Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

8 May 2019*

(Reference for a preliminary ruling — Social policy — Directive 96/34/EC — Framework agreement on parental leave — Clause 2.6 — Worker employed full-time and for indefinite duration on part-time parental leave — Dismissal — Compensation payment for dismissal and redeployment leave allowance — Method of calculation — Article 157 TFEU — Equal pay for male and female workers — Part-time parental leave taken primarily by female workers — Indirect discrimination — Objective factors unrelated to any sex discrimination — None)

In Case C-486/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Cour de cassation (France), made by decision of 11 July 2018, received at the Court on 23 July 2018, in the proceedings

RE

v

Praxair MRC SAS,

THE COURT (First Chamber),

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

Advocate General: G. Pitruzzella,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– RE, by J. Buk Lament, avocat,

– Praxair MRC SAS, by J.-J. Gatineau, avocat,

– the French Government, by E. de Moustier and R. Coesme, acting as Agents,

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

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

* Language of the case: French.

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 157 TFEU and of clauses 2.4 and 2.6 of the framework agreement on parental leave concluded on 14 December 1995 ('the framework agreement'), which is set out 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 (OJ 1996 L 145, p. 4) as amended by Council Directive 97/75/EC of 15 December 1997 (OJ 1998 L 10, p. 24) ('Directive 96/34').

2 The request has been made in proceedings between RE and Praxair MRC SAS concerning the method for calculating compensation for dismissal and for the redeployment leave allowance which were paid to her in the context of her dismissal on economic grounds which took place during her part-time parental leave.

Legal context

EU law

Directive 96/34 and the framework agreement on parental leave

3 Directive 96/34 was repealed with effect from 8 March 2012 under Article 4 of Council Directive 2010/18/EU of 8 March 2010 implementing the revised Framework Agreement on parental leave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 (OJ 2010 L 68, p. 13). However, in view of the date of the facts of the dispute in the main proceedings, the case is still governed by Directive 96/34 and the framework agreement on parental leave.

4 Directive 96/34 sought to implement the framework agreement on parental leave concluded between the general cross-industry organisations, that is to say the Union of Industrial and Employers' Confederations of Europe (UNICE), the European Centre of Enterprises with Public Participation (CEEP) and the European Trade Union Confederation (ETUC).

5 The first paragraph in the preamble to the framework agreement on parental leave states:

'The framework agreement [on parental leave] represents an undertaking by UNICE, CEEP and the ETUC to set out minimum requirements on parental leave and time off from work on grounds of *force majeure*, as an important means of reconciling work and family life and promoting equal opportunities and treatment between men and women.'

6 Paragraphs 4 to 6 of the general considerations of the framework agreement set out:

'4. Whereas the Community Charter of Fundamental Social Rights stipulates at point 16 dealing with equal treatment that measures should be developed to enable men and women to reconcile their occupational and family obligations;

5. Whereas the Council Resolution of 6 December 1994 recognises that an effective policy of equal opportunities presupposes an integrated overall strategy allowing for better organisation of working hours and greater flexibility, and for an easier return to working life, and notes the important role of the two sides of industry in this area and in offering both men and women an opportunity to reconcile their work responsibilities with family obligations;

6. Whereas measures to reconcile work and family life should encourage the introduction of new flexible ways of organising work and time which are better suited to the changing needs of society and which should take the needs of both undertakings and workers into account'.

7 Clause 1 of that framework agreement, entitled 'Purpose and scope' provided:

'1. This agreement lays down minimum requirements designed to facilitate the reconciliation of parental and professional responsibilities for working parents.

2. This agreement applies to all workers, men and women, who have an employment contract or employment relationship as defined by the law, collective agreements or practices in force in each Member State.'

8 Clause 2 of that framework agreement, entitled 'Parental leave', was worded as follows:

'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.

