ECLI:EU:C:2020:932

Provisional text

JUDGMENT OF THE COURT (First Chamber)

18 November 2020 (*)

(Reference for a preliminary ruling – Social policy – Directive 2006/54/EC – Equal opportunities and equal treatment of men and women in employment and occupation – Articles 14 and 28 – National collective agreement granting the right to leave following the statutory maternity leave for female workers who bring up their children on their own – Exclusion of male workers from the right to that leave – Protection of female workers as regards both the consequences of pregnancy and the condition of maternity – Conditions under which applicable)

In Case C-463/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the conseil de prud'hommes de Metz (France), made by decision of 15 May 2019, received at the Court on 18 June 2019, in the proceedings

Syndicat CFTC du personnel de la Caisse primaire d'assurance maladie de la Moselle

v

Caisse primaire d'assurance maladie de la Moselle,

intervening party:

Mission nationale de contrôle et d'audit des organismes de sécurité sociale,

THE COURT (First Chamber),

composed of J.-C. Bonichot, President of the Chamber, L. Bay Larsen, C. Toader, M. Safjan (Rapporteur) and N. Jääskinen, Judges,

Advocate General: M. Bobek,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– Syndicat CFTC du personnel de la Caisse primaire d'assurance maladie de la Moselle, by L. Pate, avocat,

– Caisse primaire d'assurance maladie de Moselle, by L. Besse, avocat,

– the French Government, by A.-L. Desjonquères, R. Coesme and A. Ferrand, acting as Agents,

– the Portuguese Government, by L. Inez Fernandes, A. Pimenta, P. Barros da Costa and J. Marques, acting as Agents,

– the European Commission, by A. Szmytkowska and C. Valero, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 9 July 2020,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (OJ 2006 L 204, p. 23).

2 The reference has been made in the course of proceedings between Syndicat CFTC [Confédération Française des Travailleurs Chrétiens (French Confederation of Christian Workers)] du personnel de la Caisse primaire d'assurance maladie de la Moselle (CFTC Union of the Local Sickness Insurance Fund of the Moselle; 'Syndicat CFTC') and the Caisse primaire d'assurance maladie de Moselle (Local Sickness Insurance Fund of the Moselle; 'CPAM') concerning the latter's refusal to grant CY, the father of a child, the leave for female workers who bring up their children on their own, as provided for in Article 46 of the National Collective Labour Agreement for staff of social security bodies of 8 February 1957, in the version in force at the time material to the main proceedings ('the collective agreement').

Legal context

European Union law

Directive 92/85/EEC

3 Under the 14th to 18th recitals 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):

'Whereas the vulnerability of pregnant workers, workers who have recently given birth or who are breastfeeding makes it necessary for them to be granted the right to maternity leave of at least 14 continuous weeks, allocated before and/or after confinement, and renders necessary the compulsory nature of maternity leave of at least two weeks, allocated before and/or after confinement;

Whereas the risk of dismissal for reasons associated with their condition may have harmful effects on the physical and mental state of pregnant workers, workers who have recently given birth or who are breastfeeding; whereas provision should be made for such dismissal to be prohibited;

Whereas measures for the organisation of work concerning the protection of the health of pregnant workers, workers who have recently given birth or workers who are breastfeeding would serve no purpose unless accompanied by the maintenance of rights linked to the employment contract, including maintenance of payment and/or entitlement to an adequate allowance;

Whereas, moreover, provision concerning maternity leave would also serve no purpose unless accompanied by the maintenance of rights linked to the employment contract and or entitlement to an adequate allowance;

Whereas the concept of an adequate allowance in the case of maternity leave must be regarded as a technical point of reference with a view to fixing the minimum level of protection and should in no circumstances be interpreted as suggesting an analogy between pregnancy and illness.'

