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Provisional text

JUDGMENT OF THE COURT (Seventh Chamber)

27 June 2024 (*)

(Reference for a preliminary ruling – Social policy – Measures to encourage improvements in the safety and health of pregnant workers and workers who have recently given birth or are breastfeeding – Directive 92/85/EEC – Prohibition of dismissal – Worker who became aware of her pregnancy after the expiry of the time limit for bringing an action challenging her dismissal – Option to bring such an action subject to the making of a request for leave to bring an action out of time within two weeks – Right to effective judicial protection – Principle of effectiveness)

In Case C‑284/23,

REQUEST for a preliminary ruling under Article 267 TFEU from the Arbeitsgericht Mainz (Labour Court, Mainz, Germany), made by decision of 24 April 2023, received at the Court on 2 May 2023, in the proceedings

TC

v

Firma Haus Jacobus Alten- und Altenpflegeheim gGmbH,

THE COURT (Seventh Chamber),

composed of F. Biltgen, President of the Chamber, N. Wahl and M.L. Arastey Sahún (Rapporteur), Judges,

Advocate General: J. Richard de la Tour,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– Firma Haus Jacobus Alten- und Altenpflegeheim gGmbH, by I. Michalis, Rechtsanwalt,

– the European Commission, by B.-R. Killmann and by D. Recchia 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 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).

2 The request was made in proceedings between TC and Firma Haus Jacobus Alten- und Altenpflegeheim gGmbH ('Haus Jacobus'), a company governed by German law managing a care home for elderly persons, concerning the dismissal of TC, who was pregnant on the date of that dismissal.

Legal context

European Union law

3 The term 'pregnant worker' is defined in Article 2(a) as a 'pregnant worker who informs her employer of her condition, in accordance with national legislation and/or national practice'.

4 Article 10 of that directive, entitled 'Prohibition of dismissal', provides that:

'In order to guarantee workers, within the meaning of Article 2, the exercise of their health and safety protection rights as recognized under this Article, it shall be provided that:

1. Member States shall take the necessary measures to prohibit the dismissal of workers, within the meaning of Article 2, during the period from the beginning of their pregnancy to the end of the maternity leave referred to in Article 8(1), save in exceptional cases not connected with their condition which are permitted under national legislation and/or practice and, where applicable, provided that the competent authority has given its consent;

2. if a worker, within the meaning of Article 2, is dismissed during the period referred to in point 1, the employer must cite duly substantiated grounds for her dismissal in writing;

3. Member States shall take the necessary measures to protect workers, within the meaning of Article 2, from consequences of dismissal which is unlawful by virtue of point 1.'

5 Article 12 of that directive, entitled 'Defence of rights', provides that:

'Member States shall introduce into their national legal systems such measures as are necessary to enable all workers who should [find] themselves wronged by failure to comply with the obligations arising from this Directive to pursue their claims by judicial process (and/or, in accordance with national laws and/or practices) by recourse to other competent authorities.'

German law

6 Paragraph 17 of the Gesetz zum Schutz von Müttern bei der Arbeit, in der Ausbildung und im Studium (Mutterschutzgesetz) (Law on the protection of mothers in work, training or education (Law on maternity protection)) of 23 May 2017 (BGBl. 2017 I, p. 1228; 'the MuSchG'), entitled 'Prohibition of dismissal', reads as follows:

'(1) An employer may not dismiss a woman

1. during her pregnancy,

2. until the expiry of a time limit of four months following a miscarriage after the twelfth week of pregnancy; and

3. until the end of her period of protection after childbirth, and at least up until the expiry of a time limit of four months after childbirth;

if the employer is, at the time of the dismissal, aware of the pregnancy, miscarriage after the twelfth week of pregnancy or the birth, or if that information is communicated to the employer within two weeks of receipt of the notice of dismissal. It shall not be detrimental to exceed that time limit if the person concerned is not responsible for the delay and the notification is then given to the employer immediately. The first two sentences shall apply by analogy to preparatory measures taken by the employer with a view to dismissing the person concerned.

(2) The supreme Land authority responsible for occupational health and safety or the body designated by it may exceptionally declare dismissal permissible in special cases not connected with the condition of the woman during pregnancy, following a miscarriage after the twelfth week of pregnancy or after childbirth. The notice of dismissal must be issued in writing and must state the reason for dismissal.