…

4. In order to ensure that workers can exercise their right to parental leave, Member States and/or management and labour shall take the necessary measures to protect workers against dismissal on the grounds of an application for, or the taking of, parental leave in accordance with national law, collective agreements or practices.

…

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.

…'

Framework agreement on part-time work

9 Clauses 4.1 and 4.2 of the framework agreement on part-time work concluded on 6 June 1997 ('the framework agreement on part-time work') which appears in the Annex to Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC (OJ 1998 L 14, p. 9), as amended by Council Directive 98/23/EC of 7 April 1998 (OJ 1998 L 131, p. 10) states:

'1. In respect of employment conditions, part-time workers shall not be treated in a less favourable manner than comparable full-time workers solely because they work part time unless different treatment is justified on objective grounds.

2. Where appropriate, the principle of *pro rata temporis* shall apply.'

French law

10 Under Article L. 1233-71 of the code du travail (Labour Code), in the version in force at the material time in the main proceedings ('the Labour Code'):

'In undertakings or establishments of a thousand or more employees and undertakings referred to in Article L. 2331-1 and those referred to in Article L. 2341-4, as long as they employ a total of at least a thousand employees, the employer shall offer each employee for whom he envisages dismissal on economic grounds redeployment leave for the purposes of enabling the employee to benefit from training initiatives and the services of a support team in the job search process.

Redeployment leave may not exceed nine months.

That leave begins, if necessary, with a skills assessment which serves to enable the employee to define a career plan and, where appropriate, to determine necessary training measures for his redeployment. Those shall be implemented during the period provided for in the first subparagraph.

The employer shall finance all of those measures.'

11 Article L. 1233-72 of the Labour Code provides as follows:

'Redeployment leave shall be taken during the notice period, which the employee shall be exempted from implementing.

Where the redeployment leave exceeds the notice period, the time fixed for the notice period shall be postponed until the end of the redeployment leave.

The amount of salary which exceeds the notice period shall be equal to the conversion allowance referred to in paragraph 3 of Article L. 5123-2. The provisions of Articles L. 5123-4 and L. 5123-5 shall apply to that salary.'

12 Article L. 1234-9 of the Labour Code provides:

'An employee with an employment contract of indefinite duration who is dismissed after a year's continuous service with the same employer, shall be entitled, except in the case of serious misconduct, to a compensation payment for dismissal.

The method for calculating that compensation shall be based on the gross earnings of the employee prior to the termination of the employment contract. ...'

13 Article L. 3123-13 of the Labour Code provides:

'The compensation payment for dismissal and the retirement benefit payable to an employee who has worked on both a full-time and part-time basis for the same undertaking shall be calculated in proportion to the periods of each of those types of employment completed since the employee joined the undertaking.'

14 Article R. 1233-32 of the Labour Code concerning redeployment leave allowance is worded as follows:

'During a period of redeployment leave exceeding the period of notice, an employee shall receive a monthly payment from his employer.

The amount of that payment shall be equivalent to at least 65% of the employee's average gross monthly salary for the twelve months preceding the notification of dismissal, subject to the contributions referred to in Article L. 5422-9.

It may not be less than a monthly salary equivalent to 85% of the product of the minimum wage provided for in Article L. 3231-2 multiplied by the number of the working hours agreed for the undertaking.

Nor may it be less than 85% of the guaranteed amount of salary paid by the employer in accordance with the provisions of Article 32 of Law No 2000-37 of 19 January 2000 on the negotiated reduction in working hours.

Each month, the employer shall give the employee a payslip specifying the amount and method of calculation of that salary.'

15 Article R. 1234-4 of the Labour Code provides:

'The salary to be used for calculating compensation dismissal shall be whichever of the following is the more beneficial to the employee:

1. either one twelfth of the salary for the last twelve months prior to dismissal;

2. or one third of the salary for the last three months. In that case, any annual bonus or premium or any bonus or premium of an exceptional nature, paid to the employee during that period, is taken into account only in a proportionate manner.'