4 Article 1 of that directive, headed 'Purpose', states:

'1. 'The purpose of this directive, which is the tenth individual Directive within the meaning of Article 16(1) of [Council] Directive 89/391/EEC [of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work (OJ 1989 L 183, p. 1)], is to implement measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or who are breastfeeding.

2. The provisions of Directive [89/391], except for Article 2(2) thereof, shall apply in full to the whole area covered by paragraph 1, without prejudice to any more stringent and/or specific provisions contained in this directive.

3. This directive may not have the effect of reducing the level of protection afforded to pregnant workers, workers who have recently given birth or who are breastfeeding as compared with the situation which exists in each Member State on the date on which this directive is adopted.'

5 Article 8 of Directive 92/85, entitled 'Maternity leave', 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.'

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

'In order to guarantee workers, within the meaning of Article 2, the exercise of their health and safety protection rights as recognised 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.'

7 Article 11 of that directive, entitled 'Employment rights', is worded as follows:

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

(1) in the cases referred to in Articles 5, 6 and 7, the employment rights relating to the employment contract, including the maintenance of a payment to, and/or entitlement to an adequate allowance for, workers within the meaning of Article 2, must be ensured in accordance with national legislation and/or national practice;

(2) in the case referred to in Article 8, the following must be ensured:

(a) the rights connected with the employment contract of workers within the meaning of Article 2, other than those referred to in point (b) below;

(b) maintenance of a payment to, and/or entitlement to an adequate allowance for, workers within the meaning of Article 2.

(3) the allowance referred to in point 2 (b) shall be deemed adequate if it guarantees income at least equivalent to that which the worker concerned would receive in the event of a break in her activities on grounds connected with her state of health, subject to any ceiling laid down under national legislation;

(4) Member States may make entitlement to pay or the allowance referred to in points 1 and 2 (b) conditional upon the worker concerned fulfilling the conditions of eligibility for such benefits laid down under national legislation.

These conditions may under no circumstances provide for periods of previous employment in excess of 12 months immediately prior to the presumed date of confinement.'

Directive 2006/54

8 Recitals 24 and 25 of Directive 2006/54 state:

'(24) The Court of Justice has consistently recognised the legitimacy, as regards the principle of equal treatment, of protecting a woman's biological condition during pregnancy and maternity and of introducing maternity protection measures as a means to achieve substantive equality. Directive 2006/54 should therefore be without prejudice to Directive 92/85. This directive should further be without prejudice to 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).

(25) For reasons of clarity, it is also appropriate to make express provision for the protection of the employment rights of women on maternity leave and in particular their right to return to the same or an equivalent post, to suffer no detriment in their terms and conditions as a result of taking such leave and to benefit from any improvement in working conditions to which they would have been entitled during their absence.'

9 Article 1 of Directive 2006/54, 'Purpose', provides:

'The purpose of this directive is to ensure the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.

To that end, it contains provisions to implement the principle of equal treatment in relation to:

(a) access to employment, including promotion, and to vocational training;

(b) working conditions, including pay;

(c) occupational social security schemes.

It also contains provisions to ensure that such implementation is made more effective by the establishment of appropriate procedures.'

10 Article 2 of that directive, entitled 'Definitions', provides, in paragraph 1(a):

'For the purposes of this directive, the following definitions shall apply:

(a) "direct discrimination": where one person is treated less favourably on grounds of sex than another is, has been or would be treated in a comparable situation.'

11 Article 14 of that directive, entitled 'Prohibition of discrimination', provides, in paragraph 1:

'There shall be no direct or indirect discrimination on grounds of sex in the public or private sectors, including public bodies, in relation to:

(a) conditions for access to employment, to self-employment or to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion;

(b) access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience;

(c) employment and working conditions, including dismissals, as well as pay as provided for in Article 141 [EC];

(d) membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations.'

12 Article 15 of that directive, entitled 'Return from maternity leave', is worded as follows:

‘A woman on maternity leave shall be entitled, after the end of her period of maternity leave, to return to her job or to an equivalent post on terms and conditions which are no less favourable to her and to benefit from any improvement in working conditions to which she would have been entitled during her absence.’