…'

7 Paragraph 4 of the Kündigungsschutzgesetz (Law on protection against dismissal) of 25 August 1969 (BGBl. 1969 I, p. 1317), in the version applicable to the dispute in the main proceedings ('the KSchG'), entitled 'Seising of [the Arbeitsgericht (Labour Court, Germany)]', provides:

'Where an employee wishes to challenge a dismissal because it is socially unjustified or, otherwise, legally ineffective, he or she must bring an action before [the Arbeitsgericht (Labour Court)] within three weeks of receiving written notice of the dismissal in order to seek a finding that the dismissal has not ended the employment relationship. If Paragraph 2 applies, the action may seek a finding that the modification to the working conditions is socially unjustified or, otherwise, legally ineffective. Where an employee has raised an objection before the staff representatives (Paragraph 3), he or she should attach the comments of those representatives to the application. To the extent to which the dismissal requires the approval of an authority, the time limit for bringing an action before [the Arbeitsgericht (Labour Court)] shall start to run only once the employee has been notified of the decision of such authority.'

8 Paragraph 5 of the KSchG, entitled 'Admission of actions brought out of time', states:

'1. Where, despite making all reasonable efforts under the circumstances, an employee was prevented from bringing an action within three weeks of receiving written notice of dismissal, upon request, leave to bring an action shall be granted subsequently. The same applies if, for a reason not attributable to her, a woman did not become aware of her pregnancy until after the time limit set out in the first sentence of Paragraph 4 had elapsed.

2. The request shall be submitted together with the application; where the application has already been submitted, it shall be referred to in request. In addition, the request must also describe the circumstances justifying the delayed submission and must contain the means by which those circumstances can be substantiated.

3. The request shall be admissible only if submitted within two weeks of the removal of the obstacle to bringing an action. Once six months have elapsed following the missed deadline, the request may no longer be made.

…'

9 Paragraph 7 of the KSchG, entitled 'Taking effect of dismissal', provides:

‘If the legal invalidity of a dismissal is not invoked in good time (first sentence of Paragraph 4 and Paragraphs 5 and 6), the dismissal shall be deemed valid by default …’’

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

10 TC was employed as from 1 August 2022 as a care assistant under a one-year employment contract by Haus Jacobus.

11 By letter of 6 October 2022, Haus Jacobus dismissed TC with effect from 21 October 2022.

12 On 9 November 2022, the applicant was medically certified as being seven weeks pregnant. She informed Haus Jacobus of this on 10 November 2022.

13 By letter of 13 December 2022, TC brought an action before the Arbeitsgericht Mainz (Labour Court, Mainz, Germany), the referring court, against her dismissal on the ground that, on the date of that dismissal, she was pregnant.

14 The referring court notes that, in accordance with the case-law of the Bundesarbeitsgericht (Federal Labour Court, Germany), the fourth sentence of Paragraph 4 of the KSchG, which provides that, where the dismissal requires the approval of an authority, the time limit for bringing an action before the Arbeitsgericht (Labour Court) is not to start to run until the employee has been notified of the authority’s decision, is not applicable where the employer is informed of the pregnancy after the dismissal, with the result that, in accordance with Paragraph 7 of the KSchG, the dismissal is deemed to be valid after the expiry of the time limit of three weeks laid down in the first sentence of Paragraph 4 of that law, despite the special protection against dismissal provided for in Paragraph 17 of the MuSchG, unless a request for leave to bring an action out of time is lodged in accordance with Paragraph 5 of the KSchG.

15 Thus, since TC did not make such a request, her action should be dismissed, in accordance with those provisions of the KSchG. However, the referring court has doubts as to whether those provisions are compatible with EU law, in particular in the light of the judgment of 29 October 2009, *Pontin* (C-63/08, ‘the judgment in *Pontin*’, EU:C:2009:666) in which the Court held that remedies available to a pregnant woman must be subject to rules that comply with the principle of effectiveness.

16 In that regard, the referring court notes, first, that, according to some German legal literature, the national legislation at issue in the main proceedings makes the judicial protection of pregnant women excessively difficult, on account of (i) various particularly short time limits existing alongside one another, each of which can lead to exclusion from protection against dismissal, and which are even shorter where the person concerned becomes aware of her pregnancy only after her dismissal, or (ii) obligations that must be fulfilled in respect of both the employer and the Arbeitsgericht (Labour Court).

