

JUDGMENT OF THE COURT (Third Chamber)

16 July 2009*

In Case C-537/07,

REFERENCE for a preliminary ruling under Article 234 EC from the Juzgado de lo Social nº 30 de Madrid (Spain), made by decision of 20 November 2007, received at the Court on 3 December 2007, in the proceedings

Evangelina Gómez-Limón Sánchez-Camacho

v

Instituto Nacional de la Seguridad Social (INSS),

Tesorería General de la Seguridad Social (TGSS),

Alcampo SA,

* Language of the case: Spanish.

THE COURT (Third Chamber),

composed of A. Rosas, President of the Chamber, J.N. Cunha Rodrigues, J. Klučka, U. Löhmus (Rapporteur) and A. Arabadjiev, Judges,

Advocate General: E. Sharpston,
Registrar: R. Grass,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Instituto Nacional de la Seguridad Social (INSS), by A. Álvarez Moreno and J. I. del Valle de Joz, acting as Agents,

- the Spanish Government, by B. Plaza Cruz, acting as Agent,

- the United Kingdom Government, by T. Harris, acting as Agent,

- the Commission of the European Communities, by M. van Beek and L. Lozano Palacios, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 4 December 2008,

gives the following

Judgment

- ¹ This reference for a preliminary ruling relates to the interpretation of Clause 2(6) and (8) of the framework agreement on parental leave concluded on 14 December 1995, annexed 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; ‘the framework agreement on parental leave’), and of Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security (OJ 1979 L 6, p. 24).
- ² The reference has been made in proceedings between Ms Gómez-Limón Sánchez-Camacho and the Instituto Nacional de la Seguridad Social, the managing body for social security (‘the INSS’), the Tesorería General de la Seguridad Social and her former employer, Alcampo SA, concerning entitlements to permanent invalidity pension acquired during parental leave.

Legal context

Community legislation

3 The first recital in the preamble to Directive 79/7 states:

‘Whereas Article 1(2) of 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 [(OJ 1976 L 39, p. 40)] provides that, with a view to ensuring the progressive implementation of the principle of equal treatment in matters of social security, the Council ... will adopt provisions defining its substance[,], its scope and the arrangements for its application ...’

4 Article 7 of Directive 79/7 provides:

‘1. This Directive shall be without prejudice to the right of Member States to exclude from its scope:

(a) ...

(b) advantages in respect of old-age pension schemes granted to persons who have brought up children; the acquisition of benefit entitlements following periods of interruption of employment due to the bringing up of children;

...'

- 5 Article 2 of Council Directive 86/378/EEC of 24 July 1986 on the implementation of the principle of equal treatment for men and women in occupational social security schemes (OJ 1986 L 225, p. 40), as amended by Council Directive 96/97/EC of 20 November 1996 (OJ 1996 L 46, p. 20; 'Directive 86/378'), provides:

'1. "Occupational social security schemes" means schemes not governed by Directive 79/7 ... whose purpose is to provide workers, whether employees or self-employed, in an undertaking or group of undertakings, area of economic activity or occupational sector or group of such sectors with benefits intended to supplement the benefits provided by statutory social security schemes or to replace them, whether membership of such schemes is compulsory or optional.

...'

- 6 Directive 96/34 seeks to implement the framework agreement on parental leave annexed thereto.
- 7 Under Article 2 thereof, the Member States were to bring into force the laws, regulations and administrative provisions necessary to comply with that directive by 3 June 1998 at the latest.

8 The recitals in the preamble to the framework agreement on parental leave state:

‘ ...

10. Whereas Member States should provide for the maintenance of entitlements to benefits in kind under sickness insurance during the minimum period of parental leave;

11. Whereas Member States should also, where appropriate under national conditions and taking into account the budgetary situation, consider the maintenance of entitlements to relevant social security benefits as they stand during the minimum period of parental leave;

...’

