her return to her previous post — Measures taken with a view to optimising the number of civil servants due to national economic difficulties — Assessment of the merits of a female employee on parental leave, which takes into account her latest annual performance appraisal before that leave, compared to the assessment of other civil servants who have continued in active employment

Operative part of the judgment

Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions, as amended by Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002, where a much higher number of women than men take parental leave, which it is for the national court to verify, and the Framework Agreement on Parental Leave, concluded on 14 December 1995, contained in the Annex to Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC, as amended by Council Directive 97/75/EC of 15 December 1997, must be interpreted as precluding:

— *a situation where, as part of an assessment of workers in the context of abolishment of officials' posts due to national economic difficulties, a worker who has taken parental leave is assessed in his or her absence on the basis of assessment principles and criteria which place him or her in a less favourable position as compared to workers who did not take parental leave; in order to ascertain whether or not that is the case, the national court must inter alia ensure that the assessment encompasses all workers liable to be concerned by the abolishment of the post, that it is based on criteria which are absolutely identical to those applying to workers in active service and that the implementation of those criteria does not involve the physical presence of workers on parental leave; and*

— *a situation where a female worker who has been transferred to another post at the end of her parental leave following that assessment is dismissed due to the abolishment of that new post, where it was not impossible for the employer to allow her to return to her former post or where the work assigned to her was not equivalent or similar and consistent with her employment contract or employment relationship, inter alia because, at the time of the transfer, the employer was informed that the new post was due to be abolished, which it is for the national court to verify.*

(1) OJ C 65, 3.3.2012.

Judgment of the Court (Fifth Chamber) of 20 June 2013 (request for a preliminary ruling from the Tribunal administratif, Luxembourg) — Elodie Giersch, Benjamin Marco Stemper, Julien Taminiaux, Xavier Renaud Hodin, Joëlle Hodin v État du Grand-Duché de Luxembourg

(Case C-20/12) (1)

(Freedom of movement for persons — Equal treatment — Social advantages — Regulation (EEC) No 1612/68 — Article 7(2) — Financial aid for higher education studies — Condition of residence in the Member State granting the assistance — Refusal to grant the aid to students, who are European Union citizens not residing in the Member State concerned, whose father or mother, a frontier worker, works in that Member State — Indirect discrimination — Justification — Objective of increasing the proportion of residents with a higher education degree — Whether appropriate — Proportionality)

(2013/C 225/39)

Language of the case: French

Referring court

Tribunal administratif

Parties to the main proceedings

Applicants: Elodie Giersch, Benjamin Marco Stemper, Julien Taminiaux, Xavier Renaud Hodin, Joëlle Hodin

Defendant: État du Grand-Duché de Luxembourg

Intervening party: Didier Taminiaux

Re:

Request for a preliminary ruling — Tribunal administratif (Luxembourg) — Interpretation of Article 7(2) of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (OJ, English Special Edition 1968(II), p. 475) — Whether national legislation making the grant of financial aid for higher education dependent on a condition of residence which applies both to home students and to students from another Member State is permissible — Social advantage within the meaning of the abovementioned regulation — Difference in treatment between the children of national workers and the children of migrant workers — Reasons

Operative part of the judgment

Article 7(2) of Council Regulation (EEC) No 1612/68 of 15 October 1968 on freedom of movement for workers within the Community, as amended by Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004, must be interpreted as precluding, in principle, legislation of a Member State such as that at issue in the

main proceedings, which makes the grant of financial aid for higher education studies conditional upon residence by the student in that Member State and gives rise to a difference in treatment, amounting to indirect discrimination, between persons who reside in the Member State concerned and those who, not being residents of that Member State, are the children of frontier workers carrying out an activity in that Member State.

While the objective of increasing the proportion of residents with a higher education degree in order to promote the development of the economy of that same Member State is a legitimate objective which can justify such a difference in treatment and while a condition of residence, such as that provided for by the national legislation at issue in the main proceedings, is appropriate for ensuring the attainment of that objective, such a condition nevertheless goes beyond what is necessary in order to attain the objective pursued, to the extent that it precludes the taking into account of other elements potentially representative of the actual degree of attachment of the applicant for the financial aid with the society or with the labour market of the Member State concerned, such as the fact that one of the parents, who continues to support the student, is a frontier worker who has stable employment in that Member State and has already worked there for a significant period of time.

([1]) OJ C 98, 31.3.2012.

Judgment of the Court (Fourth Chamber) of 13 June 2013 (request for a preliminary ruling from the Cour du travail de Bruxelles — Belgium) — Office national d'allocations familiales pour travailleurs salariés (ONAFTS) v Radia Hadj Ahmed

(Case C-45/12) ([1])

(Social security for migrant workers — Regulation (EEC) No 1408/71 — Scope ratione personae — Grant of family benefits to a third-country national with a right of residence in a Member State — Regulation (EC) No 859/2003 — Directive 2004/38/EC — Regulation (EEC) No 1612/68 — Length-of-residence requirement)

(2013/C 225/40)

Language of the case: French

Referring court

Cour du travail de Bruxelles

Parties to the main proceedings

Applicant: Office national d'allocations familiales pour travailleurs salariés (ONAFTS)

Defendant: Radia Hadj Ahmed

Re:

Request for a preliminary ruling — Cour du travail de Bruxelles — Interpretation of Article 1(f) of Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community (OJ 1971 L 149, p. 2) — Interpretation of Articles 13(2) and 14 of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77) — Interpretation of Article 18 TFEU and Articles 20 and 21 of the Charter of Fundamental Rights of the European Union — Grant of family benefits to a third-country national who has obtained a permit to reside in a Member State in order to join, not in the context of marriage or registered partnership, a national of another Member State — Presence of another child who is a third-country national — Scope *ratione personae* of Regulation No 1408/71 — Definition of 'member of the family' — National legislation imposing length-of-residence requirement for the grant of family benefits — Equal treatment

Operative part of the judgment

1. *Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996, as amended by Regulation (EC) No 1992/2006 of the European Parliament and of the Council of 18 December 2006, must be interpreted as meaning that a third-country national or her daughter, who is also a third-country national, while their situation is the following:*

   — *that third-country national obtained, less than five years earlier, a permit to reside in a Member State in order to join, not in the context of marriage or registered partnership, a national of another Member State, by whom she has a child who has the nationality of the latter Member State;*

   — *only that national of another Member State has the status of worker;*

   — *in the meantime the cohabitation of the third-country national and the national of another Member State has come to an end; and*

   — *both children are members of their mother's household,*

   do not come within the scope ratione personae of that regulation, unless that third-country national or her daughter can be regarded, within the meaning of the national legislation and for its application, as 'members of the family' of the national of another Member State or, where that is not the case, unless they can be regarded as being 'mainly dependent' on him.