13 Article 28 of Directive 2006/54, entitled ‘Relationship to Community and national provisions’ provides:

‘1. This directive shall be without prejudice to provisions concerning the protection of women, particularly as regards pregnancy and maternity.

2. This directive shall be without prejudice to the provisions of Directive 96/34/EC and Directive 92/85/EEC.’

French law

The code du travail

14 Article L. 1225-17 of the code du travail (Labour Code) states:

‘A female employee shall be entitled to maternity leave for a period which shall begin 6 weeks before the expected date of confinement and end 10 weeks after that date.

On request by the female employee and subject to the favourable opinion of the healthcare professional monitoring the pregnancy, the period of suspension of the employment contract which shall begin before the expected date of confinement may be reduced by a maximum period of three weeks. The period subsequent to the expected date of confinement shall then be increased by the same amount of time.

Where the female employee has deferred part of the maternity leave until after the birth of the child, and is signed off work by a doctor during the period prior to the expected date of confinement, that deferral shall be cancelled and the period of suspension of the employment contract shall be reduced as from the first day on which the employee is signed off. The period initially deferred shall be reduced by the same amount of time.’

The collective agreement

15 Article 1 of the collective agreement provides:

‘The present contract shall regulate relations between the social security and family benefit organisations and all other organisations under their control (Fédération nationale des organismes de sécurité sociale [(National Federation of Social Security Organisations)], Union nationale des Caisses d’Allocations Familiales [(Union of National Family Allowance Funds)], caisses primaires [(local insurance funds)], caisses régionales vieillesse et invalidité [(regional old age and invalidity insurance funds)], caisses d’allocations familiales [(family allowance funds)], organismes de recouvrement des cotisations [(contribution recovery organisations)], services sociaux [(social services)], caisses de prévoyance du personnel [(staff provident funds)], etc.) and the staff of those bodies and their establishments having their seat in France or the overseas *départements*.’

16 Articles 45 and 46 of the collective agreement fall within Section ‘L.’ of that agreement, entitled ‘Maternity leave’.

17 Article 45 of the collective agreement stipulates:

‘For the duration of the statutory maternity leave, salary shall be maintained for staff members who have at least six months’ seniority. This cannot be combined with daily allowances payable to staff members as insured persons.

Such leave shall not be taken into account for the right to sick leave and cannot give rise to any reduction in the duration of annual leave.’

18 In accordance with Article 46 of the collective agreement:

‘On expiry of the leave provided for in the preceding article, a female staff member who is bringing up her child on her own shall be entitled successively to:

– three months’ leave on half pay, or one and a half month’s leave on full pay;

– one year’s unpaid leave.

However, where the staff member is a single woman or where her spouse or partner is deprived of his or her usual resources (invalidity, long-term illness, military service), she shall be entitled to three months’ leave on full pay.

On expiry of the leave provided for above, the beneficiary shall be fully reinstated in her job.

Exceptionally, the management board may grant a further year’s unpaid leave. In the latter case, the staff member shall be reinstated only subject to available posts, in respect of which she shall have priority, either within her organisation or within a sister organisation, subject to the provisions of Article 16 above.

When the said leave is renewed, the management board may, in specific cases, give a formal undertaking as to immediate reinstatement.

Unpaid leave, covered by the present article, shall have the same effects as the leave provided for in Article 40 above with regard to the provisions of the present agreement and the pension scheme.’

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

19 CY was engaged by CPAM to work as an employee as a ‘benefits inspector in the employee or executive category’. He is the father of a child born in April 2016.

20 On that basis, he applied for the leave provided for in Article 46 of the collective agreement, under which, on expiry of the leave provided for in Article 45 of that collective agreement, an employee who is bringing up her child on her own is to be entitled successively to leave of three months on half-pay or to leave of one and a half months on full pay and to unpaid leave of one year.

