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Court of Justice of the European Union
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Judgment in Case C-129/20
XI v Caisse pour l'avenir des enfants

A Member State cannot make entitlement to parental leave subject to the requirement that the parent was employed at the time of the birth or adoption of the child

The Member State can, however, require that the parent was employed without interruption for a period of at least 12 months immediately before the start of that parental leave

A dispute has arisen between Ms XI and the Caisse pour l'avenir des enfants (Children's Future Fund, Luxembourg), which refused to grant her a right to parental leave to take care of her twins on the ground that she had not been in paid employment on the day on which they were born.

In September 2011, XI had concluded a fixed-term contract with the Grand Duchy of Luxembourg for the provision of teaching services in post-primary education, a contract which expired on 26 January 2012. On that date, her affiliation to the social security bodies was terminated. On 4 March 2012, at a time when she was unemployed, XI gave birth to twins. On 14 June 2012, XI became entitled to unemployment benefits and was on that basis re-affiliated to the social security bodies. After having concluded two fixed-term contracts with the Grand Duchy of Luxembourg on 15 September 2012 and 1 August 2013, XI entered, on 15 September 2014, into a contract of indefinite duration with that Member State in the education sector.

XI submitted an application to take parental leave with a desired start date of 15 September 2015. By decision of 20 March 2015, that application was rejected by the Caisse pour l'avenir des enfants on the basis that the grant of parental leave is subject to the condition that the worker is lawfully employed in a workplace and affiliated in that regard to the social security scheme concerned at the time of the birth of the child.

The Court of Justice is required, at the request of the Cour de cassation (Court of Cassation, Luxembourg), to determine whether the Directive implementing the revised Framework Agreement on parental leave¹ precludes the application of Luxembourg legislation which makes the grant of parental leave subject to the twofold condition that the worker is lawfully employed in a workplace and is affiliated in that regard to the social security scheme, first, without interruption for a continuous period of at least 12 months immediately preceding the start of the parental leave and, secondly, at the time of the birth of the child or children or of the reception of the child or children to be adopted, compliance with that second condition being required even if the birth or reception occurred more than 12 months before the start of the parental leave.

The Court observes, first of all, that the Member States may make the grant of parental leave subject to the condition of a prior period of work which may not exceed one year and that they may require that that period be continuous. In addition, since an application for parental leave seeks to secure, on the part of the applicant, a suspension of his or her employment relationship, the Member States may require that the prior period of work immediately precedes the start of the parental leave. The Court thus concludes that **EU law does not preclude national legislation which makes the grant of a right to parental leave subject to the condition that the parent**

¹ Council Directive 2010/18/EU of 8 March 2010 implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC (OJ 2010 L 68, p. 13).

concerned is employed without interruption for a period of at least 12 months immediately prior to the start of that parental leave.

As regards the condition that the parent must be employed at the time of the birth of the child or children or of the reception of the child or children to be adopted, the Court points out that the right to parental leave is an individual right to which male or female workers are entitled on the grounds of the birth or adoption of a child to enable the parent to take care of that child until a given age (which may not exceed eight years). The Court states that the birth or adoption of a child and the worker status of his or her parents are conditions giving rise to a right to parental leave, but that it cannot be inferred from those conditions that the parents of the child in respect of whom that leave is sought must be workers at the time of the birth or adoption of that child.

The Court points out, next, that the objective of the Directive is both to promote equality between men and women with regard to labour market opportunities and treatment at work and to enable working parents better to reconcile their professional, private and family life. It also states that **the individual right of each working parent to parental leave on the grounds of the birth or adoption of a child articulates a particularly important EU social right** which, moreover, is laid down in the Charter of Fundamental Rights of the European Union.

According to the Court, excluding parents who were not working at the time of the birth or adoption of their child would have the effect of precluding the possibility for them to take parental leave at a later point in time in their lives when they are employed again, parental leave which they would need to take in order to reconcile their family and professional responsibilities. Such an exclusion would be contrary to the individual right of every worker to parental leave. In addition, the twofold condition imposed by the Luxembourg legislation leads, in actual fact, in the case where the birth or reception occurred more than 12 months before the start of the parental leave, to an extension of the required period of work and/or length of service, which cannot exceed one year. Accordingly, the Court concludes that **a Member State cannot make a parent's right to parental leave subject to the condition that that parent is working at the time of the birth or adoption of his or her child.**

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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