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

16 On 22 November 1999, RE commenced employment as a sales assistant with Materials Research Corporation, now Praxair MRC, under a fixed-term and full-time contract. By addendum of 21 July 2000, her employment contract became a contract of indefinite duration and full-time with effect from 1 August 2000.

17 RE took a first period of maternity leave from 4 February 2001 to 19 August 2001, followed by a period of childcare leave from 6 September 2001 to 6 September 2003. She then took a second period of maternity leave from 6 November 2007 to 6 June 2008, followed by a period of childcare leave from 1 August 2008, in the form of her working hours being reduced by one fifth. That last period of childcare leave was supposed to end on 29 January 2011.

18 On 6 December 2010, RE was made redundant as part of a collective redundancy on economic grounds. She accepted redeployment leave for a period of 9 months.

19 After having relinquished the right to a reduction in her working hours with effect from 1 January 2011, RE left Praxair MRC on 7 September 2011.

20 On 30 September 2011, RE brought proceedings before the conseil de prud'hommes de Toulouse (Labour Tribunal, Toulouse, France) to contest her dismissal and made several claims, in particular, for the payment of EUR 941.15 in respect of outstanding redundancy pay and of EUR 1 423.79 in respect of outstanding redeployment leave allowance.

21 By judgment of 12 September 2013, that court dismissed RE's two claims.

22 By judgment of 14 October 2016, the cour d'appel de Toulouse (Court of Appeal, Toulouse, France) upheld the dismissal of those claims by RE before the conseil de prud'hommes de Toulouse (Labour Tribunal, Toulouse).

23 On 14 December 2016, RE appealed against that judgment on a point of law, claiming that the cour d'appel de Toulouse (Court of Appeal, Toulouse) had infringed clause 2.6 of the framework agreement on parental leave.

24 The Cour de cassation (Court of Cassation, France) points out that, according to its case-law, it would be appropriate, pursuant to Article L. 3123-13 of the Labour Code, to calculate the amount of compensation for dismissal payable to RE by taking into account, in proportion, the periods of full-time and periods of part-time employment completed. As regards the redeployment leave allowance, it should be determined, in accordance with Article R. 1233-32 of the Labour Code, on the basis of the average gross monthly salary for the 12 months preceding the notification of RE's dismissal.

25 That court however stated that, in its judgment of 22 October 2009, *Meerts* (C-116/08, EU:C:2009:645), the Court of Justice held that, where an employer unilaterally terminates a worker's full-time employment contract of indefinite duration, without urgent cause or without observing the statutory period of notice, whilst the worker is on part-time parental leave, the compensation to be paid to the worker cannot be determined on the basis of the reduced salary being received when the dismissal takes place. The Court followed the same interpretation in the judgment of 27 February 2014, *Lyreco Belgium* (C-588/12, EU:C:2014:99) on the calculation of the fixed-sum protective award.

26 The referring court questions whether clause 2.6 of the framework agreement on parental leave is applicable to the provisions concerning the method for calculating the redeployment leave allowance, which is paid after the dismissal of the worker concerned.

27 Where the Court takes the view that it is appropriate, for the calculation of the compensation payment for dismissal and the redeployment leave allowance, to take as a basis work carried out full-time, the lack of direct effect of directives of the European Union in a dispute which involves only private individuals would lead the referring court to consider the provisions of its national law as a whole in order to achieve an interpretation which complies with EU law. However, interpreting Article L. 3123-13 of the Labour Code in accordance with Directive 96/34 and the framework agreement on parental leave could lead to a *contra legem* interpretation of that national provision. Moreover, it is not clear that Article R. 1233-32 of the Labour Code may be interpreted in accordance with clauses 2.4 and 2.6 of the framework agreement on parental leave.