17 Second, the referring court states that Paragraph 17 of the MuSchG allows, in accordance with EU law, a pregnant worker to claim special protection against dismissal by informing her employer of her pregnancy after her dismissal, including after the expiry of the time limit of three weeks for challenging that dismissal, laid down in Paragraph 4 of the KSchG, and the expiry of the time limit of two weeks referred to in Paragraph 17 of the MuSchG. In that case, the referring court considers that there appears to be no justification, in the light of the principle of effective judicial protection of an individual’s rights under EU law, for a pregnant worker to be required to comply with the procedure laid down in Paragraph 5 of the KSchG in order for her legal action to be allowed. If a woman informs her former employer after the expiry of that two-week period that she was pregnant at the time when she was dismissed, this cannot be understood by the employer in any other way than meaning that she is asserting that her dismissal is invalid.

18 In those circumstances, the Arbeitsgericht Mainz (Labour Court, Mainz) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘… [Are] the German national provisions of Paragraphs 4 and 5 of the [KSchG], according to which a woman who, as a pregnant woman, enjoys special protection against dismissal must also mandatorily bring an action within the time limits laid down in those provisions in order to retain that protection, … compatible with [Directive 92/85?]’

Admissibility of the request for a preliminary ruling

19 Haus Jacobus submits that the reference for a preliminary ruling is inadmissible in so far as the answer to the question referred is not relevant to the outcome of the dispute in the main proceedings.

20 That company submits, first, that, by its question, the referring court asks whether a pregnant worker is required to make use of a remedy under national law, namely that laid down in Paragraph 5 of the KSchG, in order to assert the rights conferred on her by Directive 92/85. The answer to that question derives directly from Article 12 of that Directive, which provides that all workers who should find themselves wronged by failure to comply with the obligations arising from that directive are to pursue their claims by judicial process under national law.

21 Second, since the worker concerned in the main proceedings did not make a request for leave to bring an action out of time, within the meaning of Paragraph 5 of the KSchG, it is not necessary to examine, for the purposes of resolving the dispute in the main proceedings, the question referred, concerning the effectiveness of the remedy provided for in that provision.

22 Thirdly, the referring court’s view that the Member States are required to allow every pregnant worker to assert non-compliance with the obligations under Directive 92/85 without making use of a remedy under national law, such as that provided for in Paragraph 5 of the KSchG, goes beyond the protection provided for in Article 10(3) and Article 12 of that directive.

23 In that regard, it is settled case-law that, in proceedings under Article 267 TFEU, 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 EU law, the Court is in principle bound to give a ruling (judgment of 9 March 2023, *Vapo Atlantic*, C‑604/21, EU:C:2023:175, paragraph 31 and the case-law cited).

24 In the present case, it should be noted, first, that Haus Jacobus’ arguments referred to in paragraphs 20 and 22 of the present judgment relate to the substance of the question referred and not to the admissibility of the request for a preliminary ruling. Moreover, the allegedly obvious nature of the answer to that question cannot justify a finding of inadmissibility. Even if this is a question to which the answer, in the view of one of the parties to the main proceedings, leaves no scope for any reasonable doubt, a request for a preliminary ruling containing such a question does not thereby become inadmissible (see, to that effect, judgment of 9 March 2023, *Vapo Atlantic*, C‑604/21, EU:C:2023:175, paragraph 33 and the case-law cited).

25 Second, as regards the argument referred to in paragraph 21 of the present judgment, it must be noted that the question referred relates not to the effectiveness of the remedy provided for in Paragraph 5 of the KSchG, but to whether the obligation to make use of such a remedy in order to assert the rights conferred by Directive 92/85 is compatible with the requirements arising from the principle of effectiveness.

26 Accordingly, the request for a preliminary ruling is admissible.

Consideration of the question referred

27 By its question, the referring court asks, in essence, whether Articles 10 and 12 of Directive 92/85 must be interpreted as precluding national legislation under which a pregnant worker who became aware of her pregnancy only after the expiry of the time limit prescribed for bringing an action challenging her dismissal is required, in order to be able to bring such an action, to submit a request for leave to bring an action out of time within a period of two weeks.