21 CPAM refused to grant CY’s application on the ground that the leave provided for in Article 46 of the collective agreement is reserved to female workers who bring up their child on their own.

22 Syndicat CFTC asked the Social Security Directorate to extend the benefit of the provisions of Article 46 of the collective agreement to male workers who are bringing up their child on their own.

23 That application was rejected on the ground that, under the wording of that article, the leave provided for is granted only to the child's mother, the term 'employee' being in the feminine, and that that article is not discriminatory in so far as it is ancillary to Article 45 of the collective agreement, which grants a benefit only to women.

24 On 27 December 2017, Syndicat CFTC, which acts in the interests of CY, brought an action against CPAM before the conseil de prud'hommes de Metz (Labour Tribunal, Metz, France), the referring court, arguing that the decision refusing to grant CY the benefit of the leave provided for in Article 46 of the collective agreement constituted discrimination on grounds of sex, prohibited both by EU law and by French law. In its submission, Article 46 of the collective agreement is not ancillary to Article 45 of that collective agreement, since, unlike Article 45, Article 46 is not linked to physiological considerations. Since men and women are equal as regards the burden of bringing up their children, male workers employed by CPAM should also have the benefit of the leave provided for in Article 46 of the collective agreement.

25 The referring court notes that, by judgment of 21 September 2017, the Cour de cassation (Court of Cassation, France) held that the purpose of Article 46 of the collective agreement is to grant supplementary maternity leave on the expiry of the statutory maternity leave referred to in Article 45 of that collective agreement and that it is thus intended to protect the special relationship between a woman and her child during the period which follows pregnancy and childbirth.

26 In those circumstances, the conseil de prud'hommes de Metz (Labour Tribunal, Metz) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Should Directive [2006/54], read in conjunction with Articles 8 and 157 TFEU, the general EU law principles of equal treatment and of the prohibition of discrimination, and Articles 20, 21[(1)] and 23 of the Charter of Fundamental Rights of the European Union, be interpreted as meaning that the provisions of Article 46 of the [collective agreement], which grant female employees of [the] social security organisations [concerned] bringing up children on their own three months leave with half pay or one and a half months' leave with full pay and unpaid leave of up to a year after maternity leave, are excluded from the scope of application of that directive?'

Consideration of the question referred

The jurisdiction of the Court of Justice

27 CPAM submits, primarily, that the Court clearly has no jurisdiction to answer the question referred, in the light of Article 267 TFEU. Indeed, in the present case, the Court is not being asked to rule on the interpretation of the Treaties or on the validity or interpretation of any act adopted by an institution, body, office or agency of the European Union.

28 CPAM submits that, in the guise of a request for a preliminary ruling, Syndicat CFTC is, in reality, seeking to obtain a 'supranational invalidation' of Article 46 of the collective agreement, as interpreted by the Cour de cassation, in the light of the general principles of equal treatment and the prohibition of discrimination. However, the Court does not have jurisdiction to verify the

conformity of national law, including the case-law of the Member States, with EU law, or to interpret national law.

29 In that regard, it must be borne in mind that the system of cooperation established by Article 267 TFEU is based on a clear division of responsibilities between the national courts and the Court of Justice. In proceedings brought on the basis of that article, the interpretation of provisions of national law is a matter for the courts of the Member States, not for the Court of Justice, and the Court has no jurisdiction to rule on the compatibility of rules of national law with EU law. However, the Court does have jurisdiction to provide the national court with all the guidance as to the interpretation of EU law necessary to enable that court to determine whether those national rules are compatible with EU law (judgment of 30 April 2020, *CTT – Correios de Portugal*, C-661/18, EU:C:2020:335, paragraph 28 and the case-law cited).