28 Additionally, the referring court takes the view that Article 157 TFEU is applicable in a dispute such as that in the main proceedings in so far as the benefits concerned fall within the concept of 'pay' within the meaning of that article. It points out that a far greater number of women than men choose to take part-time parental leave and that this results in indirect discrimination in respect of female workers.

29 In the context of the assessment of objective factors justifying such discrimination, it is appropriate to take into account clauses 4.1 and 4.2 of the framework agreement on part-time work. The referring court states however that, in paragraph 51 of the judgment of 22 October 2009, *Meerts* (C-116/08, EU:C:2009:645), the Court observed that a worker on part-time parental leave and a worker employed under a full-time contract are not in a different position in relation to the initial employment contract with their employer.

30 In those circumstances, the Cour de cassation (Court of Cassation) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Are clauses 2.4 and 2.6 of the framework agreement on parental leave … to be interpreted as precluding the application to an employee who is on part-time parental leave at the time of his dismissal of a provision of domestic law, such as Article L. 3123-13 of the Labour Code, applicable at the material time, under which “the compensation payment for dismissal and retirement benefit payable to an employee who has worked on both a full-time and part-time basis for the same undertaking shall be calculated in proportion to the periods of each of those types of employment completed since the employee joined the undertaking”?

(2) Are clauses 2.4 and 2.6 of the framework agreement … to be interpreted as precluding the application to an employee who is on part-time parental leave at the time of his dismissal of a provision of domestic law, such as Article R. 1233-32 of the Labour Code, under which, during a period of redeployment leave which exceeds the notice period, the employee is to receive a monthly payment from the employer of an amount equivalent to at least 65% of the employee’s average gross monthly pay during the 12 months preceding the notice of dismissal, subject to the contributions referred to in Article L. 5422-9 of the Labour Code?

(3) If the answer to either of the preceding questions is in the affirmative, is Article 157 [TFEU] to be interpreted as precluding provisions of national law, such as Article L. 3123-13 of the Labour Code, applicable at the material time, and Article R. 1233-32 of that Code, in so far as a far greater number of women than men choose to take part-time parental leave and the indirect discrimination which results therefrom as regards the receipt of redundancy pay and redeployment leave allowance, which are less than those received by employees who have not taken part-time parental leave, is not justified by objective factors unrelated to any form of discrimination?’

The first and second questions

31 By its first and second questions, which it is appropriate to examine together, the referring court asks, in essence, whether clauses 2.4 and 2.6 of the framework agreement on parental leave must be interpreted as precluding, where a worker employed full-time and for an indefinite duration is dismissed at the time he takes part-time parental leave, the compensation payment for dismissal and the redeployment leave allowance to be paid to that worker being determined at least in part on the basis of the reduced salary being received when the dismissal takes place.

Admissibility

32 Praxair MRC and the French Government submit that, since the dispute in the main proceedings is between two private individuals and without the possibility of interpreting the national legislation at issue in the main proceedings in accordance with EU law, RE may not rely on the framework agreement to prevent the application of that national legislation where the latter would be contrary to EU law. Consequently, the first and second questions are not relevant to the resolution of the dispute in the main proceedings. Those questions are thus hypothetical and, consequently, inadmissible.

33 In that regard, it should be recalled that it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court.

Consequently, where the questions submitted concern the interpretation of a rule of EU law, the Court is in principle bound to give a ruling (judgment of 10 December 2018, *Wightman and Others*, C-621/18, EU:C:2018:999, paragraph 26 and the case-law cited).

34 It follows that questions relating to EU law enjoy a presumption of relevance. 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 EU 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 (judgment of 10 December 2018, *Wightman and Others*, C-621/18, EU:C:2018:999, paragraph 27 and the case-law cited).

35 In that regard, it follows from the Court's case-law that the Court has jurisdiction to give preliminary rulings concerning the interpretation of provisions of EU law irrespective of whether or not they have direct effect (judgment of 27 November 2012, *Pringle*, C-370/12, EU:C:2012:756, paragraph 89 and the case-law cited).