9 Clause 2 of the framework agreement on parental leave provides:

‘1. This agreement grants, subject to clause 2.2, men and women workers an individual right to parental leave on the grounds of the birth or adoption of a child to enable them to take care of that child, for at least three months, until a given age up to 8 years to be defined by Member States and/or management and labour.

...

3. The conditions of access and detailed rules for applying parental leave shall be defined by law and/or collective agreement in the Member States, as long as the minimum requirements of this agreement are respected.

...

6. Rights acquired or in the process of being acquired by the worker on the date on which parental leave starts shall be maintained as they stand until the end of parental leave. At the end of parental leave, these rights, including any changes arising from national law, collective agreements or practice, shall apply.
7. Member States and/or management and labour shall define the status of the employment contract or employment relationship for the period of parental leave.
8. All matters relating to social security in relation to this agreement are for consideration and determination by Member States according to national law, taking into account the importance of the continuity of the entitlements to social security cover under the different schemes, in particular health care.'

National legislation

- 10 Article 37(5) of the consolidated Law on the status of workers (texto refundido de la Ley del Estatuto de los Trabajadores), adopted under Royal Legislative Decree 1/1995 of 24 March 1995 (*BOE* No 75 of 29 March 1995, p. 9 654), as amended by Law 39/1999 for the promotion of harmonisation between the private life and professional life of workers (*Ley 39/1999 para promover la conciliación de la vida familiar y laboral de las personas trabajadoras*) (*BOE* No 266 of 6 November 1999, p. 38 934), provided that any person who has legal custody and takes direct care of a child under the age of six is entitled to a reduction in his working day, with a proportionate reduction in salary, of a minimum of one third and a maximum of a half of the duration of that working day.
- 11 Under Article 139(2) of the General social security law (*Ley General de la Seguridad Social*), adopted by Royal Legislative Decree 1/1994 of 20 June 1994 (*BOE* No 154 of 29 June 1994, p. 20 658; ‘the LGSS’), the financial benefit received by an employee who suffers from a permanent invalidity which renders him or her incapable of working in his or her usual occupation consists of a life pension. That pension is fixed in Article 140(1) of the LGSS at 55% of a basis of assessment arrived at by dividing by 112 the employee’s contribution bases during the 96 months before the event giving rise to the entitlement.
- 12 Pursuant to Article 109(1) of the LGSS, the basis of assessment for all risks and situations covered by the general system, including occupational accidents and occupational diseases, is made up of the total remuneration, irrespective of the form it takes or its designation, which the worker is entitled to receive per month, or of that which the worker actually receives, if that is greater, in respect of the work which he or she carries out as an employee.
- 13 In order to determine the contribution base in the event of reduced working time applicable to workers who have legal custody and who are taking care of a child under the age of six, Royal Decree 2064/1995 on the contributions and settlement of other social security entitlements (*Reglamento General sobre cotización y liquidación de*

otros derechos de la Seguridad Social) of 22 December 1995 (*BOE* No 22 of 25 January 1996, p. 2 295) refers to the system of contributions laid down in respect of contracts of part-time employment. Article 65 of that Royal Decree provides that, with regard to employees who have concluded part-time work contracts and relief contracts, the contribution base for all risks and situations covered by the scheme in question is determined on the basis of the remuneration received for the hours worked.

- ¹⁴ Article 14 of the Order of 18 July 1991 regulating the special agreement within the social security system, (*Orden por que se regula el convenio especial en el Sistema de la Seguridad Social* (*BOE* of 30 July 1991, p. 25 114)) which is applicable to persons who have legal custody of a minor, provides that workers who, by virtue of Article 37(5) of the consolidated text of the Law on the status of workers, as amended by Law 39/1999, benefit from a reduction in their working time because they are taking direct care of a child under the age of six, accompanied by a proportionate reduction in salary, may conclude a special agreement to preserve the same contribution bases as before the reduction in their working time. The contributions paid by virtue of that special agreement cover the following risks and situations: retirement, permanent invalidity and death and survival resulting from an ordinary disease or an accident other than an occupational accident.

