish legislation on parental leave complies with Directive 2019/1158 in so far as that legislation does not take account of the specific situation of parents of single-parent families, who are at a disadvantage compared with parents of two-parent families as regards the reconciliation between work and private life, as well as the time spent caring for the child.
- 19 In particular, it asks whether that legislation complies with that directive when it excludes any possibility of extending the period of parental leave for a mother forming a single-parent family with her child and therefore creates unequal treatment between her and the two-parent families who have, at the very least, the possibility of taking parental leave of a maximum of 32 weeks, of which 10 weeks are intended exclusively to fulfil the obligation on both parents to care for the child. The absence of provisions in Spanish legislation laying down flexible measures or conditions for single-parent families results in a reduction, for those families, in the time spent caring for the child compared with the time which the parents of a two-parent family can give to their child where they satisfy the conditions laid down in that regard.
- 20 Consequently, the referring court asks whether single-parent families may fall within the scope of Article 5(8) of Directive 2019/1158, read in conjunction with recital 37 of that directive, which allows the conditions of access and detailed rules for applying parental leave to be adapted to the needs of adoptive parents, parents with disabilities and parents of children with disabilities or suffering from a long-term illness. It also asks whether the minimum EU rules imposed on the Member States include the obligation to provide a legal framework adapted to the specific needs of single-parent families as regards the balance between work and private life.
- 21 In those circumstances, the Juzgado de lo Social No 1 de Sevilla (Social Court No 1, Seville) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- ‘(1) Is the omission by the Spanish legislature from Article 48(4) of the [Workers’ Statute] and from Articles 177, 178 and 179 [of the General Law on Social Security] of provisions requiring an assessment of the specific needs of single-parent families in the area of work-life balance, having implications for the period in which care is provided to a new-born child, as compared with a child born into a two-parent family in which both parents have an expectation of access to paid leave if both fulfil the conditions of access to the social security benefit, compatible with the directive, which requires a specific assessment, inter alia, of the birth of a child into a single-parent family, in order to determine the conditions of access to and the detailed arrangements for parental leave?’

- (2) In the absence of a specific statutory provision laid down by the Spanish legislature, must the eligibility conditions for time off work for the birth of a child, the conditions of access to the social security cash benefit and the rules governing eligibility for parental leave, and, in particular, the possible extension of the duration of that leave owing to the lack of another parent other than the biological mother who cares for the child, be interpreted flexibly pursuant to the [EU] provision?’

Inadmissibility of the request for a preliminary ruling

- 22 As a preliminary point, it must be borne in mind that it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine, in the light of the particular circumstances of the case, both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted concern the interpretation of a rule of EU law, the Court is, in principle, bound to give a ruling. Questions relating to EU law enjoy a presumption of relevance (see, to that effect, judgment of 6 October 2021, *Sumal*, C-882/19, EU:C:2021:800, paragraphs 27 and 28 and the case-law cited).
- 23 However, as is apparent from the actual wording of Article 267 TFEU, the question referred for a preliminary ruling must be ‘necessary’ to enable the referring court to ‘give judgment’ in the case before it (judgment of 22 March 2022, *Prokurator Generalny (Disciplinary Chamber of the Supreme Court –Appointment)*, C-508/19, EU:C:2022:201, paragraph 61 and the case-law cited).
- 24 Thus, it is essential that the national court should, in that decision, expand on its definition of the factual and legislative context of the dispute in the main proceedings and give at the very least some explanation of the reasons for the choice of the provisions of EU law which it seeks to have interpreted and of the link it establishes between those provisions and the national law applicable to the proceedings pending before it. Those cumulative requirements concerning the content of a request for a preliminary ruling are expressly set out in Article 94 of the Rules of Procedure of the Court (judgment of 4 June 2020, *C.F. (Tax inspection)*, C-430/19, EU:C:2020:429, paragraph 23 and the case-law cited).
- 25 Furthermore, according to the Court’s settled case-law, where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it, the Court may refuse to rule on a question referred for a preliminary ruling by a national court (see, to that effect, judgment of 6 October 2021, *Sumal*, C-882/19, EU:C:2021:800, paragraph 28 and the case-law cited).
- 26 In the present case, the referring court asks the Court to interpret the rules of EU law governing parental leave, laid down in Directive 2019/1158 and, in particular, Article 5(8) of that directive, read in conjunction with recital 37 thereof.
- 27 However, in the first place, as regards the application *ratione materiae* of Article 5 of Directive 2019/1158, relating to parental leave, it should be noted that the dispute in the main proceedings concerns an application for an extension of 16 weeks’ maternity leave on account of the status of the applicant in the main proceedings as a single parent. In addition, Article 48(4) of the Workers’ Statute and Articles 177 to 179 of the General Law on Social Security, in respect of which the referring court queries compatibility with Article 5 on the right to parental leave, appear to govern maternity and paternity leave.
- 28 The concepts of ‘parental leave’, ‘paternity leave’ and ‘maternity leave’ have a precise and distinct meaning in EU law. Parental leave is defined in Article 5 of Directive 2019/1158, read in conjunction with Article 3(1)(b) thereof, as leave from work for four months for parents on the grounds of the birth or adoption of a child to take care of that child, to be taken before the child reaches a specified age, up to the age of eight. As regards paternity leave, under Article 4 of that directive, read in conjunction with Article 3(1)(a), it means leave from work of 10 working days for fathers or, where and in so far as recognised by national law equivalent second parents, that is to be taken on the occasion of the birth of a child to take care of him or her. Lastly, as provided for in Article 8 of Directive 92/85, maternity leave

is leave for pregnant workers or who have recently given birth of at least 14 weeks allocated before and/or after confinement.