28 In that regard, it should be noted that Article 10(1) of Directive 92/85 provides that Member States must take the necessary measures to prohibit the dismissal of workers, within the meaning of Article 2 of that directive, during the period from the beginning of their pregnancy to the end of the maternity leave referred to in Article 8(1) of that directive, save in exceptional cases not connected with their condition which are permitted under national legislation and/or practice and, where applicable, provided that the competent authority has given its consent.

29 Under Article 12 of Directive 92/85, Member States are also required to introduce into their national legal systems such measures as are necessary to enable all workers who consider themselves wronged by failure to comply with the obligations arising from that directive, including those arising from Article 10 of the directive, to pursue their claims by judicial process. Point 3 of Article 10 specifically states that Member States are to take the necessary measures to protect such workers from consequences of dismissal which is unlawful by virtue of point 1 of that article.

30 Those provisions, in particular Article 12 of Directive 92/85, are a specific expression, in the context of that directive, of the principle of effective judicial protection of an individual's rights under EU law (judgment in *Pontin*, paragraph 41).

31 It is also apparent from case-law that, although the Member States are not bound under Article 12 of Directive 92/85 to adopt a specific measure, nevertheless the measure chosen must be such as to ensure effective and efficient legal protection, must have a genuine dissuasive effect with regard to the employer and must be commensurate with the injury suffered (judgment in *Pontin*, paragraph 42 and the case-law cited).

32 As regards the principle of effective judicial protection of an individual's rights under EU law, it is settled case-law that the detailed procedural rules governing actions for safeguarding an individual's rights under EU law must be no less favourable than those governing similar domestic actions (principle of equivalence) and must not render practically impossible or excessively difficult the exercise of rights conferred by EU law (principle of effectiveness) (judgment in *Pontin*, paragraph 43 and the case-law cited).

33 As regards the principle of equivalence, it is not apparent from the documents before the Court that the national legislation at issue in the main proceedings does not comply with that principle.

34 As regards the principle of effectiveness, it follows from the Court's case-law that every case in which the question arises as to whether a national procedural provision makes the application of EU law impossible or excessively difficult must be analysed by reference to the role of that provision in the procedure, its progress and its special features, viewed as a whole, before the various national bodies. In that context, it is necessary to take into consideration, where relevant, the principles which lie at the basis of the national legal system, such as the protection of the rights of the defence, the principle of legal certainty and the proper conduct of the proceedings (judgment of 21 December 2023, *BMW Bank and Others*, C-38/21, C-47/21 and C-232/21, EU:C:2023:1014, paragraph 304 and the case-law cited).

35 In that respect, the Court has thus recognised that it is compatible with EU law to lay down reasonable time limits for bringing proceedings in the interests of legal certainty, since such time limits are not liable to render practically impossible or excessively difficult the exercise of rights conferred by EU law (see, to that effect, judgment of 12 February 2008, *Kempter*, C-2/06, EU:C:2008:78, paragraph 58 and the

case-law cited). As regards limitation periods, the Court has also held that, in respect of national legislation which comes within the scope of EU law, it is for the Member States to establish those periods in the light of, inter alia, the significance for the parties concerned of the decisions to be taken, the complexities of the procedures and of the legislation to be applied, the number of persons who may be affected and any other public or private interests which must be taken into consideration (see, to that effect, judgment in *Pontin*, paragraph 48 and the case-law cited, and judgment of 27 February 2020, *Land Sachsen-Anhalt (Remuneration of officials and judges)*, C-773/18 to C-775/18, EU:C:2020:125, paragraph 69).

36 Thus, having regard in particular to the principle of legal certainty, the requirements of the principle of effectiveness do not preclude, in principle, in the case of an action seeking the reinstatement within the undertaking concerned of an employee who was unlawfully dismissed, the setting of a relatively short limitation period. It may be in the interest of legal certainty, both for the dismissed pregnant worker and the employer, that the possibility of bringing such actions before a court should be subject to a time-bar, particularly in view of the consequences for all of the parties concerned of reinstatement taking place after a significant period of time (see, to that effect, judgment in *Pontin*, paragraphs 60 and 61).

37 However, as regards national legislation which provides for a 15-day period for bringing an action for nullity of a dismissal, the Court held, first, that such a period must be regarded as particularly short, in view inter alia of the situation in which a woman finds herself at the start of her pregnancy and, second, that it would be very difficult for a worker dismissed during her pregnancy to obtain proper advice and, if appropriate, prepare and bring an action within that period (judgment in *Pontin*, paragraphs 62 and 65).