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

- ¹⁵ It is apparent from the decision for reference that, from 17 December 1986, Ms Gómez-Limón Sánchez-Camacho worked full-time as an administrative assistant for Alcampo SA, an undertaking active in the hypermarket sector.
- ¹⁶ With effect from 6 December 2001, it was agreed with that undertaking that Ms Gómez-Limón Sánchez-Camacho would benefit from the system of reduction of

working time applicable to workers with legal custody of a child under six years old, in accordance with the legislation in force at that time, and, accordingly, her daily working time was reduced by a third.

- 17 Ms Gómez-Limón Sánchez-Camacho's remuneration and, since no special agreement had been concluded, the amount of contributions paid both by the undertaking and by the employee to the general social security scheme were accordingly reduced in the same proportion, that amount corresponding to a percentage of the remuneration received.
- 18 As a result of an illness unrelated to her work, Ms Gómez-Limón Sánchez-Camacho initiated, because of her physical and functional difficulties, administrative proceedings culminating in an INSS decision of 30 June 2004, which found that she suffered from permanent total invalidity rendering her incapable of working in her usual occupation and entitling her to a pension of 55% of a basis of assessment of EUR 920.33 per month.
- 19 That base was calculated using the amount of contributions actually paid to the public social security scheme during the period to be taken into account pursuant to the legislation governing the benefits, namely between 1 November 1998 and November 2004. That amount included the total contributions paid by Ms Gómez-Limón Sánchez-Camacho and by her employer.
- 20 Ms Gómez-Limón Sánchez Camacho has brought an action before the Juzgado de lo Social No 30 de Madrid, before which she submitted that, although the calculation made does take into account the contributions actually paid, those calculations were decreased in proportion to the reduction in her pay following the reduction in her working day during the period of parental leave granted to her to care for a minor, whereas her pension ought to have been calculated on the basis of the amount of contributions corresponding to full-time work. She argues that the calculation applied to her in practice negates the effectiveness of a measure intended to promote equality before the law and to eliminate discrimination on grounds of sex.

21 Under those circumstances the Juzgado de lo Social No 30 de Madrid decided to stay the proceedings and refer the following questions to the Court for a preliminary ruling:

- ‘1. Bearing in mind that the granting of parental leave must be a measure intended to promote equality, in the manner and to the extent freely fixed by each Member State within the minimum limits imposed by Directive 96/34 ..., is it possible that the enjoyment of that period of parental leave, in the case of a reduction in the working day and in salary by reason of taking care of children, should affect entitlements in the process of being acquired by the worker, male or female, taking such parental leave and may individuals rely before the public institutions of a State on the principle of the protection of entitlements acquired or in the process of being acquired?

2. In particular, does the expression “entitlements acquired or in the process of being acquired” in Clause 2(6) of [the framework agreement on parental leave] include only entitlements related to working conditions and affect only the contractual relationship with the employer or, on the contrary, does it also affect the maintenance of entitlements acquired or in the process of being acquired in matters of social security, and is the requirement for “continuity of the entitlements to social security cover under the different schemes” in Clause 2(8) of the [framework agreement on parental leave] satisfied by the formulation under consideration and applied by the national authorities and, if applicable, is the right to continuity of entitlements to social security cover sufficiently certain and precise to be relied upon before the public authorities of a Member State?

3. Are the provisions of Community law compatible with national legislation which, during the period of reduction in the working day by reason of parental leave, reduces the amount of invalidity pension to be paid in relation to what it would have been before that leave and reduces the accrual and consolidation of future benefits in proportion to the reduction in working hours and in salary?

4. Given the duty of the national courts to interpret national law in the light of the obligations imposed by the Directive, in order to enable the objectives of the Community legislation to be achieved to the greatest possible extent, must that requirement apply equally to the continuity of social security entitlements during the period of parental leave and, specifically, in the circumstances of the case to a form of part-time leave or reduction in the working day such as was used on this occasion?