30 Although it is true that a combined reading of the question referred and the grounds set out by the referring court requests the Court of Justice to rule on the compatibility of a provision of national law with EU law, there is nothing to prevent the Court from giving an answer that will be of use to the referring court, by providing the latter with guidance as to the interpretation of EU law that will enable that court itself to rule on the compatibility of the national rules with EU law. Consequently, where the questions submitted concern the interpretation of EU law, the Court is in principle bound to give a ruling (see, to that effect, judgment of 30 April 2020, *CTT – Correios de Portugal*, C-661/18, EU:C:2020:335, paragraph 29 and the case-law cited).

31 In the present case, it must be noted that the dispute in the main proceedings, which concerns the grant of leave on the basis of Article 46 of the collective agreement, concerns working conditions within the meaning of point (b) of the second paragraph of Article 1 of Directive 2006/54. Accordingly, the dispute falls within the scope of that directive, which is referred to in the question referred for a preliminary ruling.

32 Contrary to CPAM’s assertions, the referring court is thus seeking an interpretation of an EU act.

33 It is therefore for the Court to provide the national court with all the guidance as to the interpretation of EU law necessary to enable that court itself to rule on the compatibility of its domestic law with EU law.

34 It must therefore be held that the Court has jurisdiction to answer the question referred.

Admissibility of the request for a preliminary ruling

35 The French Government submits that the order for reference does not satisfy the requirements laid down in Article 94 of the Rules of Procedure of the Court of Justice, since that order contains no statement of reasons concerning the need to refer a question to the Court in order to resolve the dispute in the main proceedings. The referring court merely reproduces the arguments put forward before it, without stating the precise reasons which lead it to consider it necessary to refer a question to the Court.

36 In addition, the referring court refers to a number of provisions of the FEU Treaty and of the Charter of Fundamental Rights of the European Union (‘the Charter’), without, however, explaining their connection with the question referred. The French Government submits that, even if the request for a preliminary ruling were admissible, it would be appropriate to answer the question

inasmuch as it relates to Directive 2006/54, but not with regard to Articles 8 and 157 TFEU and Articles 20, 21 and 23 of the Charter.

37 In that regard, it must be borne in mind that questions concerning the interpretation of EU law referred by a national court in the factual and legislative context which that court is responsible for defining, and the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance (judgment of 2 April 2020, *Reliantco Investments and Reliantco Investments Limassol Sucursala Bucureşti*, C-500/18, EU:C:2020:264, paragraph 40 and the case-law cited).

38 However, 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, 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, it may reject the request for a preliminary ruling as inadmissible (judgment of 2 April 2020, *Reliantco Investments and Reliantco Investments Limassol Sucursala Bucureşti*, C-500/18, EU:C:2020:264, paragraph 41 and the case-law cited).

39 Furthermore, in view of the spirit of judicial cooperation which governs relations between national courts and the Court of Justice in the context of preliminary-ruling proceedings, the fact that the referring court did not make certain initial findings does not necessarily mean that the request for a preliminary ruling is inadmissible if, in spite of those deficiencies, the Court, in the light of the information contained in the case file, considers that it is in a position to provide a useful answer to the referring court (judgment of 2 April 2020, *Reliantco Investments and Reliantco Investments Limassol Sucursala Bucureşti*, C-500/18, EU:C:2020:264, paragraph 42 and the case-law cited).

40 In the present case, it must be noted that the order for reference is admittedly succinct as regards the statement of the reasons which led the referring court to entertain doubts as to the interpretation of Directive 2006/54 and that the provisions of the FEU Treaty and of the Charter are referred to only in the question referred.

41 However, first, the referring court has repeated the arguments of Syndicat CFTC relating to the non-compliance of Article 46 of the collective agreement with EU law. As the French Government itself noted, the referring court, by posing the question referred as it was proposed to it by Syndicat CFTC, has impliedly adopted as its own the doubts expressed by that trade union concerning the compatibility of that article of the collective agreement with Directive 2006/54. Thus, the order for reference enables the reasons for which the referring court considered it necessary to refer that question to the Court to be understood.