38 The Court also pointed out, in the light of the national legislation at issue in the case giving rise to the judgment in *Pontin*, that a pregnant worker who, for whatever reason, allows that 15-day period to expire ceases to have a legal remedy available in order to assert her rights following her dismissal (see, to that effect, judgment in *Pontin*, paragraph 66).

39 On the basis, in particular, of those findings, the Court held that procedural rules such as those characterising that national legislation, by giving rise to procedural problems liable to make exercise of the rights that pregnant women derive from Article 10 of Directive 92/85, excessively difficult, did not comply with the requirements of the principle of effectiveness, which it was, however, for the referring court to determine (see, to that effect, judgment in *Pontin*, paragraphs 67 and 69).

40 In the present case, it is apparent from the order for reference that, in accordance with the first sentence of Paragraph 4 of the KSchG, an action challenging a dismissal must be brought within three weeks of notification in writing of the dismissal. However, under Paragraph 5 of the KSchG, an action brought after that period by a pregnant worker may nevertheless be allowed if she was not aware of her pregnancy until after the expiry of that three-week time limit, and submits a request for leave to bring an action. That request must be made within two weeks of the removal of the obstacle to bringing the action.

41 The referring court finds that the worker concerned in the main proceedings, who did not bring an action against her dismissal within three weeks of written notification of that dismissal, did not make such a request, with the result that her action should be dismissed unless, as that court is inclined to consider, the national legislation at issue in the main proceedings is contrary to the principle of effectiveness.

42 The referring court observes that the three-week period for bringing an action laid down in the first sentence of Paragraph 4 of the KSchG is intended to provide legal certainty and that the same appears true of the two-week time limit for submitting a request for leave to bring an action out of time laid down in Paragraph 5(3) of the KSchG.

43 That said, as has been pointed out in paragraph 35 of the present judgment, in the determination of limitation periods, the Member States are not required merely to take into account legal certainty. Other

factors, such as the importance for the parties concerned of decisions to be taken or other public or private interests, must also be taken into consideration.

44 In that regard, the protection against dismissal of pregnant workers, as guaranteed by Article 10 of Directive 92/85, constitutes an important parameter which the Member States must take into account.

45 It is in view of the harmful effects which the risk of dismissal may have on the physical and mental state of a worker who is pregnant that, pursuant to Article 10 of Directive 92/85, the EU legislature provided for special protection for women, by prohibiting dismissal (see, to that effect, judgment of 22 February 2018, *Porras Guisado*, C-103/16, EU:C:2018:99, paragraph 46 and the case-law cited).

46 Admittedly, it is clear from the order for reference that Paragraph 5 of the KSchG allows, by means of a request, an action to be brought out of time after the expiry of the ordinary time limit of three weeks for bringing an action against the dismissal, where the woman, for a reason not attributable to her, had not yet become aware of her pregnancy.

47 However, it should be noted in the first place that that request for leave to bring an action out of time must be made within two weeks following the removal of the obstacle to bringing an action, which, according to the Court, is particularly short, in view inter alia of the situation in which a woman finds herself at the start of her pregnancy (judgment in *Pontin*, paragraph 62).

48 Second, it should be pointed out that that time limit of two weeks is shorter than the ordinary time limit of three weeks laid down in the first sentence of Paragraph 4 of the KSchG for bringing an action challenging a dismissal.

49 Thus, a pregnant worker who is aware, at the time of her dismissal, of her pregnancy has a period of three weeks in which to bring such an action. By contrast, a worker who is not aware of her pregnancy before the expiry of that time limit, for a reason which is not attributable to her, has only two weeks in which to request leave to bring such an action, which implies a considerable reduction in the time limit to obtain effective advice and, where appropriate, to draft and submit not only that request for leave to bring an action out of time, but also to bring the action itself. As the Commission points out in its written observations, Paragraph 5(2) of the KSchG provides that that action is, in principle, to be lodged at the same time as the request.

50 In that regard, Haus Jacobus asserts, in its written observations, that the request for leave to bring the action out of time is not subject to specific formal requirements and that it may even be made orally to the registry of any court, including a court which does not have jurisdiction. The Commission, for its part, submits that, even if the mere fact of bringing an action against a dismissal is not sufficient for such a request to be regarded as having been made, it may nevertheless be made implicitly.