5. In the specific circumstances of the case, does the reduction in the grant and accrual of social security entitlements during the period of parental leave constitute direct or indirect discrimination contrary to the provisions of Directive 79/7 ... and is it contrary to the requirements of equality and non-discrimination between men and women, in accordance with the tradition common to all the Member States, to the extent that this principle must apply not only to conditions of employment but also to the public activity of social protection of workers?'

The questions referred for a preliminary ruling

Admissibility

- 22 The INSS and the Spanish Government take the view that the first question must be declared inadmissible.

- 23 They submit that that question, formulated in purely hypothetical and general terms, lacks precision. The exact potential situation which could affect the entitlements being acquired by workers on parental leave is not described.

24 In that regard, it should be recalled that, in proceedings under Article 234 EC, which are based on a clear separation of functions between the national courts and the Court of Justice, any assessment of the facts in the case is a matter for the national court. Similarly, it is solely for the national court, before which the dispute has been brought and which must assume responsibility for the forthcoming 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 Community law, the Court is in principle bound to give a ruling (see, *inter alia*, Case C-326/00 *IKA* [2003] ECR I-1703, paragraph 27; Case C-145/03 *Keller* [2005] ECR I-2529, paragraph 33; and Case C-419/04 *Conseil générale de la Vienne* [2006] ECR I-5645, paragraph 19).

25 However, the Court has held that, in exceptional circumstances, it can examine the conditions in which the case was referred to it by the national court, in order to assess whether it has jurisdiction (see, to that effect, Case 244/80 *Foglia* [1981] ECR 3045, paragraph 21). The Court may refuse to rule on a question referred for a preliminary ruling by a national court only where it is quite obvious that the interpretation of Community law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (see, *inter alia*, Case C-379/98 *PreussenElektra* [2001] ECR I-2099, paragraph 39 and Case C-390/99 *Canal Satélite Digital* [2002] ECR I-607, paragraph 19).

26 In the present case, the dispute in the main proceedings concerns the entitlement to a permanent invalidity pension acquired by a worker during her part-time parental leave, that is to say, on the basis of a period during which the contributions to the statutory social security scheme of which she was a member were paid in proportion to the salary she received, which situation led to her being granted a pension lower than that to which she would have been entitled if she had continued to work full-time.

27 It follows that, by its first question, the national court essentially asks, firstly, whether, with regard to the period of parental leave, Clause 2(6) of the framework agreement on

parental leave precludes the taking into account, in the calculation of a worker's permanent invalidity pension, of contributions paid which were decreased in proportion to the salary received during that period, and requires the taking into account of contributions corresponding to remuneration at the full rate. Secondly, it asks whether that clause can be relied on by individuals before a national court against public bodies.

28 Accordingly, it appears that the first question referred does relate to the subject-matter of the dispute in the main proceedings, as defined by the national court, and that the ruling to be given is likely to be useful to that court in deciding whether the framework agreement on parental leave precludes such a result.

29 It follows that the first question referred is admissible.

The first to fourth questions

30 In order to give a useful ruling which enables the national court to resolve the dispute in the main proceedings, it is necessary to reformulate the first, second and fourth questions, which each have two parts, and to examine the four questions on the basis of the queries which they raise, taking them in a different order from that in which they have been referred.

31 The first part of the second question is closely related to the first question, as pointed out in paragraph 27 of the present judgment, and it is appropriate to examine it in relation, in particular, with the first part of the first question, the third question and the second part of the fourth question.