42 Furthermore, CPAM, the French and Portuguese Governments and the European Commission have been perfectly able to submit their observations on the question referred.

43 Second, the question referred for a preliminary ruling is worded as referring to Directive 2006/54, which must be interpreted 'in the light of' Articles 8 and 157 TFEU and of Article 20, Article 21(1) and Article 23 of the Charter. Accordingly, the referring court does not request an autonomous interpretation of those provisions of the FEU Treaty and of the Charter, which are referred to solely in support of the interpretation of Directive 2006/54.

44 In those circumstances, it must be held that the order for reference satisfies the requirements laid down in Article 94 of the Rules of Procedure.

45 The reference for a preliminary ruling is therefore admissible.

Substance

46 By its question, the referring court asks, in essence, whether Directive 2006/54 must be interpreted as precluding a provision of a national collective agreement which reserves to female workers who bring up their children on their own the right to leave after the expiry of their statutory maternity leave, since male workers are refused the right to such leave.

47 In that regard, Article 14(1)(c) of Directive 2006/54 prohibits all direct or indirect discrimination on grounds of sex in relation to employment and working conditions.

48 In the context of that directive, the prohibition of discrimination between male and female workers extends to all agreements which are intended to regulate paid labour collectively (see, to that effect, judgment of 18 November 2004, *Sass*, C-284/02, EU:C:2004:722, paragraph 25 and the case-law cited).

49 Furthermore, although, under Article 2(1)(a) of Directive 2006/54, direct discrimination is constituted by 'a situation in which one person is treated less favourably on grounds of sex than another is, has been or would be treated in a comparable situation', Article 28 of that directive states that it is without prejudice to provisions concerning the protection of women, particularly as regards pregnancy and maternity, and that that situation is without prejudice to the provisions of Directive 92/85.

50 With regard to the protection of the mother of a child, it follows from the settled case-law of the Court that the right to maternity leave granted to pregnant workers must be regarded as a particularly important mechanism of protection under employment law. The EU legislature thus took the view that the fundamental changes to the living conditions of the persons concerned during the period of at least 14 weeks preceding and after childbirth constituted a legitimate ground on which they could suspend their employment, without the public authorities or employers being allowed in any way to call the legitimacy of that ground into question (judgments of 20 September 2007, *Kiiski*, C-116/06, EU:C:2007:536, paragraph 49, and of 21 May 2015, *Rosselle*, C-65/14, EU:C:2015:339, paragraph 30).

51 As the EU legislature acknowledged in the 14th recital of Directive 92/85, pregnant workers and workers who have recently given birth or who are breastfeeding are in an especially vulnerable situation which makes it necessary for the right to maternity leave to be granted to them but which, particularly during that leave, cannot be compared to that of a man or a woman on sick leave (judgments of 27 October 1998, *Boyle and Others*, C-411/96, EU:C:1998:506, paragraph 40, and of 18 March 2014, *D.*, C-167/12, EU:C:2014:169, paragraph 33).

52 That maternity leave is intended, first, to protect a woman's biological condition during and after pregnancy and, second, to protect the special relationship between a 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 (judgments of 12 July 1984, *Hofmann*, 184/83, EU:C:1984:273, paragraph 25, and of 4 October 2018, *Dicu*, C-12/17, EU:C:2018:799, paragraph 34).

53 Moreover, Directive 92/85, which lays down minimum requirements, in no way prevents Member States from providing for a higher level of protection for pregnant workers or workers who have recently given birth or who are breastfeeding by maintaining or introducing more favourable measures for those workers, provided that those measures are compatible with the provisions of EU

law (judgments of 13 February 2014, *TSN and YTN*, C-512/11 and C-513/11, EU:C:2014:73, paragraph 37, and of 14 July 2016, *Ornano*, C-335/15, EU:C:2016:564, paragraph 35).