- 29 The Court has further clarified that parental leave and maternity leave pursue different purposes. Thus, although parental leave is granted to parents to enable them to take care of their child and may be taken until the child has reached a given age up to eight years, maternity leave is intended to protect a woman's biological condition and the special relationship between the woman and her child over the period which follows pregnancy and childbirth, by preventing that relationship from being disturbed by the multiple burdens which would result from the simultaneous pursuit of employment (see, to that effect, judgment of 16 June 2016, *Rodríguez Sánchez*, C-351/14, EU:C:2016:447, paragraph 44 and the case-law cited).
- 30 Consequently, having regard to the dispute in the main proceedings, which concerns an application for an extension of maternity leave, it must be held that the referring court does not explain why it seeks an interpretation of Article 5 of Directive 2019/1158 concerning parental leave and the link between that provision and the provisions of national law governing maternity leave or paternity leave on which it relies.
- 31 On 4 October 2023, the President of the Court sent a request for information to the referring court in which he asked that court to clarify whether the applicant's request related to maternity leave, paternity leave or parental leave. If that request related to parental leave, the referring court was asked to specify the role and nature of the intervention of the INSS in the context of such a request. In the event that that request related to maternity leave or paternity leave, the referring court was asked to clarify in what way the interpretation of Article 5 of Directive 2019/1158 on parental leave was necessary in order to resolve the dispute in the main proceedings
- 32 In response to that request for information, the referring court stated that the nature of the parental leave referred to in Article 5 of Directive 2019/1158 and that of the paid maternity leave governed by Article 177 et seq. of the General Law on Social Security were clearly similar and that maternity leave conferred special legal protection for maternity. In addition, it stated that its request for a preliminary ruling seeks to determine whether Spanish social security legislation complies with Directive 2019/1158 in so far as that legislation neither governs nor provides for the special situation of single-parent families, irrespective of the question of remuneration for the leave at issue. The referring court also states that an answer to its questions is necessary in order to avoid a systematic refusal of the right to the extension requested by a strict application of the Spanish legislation liable to infringe the rights of children born into single-parent families as compared to those born in two-parent families, who are able, under Spanish law, to benefit from a period of 32 weeks of parental leave.
- 33 That answer from the referring court does not, however, clarify the relationship between, on the one hand, the dispute in the main proceedings concerning an application for extension of maternity leave, governed by Article 48(4) of the Workers' Statute and Articles 177 to 179 of the General Law on Social Security, and, on the other hand, the interpretation of Article 5 of Directive 2019/1158, which confers on each parent an individual right to parental leave and specifies the detailed rules governing it. Article 5 of that directive does not concern maternity leave and therefore does not govern the question of the extension of that leave on the ground that a mother forms a single-parent family with her child, which cannot be called into question by the alleged similarities between parental leave and maternity leave and by the risk of strict application of the Spanish legislation which does not take account of the specific situation of single-parent families.
- 34 Therefore, it has not been established that Article 5 of Directive 2019/1158 applies *ratione materiae* to the dispute in the main proceedings. The interpretation of that provision is therefore not necessary for the purposes of enabling the referring court to rule on the dispute in the main proceedings.
- 35 In the second place, as regards the application *ratione temporis* of Directive 2019/1158, it should be noted that, under Article 20(1) of that directive, the Member States were required to transpose it into their national law by 2 August 2022 at the latest. In the present case, on 22 February 2022, the applicant in the main proceedings requested an extension of her maternity leave with effect from 24 February 2022 for a period of 16 weeks.

36 Thus, both the date of that request and the period of possible extension of the maternity leave at issue in the main proceedings precede the date of expiry of the transposition period laid down by Directive 2019/1158. Moreover, there is nothing in the documents before the Court to establish that Article 48(4) of the Workers' Statute and Articles 177 to 179 of the General Law on Social Security were adopted with a view to anticipating the obligation to transpose the provisions of that directive relating to parental leave.

37 Consequently, at the time of the facts in the main proceedings, since the period prescribed for the implementation of Directive 2019/1158 had not expired and that directive had not been transposed into national law, it is not necessary to interpret its provisions for the purposes of the main proceedings (see, to that effect, judgment of 15 March 2001, *Mazzoleni and ISA*, C-165/98, EU:C:2001:162, paragraph 17).

38 It must therefore be held that the provisions of EU law whose interpretation is sought are not applicable either *ratione materiae* or *ratione temporis* to the circumstances of the case in the main proceedings and, consequently, that the questions referred in the present case are hypothetical.

39 It follows that the request for a preliminary ruling is inadmissible.

Costs

40 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 (Seventh Chamber) hereby rules:

The request for a preliminary ruling made by the Juzgado de lo Social No 1 de Sevilla (Social Court No 1, Seville, Spain), by decision of 28 September 2022, is inadmissible.

[Signatures]