The second part of the first question

- 32 By the second part of its first question, the national court asks, essentially, whether Clause 2(6) of the framework agreement on parental leave can be relied on by individuals before a national court against public authorities.
- 33 The Court has consistently held in that regard that, whenever the provisions of a directive appear, so far as their subject-matter is concerned, to be unconditional and sufficiently precise, they may be relied upon by individuals as against the State, particularly in its capacity as an employer (see, in particular, to that effect, Case 152/84 *Marshall* [1986] ECR 723, paragraphs 46 and 49; Case C-187/00 *Kutz-Bauer* [2003] ECR I-2741, paragraphs 69 and 71; and Case C-268/06 *Impact* [2008] ECR I-2483, paragraph 57).
- 34 As the Court has held, that case-law can be applied to agreements which, like the framework agreement on parental leave, are the product of a dialogue, based on Article 139(1) EC, between management and labour at Community level and which have been implemented in accordance with Article 139(2) EC by a directive of the Council of the European Union, of which they are thus an integral component (see *Impact*, paragraph 58, and Joined Cases C-378/07 to C-380/07 *Angelidaki and Others* [2009] ECR I-3071, paragraph 195).
- 35 Clause 2(6) of the framework agreement on parental leave lays down an obligation to maintain rights acquired or in the process of being acquired by the worker on the date on which parental leave starts as they stand until the end of parental leave, including any changes arising in the meantime.

36 Clause 2(6) of that framework agreement, which is intended to avoid any detriment to the rights of employees who have opted to take parental leave, requires, generally and in unequivocal terms, both national authorities and employers to recognise rights already acquired and those being acquired at the start of such leave and to guarantee that, at the end of the leave, employees will be able to continue to acquire rights as if that leave had not taken place. Accordingly, the content of Clause 2(6) of the framework agreement on parental leave thus is sufficiently precise for that provision to be relied on by an individual and applied by courts (see, by analogy, *Marshall*, paragraph 52).

37 Consequently, the answer to the second part of the first question is that Clause 2(6) of the framework agreement on parental leave can be relied on by individuals before a national court.

The first part of the first question, the first part of the second question, the third question and the second part of the fourth question

38 By the first part of the first question, the first part of the second question, the third question and the second part of the fourth question, which it is appropriate to examine together, the national court asks, essentially, whether Clause 2(6) and (8) of the framework agreement on parental leave precludes the taking into account, in the calculation of an employee's permanent invalidity pension, of the fact that he has taken a period of part-time parental leave during which he made contributions and acquired pension entitlements in proportion to the salary received, as a result of which the pension granted to him is lower than that which would have been paid to him had he continued to work on a full-time basis.

39 It is apparent both from the wording of Clause 2(6) of the framework agreement on parental leave and its context that that provision is intended to avoid the loss of entitlements derived from an employment relationship, acquired or being acquired, which the employee already has when he starts parental leave, and to ensure that, at the end of that leave, with regard to those entitlements, he will find himself in the same

situation as that in which he was before that leave. Those entitlements derived from an employment relationship are those which the employee had at the date when the leave commenced.

- 40 Clause 2(6) of the framework agreement on parental leave does not, however, govern the entitlements and obligations derived from an employment relationship during parental leave, which are defined, pursuant to Clause 2(7), by the Member States and/or by management and labour. Thus, that clause refers to national legislation and to collective agreements in order to determine the regime governing the contract or employment relationship, including the extent to which the employee, during that leave, continues to acquire entitlements vis-à-vis his employer and under occupational social security schemes.
- 41 Nor is the continued acquisition of future entitlements under the statutory social security schemes during periods of parental leave explicitly regulated in the framework agreement on parental leave. Nevertheless, Clause 2(8) of that framework agreement refers to national legislation for consideration and determination of all questions of social security related to that agreement. Accordingly, the extent to which an employee will be able to continue to acquire social security entitlements while on part-time parental leave must be determined by the Member States.
- 42 In any event, although it is true that both recital 10 and recital 11 in the preamble to the framework agreement on parental leave and Clause 2(8) thereof refer to maintenance of social security benefits during the period of an employee's parental leave, without however imposing a specific obligation on Member States in that regard, the fact remains that the acquisition of entitlements to future social security benefits by the employee during that period is not mentioned in the framework agreement.
- 43 It follows that Clause 2(6) and (8) of that framework agreement does not require the Member States to give workers a guarantee that, during the period of their part-time

parental leave, they will continue to acquire entitlements to future social security benefits to the same extent as if they had continued to work on a full-time basis.