54 The Court added that a measure such as maternity leave, granted to the woman after expiry of the legal period of protection, falls within the scope of Article 28(1) of Directive 2006/54, inasmuch as it seeks to protect a woman in connection with the effects of pregnancy and motherhood. On that basis, such leave may legitimately be reserved to the mother, to the exclusion of any other person, in view of the fact that it is only the mother who may find herself subject to undesirable pressures to return to work prematurely (see, to that effect, judgment of 12 July 1984, *Hofmann*, 184/83, EU:C:1984:273, paragraph 26).

55 As regards the status of parent, the Court has stated that the situation of a male worker and that of a female worker both having that status are comparable so far as concerns the bringing up of children (judgments of 25 October 1988, *Commission* v *France*, 312/86, EU:C:1988:485, paragraph 14, and of 12 December 2019, *Instituto Nacional de la Seguridad Social (Mothers' Pension Supplement)*, C-450/18, EU:C:2019:1075, paragraph 51). Consequently, measures designed to protect women in their capacity as parents cannot be justified on the basis of Article 28(1) of Directive 2006/54 (see, to that effect, judgment of 29 November 2001, *Griesmar*, C-366/99, EU:C:2001:648, paragraph 44).

56 It thus follows from the case-law of the Court that, after the expiry of the statutory maternity leave, a Member State may grant additional leave to the mother where that leave concerns her, not in her capacity as parent, but in connection with the effects of pregnancy and motherhood.

57 As is apparent from paragraph 52 of this judgment, such additional leave must be intended to protect the woman's biological condition and the special relationship between her and her child during the period following childbirth.

58 In that regard, as the Advocate General observed, in essence, in point 61 of his Opinion, the aim of protecting the special relationship between a woman and her child is not, however, sufficient in itself to exclude fathers from the benefit of a period of additional leave.

59 In the present case, Article 46 of the collective agreement states that, at the end of the statutory maternity leave referred to in Article 45 of that collective agreement, an employee who is bringing up her child on her own is entitled successively to three-months' leave on half pay or to one and a half months' leave on full pay and to unpaid leave of one year, renewal for a period of one year being possible for the latter leave.

60 It must be borne in mind that a collective agreement which excludes from the benefit of such additional leave a male worker who is bringing up a child on his own establishes a difference in treatment between male and female workers.

61 As is clear from paragraphs 52 and 54 of this judgment, it is only if such a difference in treatment seeks the protection of the mother in connection with the effects of pregnancy and motherhood, that is to say, if it is intended to protect the woman's biological condition and the special relationship between her and her child during the period following childbirth, that it appears to be compatible with Directive 2006/54. If Article 46 of the collective agreement were to apply to women solely in their capacity as parents, that article would institute, as regards male workers, direct discrimination prohibited under Article 14(1) of that directive.

62 As the Advocate General observed in point 70 of his Opinion, the factors to be taken into account in order that leave granted consecutive to the statutory maternity leave may be reserved to female workers concern, inter alia, the conditions for entitlement to the leave, its length and modalities of enjoyment, and the legal protection that attaches to that period of leave.

63 First of all, the conditions for granting such leave must be directly linked to the protection of the woman's biological and psychological condition and the special relationship between the woman and her child during the period following childbirth. Thus, in particular, that leave must be granted to all women covered by the national legislation at issue, irrespective of their length of service and without the need for the employer's consent.

64 Next, consequently, the duration of and the manner in which the supplementary maternity leave is exercised must also be appropriate to ensure the biological and psychological protection of the woman and of the special relationship between the woman and her child during the period after childbirth, without exceeding the period which appears necessary for that protection.