51 That being so, even if those clarifications prove to be correct, in accordance with the findings of the referring court, the fact remains that, when a worker learns, as in the present case, that she is pregnant after a period of three weeks has passed following her dismissal, she is required, on pain of being time-barred, not only to bring an action, but also to make a request for leave to bring that action within a period of two weeks, that is to say, a shorter period than that which would have applied if she had been aware of her pregnancy at the time of her dismissal. Thus, that two-week period may have the effect of making it very difficult for that worker to obtain proper advice and, where appropriate, to draw up and submit the request for leave to bring an action and to bring the action itself.

52 Third, as the Commission also observes in its written observations, the starting point of the two-week period referred to in Paragraph 5(3) of the KSchG, that is to say, the time when 'the obstacle to bringing an action is removed', appears ambiguous, which may contribute to making the exercise of the rights guaranteed by Directive 92/85 more difficult.

53 Fourth and lastly, it is apparent from the order for reference that, in accordance with the second sentence of Paragraph 17(1) of the MuSchG, the dismissed worker is required to inform her employer without delay of her pregnancy. In the light of that obligation, that court asks whether the additional requirement that that worker must submit to a court a request for leave to bring an action out of time should be regarded as incompatible with the requirements of the principle of effective judicial protection.

54 In that regard, it should be noted that, admittedly, the fact that the worker is required not only to inform her employer without delay of her pregnancy but also to submit, within a period of two weeks, a request for leave to bring an action out of time before a court and, in principle, to bring the action itself, helps to demonstrate the complexity of the system put in place by the national legislation at issue in the main proceedings, which lays down a number of competing obligations, to be fulfilled within separate, overlapping periods, both with the employer, and with a court.

55 However, mere notification to the employer cannot, in principle, be regarded as equivalent to the lodging with a court of an act required by national procedural rules in order to challenge a dismissal or, as a minimum, to suspend the limitation period for challenging that dismissal.

56 It follows that the requirement to submit to a court a request for leave to bring an action out of time cannot, as such, be regarded as incompatible with the requirements of the principle of effective judicial protection, even where the national legislation also imposes an obligation on the worker concerned to inform her employer without delay of her pregnancy.

57 By contrast, the procedural rules governing such a request for leave to bring an action out of time may, as the case may be, prove incompatible with the requirements of the principle of effective judicial protection.

58 In the present case, it should be noted that the two-week time limit laid down in Paragraph 5 of the KSchG appears, subject to checks to be made by the referring court, to entail procedural disadvantages such as to infringe the principle of effectiveness and, accordingly, the principle of effective judicial protection of the rights conferred on individuals by Directive 92/85. That time limit, which is considerably shorter than the ordinary time limit laid down in Paragraph 4 of that law, appears, in view of the situation of a woman at the beginning of pregnancy, particularly short and likely to make it very difficult for a pregnant worker to obtain effective advice and, where appropriate, to prepare and submit a request for leave to bring an action out of time and to bring the action itself, particularly since uncertainties remain as to the starting point of that two-week period and the accumulation of obligations, each corresponding to separate time limits, to be fulfilled both in respect of the employer and a court.

59 In the light of all the foregoing, the answer to the question referred is that Articles 10 and 12 of Directive 92/85 must be interpreted as precluding national legislation under which a pregnant worker who did not become aware of her pregnancy until after the expiry of the time limit prescribed for bringing an action against her dismissal is required, in order to be able to bring such an action, to submit a request for leave to bring an action out of time within a period of two weeks, where the procedural rules surrounding that request, in so far as they give rise to problems liable to render excessively difficult the implementation of the rights which pregnant workers derive from Article 10 of that directive, do not comply with the requirements of the principle of effectiveness.

Costs

60 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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:

Articles 10 and 12 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 national legislation under which a pregnant worker who did not become aware of her pregnancy until after the expiry of the time limit prescribed for bringing an action against her dismissal is required, in order to be able to bring such an action, to submit a request for leave to bring an action out of time within a period of two weeks, where the procedural rules surrounding that request, in so far as they give rise to problems liable to render excessively difficult the implementation of the rights which pregnant workers derive from Article 10 of that directive, do not comply with the requirements of the principle of effectiveness.

[Signatures]

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* Language of the case: German.