44 Consequently, the answer to the first part of the first question, the first part of the second question, the third question and the second part of the fourth question is that Clause 2(6) and (8) of the framework agreement on parental leave does not preclude the taking into account, in the calculation of an employee's permanent invalidity pension, of the fact that he has taken a period of part-time parental leave during which he made contributions and acquired pension entitlements in proportion to the salary received.

The first part of the fourth question and the second part of the second question

45 By the first part of the fourth question and the second part of the second question, which it is appropriate to examine together, the national court asks, essentially, whether Clause 2(8) of the framework agreement on parental leave is to be interpreted as meaning that it requires Member States to provide for employees to continue to receive social security benefits during parental leave, and whether that clause can be relied on by individuals before a national court against public authorities.

46 In that regard, it must be pointed out, firstly, that Clause 2(3) of the framework agreement on parental leave refers to the law and/or to collective agreements in the Member States for definition of the conditions of access and detailed rules for applying parental leave. Nevertheless, those conditions and rules must be defined in compliance with the minimum requirements laid down by the framework agreement on parental leave.

- 47 Secondly, although Clause 2(8) of the framework agreement on parental leave also refers to the Member States' legislation with regard to consideration and determination of all matters relating to social security questions in relation to that agreement, it merely recommends that they take into account the importance of the continuity of the entitlements to social security cover under the different schemes, in particular health care, during parental leave.
- 48 In addition, both the wording of Clause 2(8) of the framework agreement on parental leave and the fact that that framework agreement was concluded by management and labour represented by joint trade bodies shows that it could not impose obligations on the national social security organisations, which were not party to that agreement.
- 49 Furthermore, in accordance with point 11 of the general considerations of the framework agreement on parental leave, Member States should, where appropriate under national conditions and taking into account the budgetary situation, consider the maintenance of entitlements to relevant social security benefits as they stand during the minimum period of parental leave.
- 50 It follows from the foregoing that Clause 2(8) of the framework agreement on parental leave does not impose any obligation on the Member States to ensure, during parental leave, that employees continue to receive social security benefits and does not establish entitlements for employees. Accordingly, Clause 2(8) of the framework agreement cannot be relied on by individuals before a national court against public authorities and there is no need to examine whether it contains provisions which are unconditional and sufficiently precise.
- 51 Consequently, the answer to the first part of the fourth question and to the second part of the second question must be that Clause 2(8) of the framework agreement on parental leave does not impose obligations on the Member States, apart from that of considering and determining social security questions related to that framework agreement in accordance with national legislation. In particular, it does not require them to ensure that during parental leave employees continue to receive social security

benefits. Clause 2(8) thereof cannot be relied on by individuals before a national court against public authorities.

The fifth question

52 By its fifth question, the national court asks, essentially, whether the principle of equal treatment for men and women and, in particular, the principle of equal treatment for men and women in matters of social security, within the meaning of Directive 79/7, precludes an employee, during part-time parental leave, from acquiring entitlements to a permanent invalidity pension according to the time worked and the salary received and not as if he had worked on a full-time basis.

53 From the outset it must be noted that national legislation such as that at issue in the main proceedings is not directly discriminatory, since it applies without distinction to both male and female workers. It is therefore necessary to ascertain whether it may constitute indirect discrimination.

54 According to settled case-law, indirect discrimination arises where a national measure, albeit formulated in neutral terms, works to the disadvantage of far more women than men (see, in particular, Case C-411/96 *Boyle and Others* [1998] ECR I-6401, paragraph 76, and Case C-333/97 *Lewen* [1999] ECR I-7243, paragraph 34).

55 In that regard, it must be noted, as the national court has pointed out, that, in order to devote themselves to bringing up their children, women opt much more frequently than men for periods of reduced working time and a proportional reduction in salary, resulting in a reduction in social security entitlements derived from the employment relationship.