65 Finally, as regards the level of legal protection, since that leave has the same objective as that of statutory maternity leave, that protection must be in conformity with the minimum protection guaranteed for that statutory leave by Directives 92/85 and 2006/54. In particular, the legal system of supplementary leave must ensure protection against dismissal and the maintenance of a payment to and/or entitlement to an adequate allowance for the female workers, on conditions which conform to those set out in Articles 10 and 11 of Directive 92/85, and the right, such as that referred to in Article 15 of Directive 2006/54, to return to her job or to an equivalent post on terms and conditions which are no less favourable to her and to benefit from any improvement in working conditions to which she would have been entitled during her absence.

66 It is for the referring court to determine whether the leave provided for in Article 46 of the collective agreement meets the conditions on which it may be considered that it is intended to protect female workers in connection with the effects of pregnancy and motherhood.

67 As has been pointed out in paragraph 29 of the present judgment, it is not for the Court to rule, in the present proceedings, on the compatibility of that article of the collective agreement with Directive 2006/54. However, it is for the Court to provide the referring court with all the guidance as to the interpretation of EU law necessary to enable that court to assess that compatibility.

68 In that regard, first, it should be noted that leave at the end of the statutory maternity leave could be regarded as forming an integral part of maternity leave of a longer period and more favourable to female workers than the statutory period.

69 Nevertheless, it must be borne in mind that, in the light of the case-law cited in paragraph 54 of the present judgment, the possibility of introducing a period of leave reserved for mothers after the expiry of the statutory maternity leave is subject to the condition that it is itself intended to protect women. Consequently, the mere fact that leave immediately follows the statutory maternity leave is not sufficient for it to be considered that it may be reserved for female workers who bring up their child on their own.

70 Second, the title of the chapter of the collective agreement within which the provision which provides for such additional leave falls is not a relevant factor in examining whether such a provision complies with EU law. The referring court must specifically ascertain whether the leave provided for is intended, in essence, to protect the mother in connection with the effects of pregnancy and motherhood.

71 Third, the French Government relies on the judgment of 30 April 1998, *Thibault* (C-136/95, EU:C:1998:178), in which the Court accepted that Article 46 of the collective agreement constituted maternity leave.

72 However, paragraph 12 of that judgment, to which the French Government refers, concerns not the Court's legal reasoning and interpretation, but only the facts as they result from the request for a preliminary ruling in the case which gave rise to that judgment.

73 Fourth, it must be noted that the duration of the leave provided for in Article 46 of the collective agreement may vary considerably, from one and a half months to up to two years and three months. That period may thus be considerably greater than that of the statutory maternity leave of sixteen weeks, provided for in Article L. 1225-17 of the Labour Code, to which Article 45 of the collective agreement refers. Furthermore, where the leave is taken for one or two years, it is 'unpaid', which does not appear to ensure maintenance of pay and/or entitlement to an adequate allowance for the female worker, a condition required for maternity leave by Article 11 (2) of Directive 92/85.

74 In the light of all the foregoing considerations, the answer to the question referred is that Articles 14 and 28 of Directive 2006/54, read in the light of Directive 92/85, must be interpreted as meaning that they do not preclude a provision of a national collective agreement which reserves to female workers who bring up their child on their own the right to leave after the expiry of the statutory maternity leave, provided that such leave is intended to protect workers in connection with the effects of pregnancy and motherhood, which is for the referring court to ascertain, taking into account, inter alia, the conditions for entitlement to the leave, its length and modalities of enjoyment, and the legal protection that attaches to that period of leave.

Costs

75 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 (First Chamber) hereby rules:

Articles 14 and 28 of Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, read in the light 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 meaning that they do not preclude a provision of a national collective agreement which reserves to female workers who bring up their child on their own the right to leave after the expiry of the statutory maternity leave, provided that such leave is intended to protect workers in connection with the effects of pregnancy and motherhood, which is for the referring court to ascertain, taking into account, inter alia, the conditions for entitlement to the leave, its length and modalities of enjoyment, and the legal protection that attaches to that period of leave.

[Signatures]

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* Language of the case: French.