- 56 Nevertheless, according to established case-law, discrimination consists in the application of different rules to comparable situations or the application of the same rule to different situations (see, in particular, *Boyle*, paragraph 39, and *Lewen*, paragraph 36).
- 57 An employee benefiting from parental leave, to which she is entitled under Directive 96/34 implementing the framework agreement on parental leave, in a manner defined by national law or by collective agreement, who works only part-time as is the case in the main proceedings, is in a specific situation which cannot be compared to that of a man or woman who works on a full-time basis (see, to that effect, *Lewen*, paragraph 37).
- 58 The national rules at issue in the main proceedings provide that the amount of the permanent invalidity pension is calculated on the basis of the contributions actually paid by the employer and by the employee during the reference period, in the present case the eight years preceding the event giving rise to entitlement to that pension. Since, during periods of part-time parental leave, an employee receives a lower salary because of the reduction in his working time, the contributions, which constitute a percentage of the salary, were also reduced and there is a resulting difference in the acquisition of entitlements to future social security benefits between employees working on a full-time basis and those on part-time parental leave.
- 59 It must be borne in mind, in that regard, that the Court has already held that Community law does not preclude a retirement pension being calculated *pro rata temporis* in the case of part-time employment. The fact that, in addition to the number of years spent working in the civil service, an official's actual period of service during those years, as compared with the actual period of service of an official who has worked on a full-time basis throughout his career, is also taken into account is an objective criterion unrelated to any discrimination on grounds of sex, allowing his pension entitlement to be reduced proportionately (see, regarding officials, Joined Cases C-4/02 and C-5/02 *Schönheit and Becker* [2003] ECR I-12575, paragraphs 90 and 91).

60 With regard to Directive 79/7, according to the first recital of the preamble thereto and Article 1 thereof, the purpose of the directive is only the progressive implementation of the principle of equal treatment for men and women in matters of social security. Thus, pursuant to Article 7(1)(b) of that directive, Member States may exclude from its scope the acquisition of entitlements to social security benefits under statutory schemes following periods of interruption of employment due to the bringing up of children

61 It follows that the acquisition of entitlement to social security benefits following periods of interruption of employment due to the bringing up of children is still a matter for the Member States to regulate (see Case C-31/90 *Johnson* [1991] ECR I-3723, paragraph 25).

62 It is apparent from case-law that Directive 79/7 in no way obliges the Member States to grant advantages in respect of social security to persons who have brought up children or to provide benefit entitlements where employment has been interrupted in order to bring up children (see, by analogy, Case C-297/93 *Grau-Hupka* [1994] ECR I-5535, paragraph 27).

63 Consequently, the answer to the fifth question is that the principle of equal treatment for men and women and, in particular, the principle of equal treatment for men and women in matters of social security, within the meaning of Directive 79/7, does not preclude an employee, during part-time parental leave, from acquiring entitlements to a permanent invalidity pension according to the time worked and the salary received and not as if he had worked on a full-time basis.

Costs

⁶⁴ 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 (Third Chamber) hereby rules:

- 1. Clause 2(6) of the framework agreement on parental leave concluded on 14 December 1995, annexed to Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC can be relied on by individuals before a national court.**
- 2. Clause 2(6) and (8) of the framework agreement on parental leave does not preclude the taking into account, in the calculation of an employee's permanent invalidity pension, of the fact that he has taken a period of part-time parental leave during which he made contributions and acquired pension entitlements in proportion to the salary received.**
- 3. Clause 2(8) of the framework agreement on parental leave does not impose obligations on the Member States, apart from that of examining and determining social security questions related to that framework agreement in accordance with national legislation. In particular, it does not require them to ensure that during parental leave employees continue to receive social security benefits. Clause 2(8) thereof cannot be relied on by individuals before a national court against public authorities.**

4. **The principle of equal treatment for men and women and, in particular, the principle of equal treatment for men and women in matters of social security, within the meaning of Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security, does not preclude an employee, during part-time parental leave, from acquiring entitlements to a permanent invalidity pension according to the time worked and the salary received and not as if he had worked on a full-time basis.**

[Signatures]