36 Additionally, as regards the obligation of interpretation in conformity with EU law, it should be recalled that, according to settled case-law, the Member States' obligation arising from a directive to achieve the result envisaged by the directive and their duty under Article 4(3) TEU and Article 288 TFEU to take all appropriate measures, whether general or particular, to ensure the fulfilment of that obligation are binding on all the authorities of the Member States including, for matters within their jurisdiction, the courts (judgment of 4 October 2018, *Link Logistik N&N*, C-384/17, EU:C:2018:810, paragraph 57 and the case-law cited).

37 To fulfil that obligation, the principle of interpretation in conformity with EU law requires the national authorities to do everything within their power, taking the whole body of domestic law into consideration and applying the interpretative methods recognised by domestic law, with a view to ensuring that EU law is fully effective and to achieving an outcome consistent with the objective pursued by it (judgment of 4 October 2018, *Link Logistik N&N*, C-384/17, EU:C:2018:810, paragraph 58 and the case-law cited).

38 However, that principle of interpretation of national law in conformity with EU law has certain limits. Thus the obligation for a national court to refer to EU law when interpreting and applying the relevant rules of domestic law is limited by general principles of law and cannot serve as the basis for an interpretation of national law that is *contra legem* (judgment of 4 October 2018, *Link Logistik N&N*, C-384/17, EU:C:2018:810, paragraph 59 and the case-law cited).

39 In the present case, it is clear from the order for reference, as stated in paragraph 27 of the present judgment that the referring court, even though it expresses doubts in that regard, does not exclude the possibility of an interpretation in conformity with national legislation referred to in its first and second questions. It is for that court to determine whether it is appropriate to proceed to an interpretation of the national legislation at issue in the main proceedings in compliance with EU law.

40 In those circumstances, the first and second questions must be held to be admissible.

Substance

41 As a preliminary point, it should be noted that, as is apparent from the first paragraph in the preamble to the framework agreement on parental leave, from paragraphs 4 and 5 of the general considerations of that framework agreement and from clause 1.1 thereof, the framework agreement constitutes an undertaking by the two sides of industry to introduce, through minimum requirements, measures to

offer both men and women an opportunity to reconcile their work responsibilities with family obligations (judgments of 22 October 2009, *Meerts*, C-116/08, EU:C:2009:645, paragraph 35, and of 27 February 2014, *Lyreco Belgium*, C-588/12, EU:C:2014:99, paragraph 30).

42 Under clause 1.2 of the framework agreement on parental leave, that agreement applies to all workers, men and women, who have an employment contract or employment relationship as defined by the law, collective agreements or practices in force in each Member State.

43 It is not disputed that such was the case of RE in the main proceedings, with the result that her situation falls within the ambit of that framework agreement.

44 In its first and second questions, the referring court refers to clauses 2.4 and 2.6 of the framework agreement on parental leave. In that regard, clause 2.4 of that framework agreement sets out that in order to ensure that workers can exercise their right to parental leave, Member States and/or management and labour are to take the necessary measures to protect workers against dismissal 'on the grounds of an application for, or the taking of, parental leave' in accordance with national law, collective agreements or practices.

45 In the present case, RE was dismissed as part of a collective redundancy on economic grounds. It is not clear from the order for reference that she was subject to that dismissal because she had applied for or had taken parental leave.

46 In those circumstances, it is not necessary to answer the first and second questions in the light of clause 2.4 of the framework agreement on parental leave, since only clause 2.6 of that framework agreement is relevant.

47 According to clause 2.6, rights acquired or in the process of being acquired by the worker on the date on which parental leave starts are to be maintained as they stand until the end of parental leave and, at the end of parental leave, these rights, including any changes arising from national law, collective agreements or practice, are to apply.

48 In that regard, it is clear 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 loss or reduction of rights derived from an employment relationship, acquired or being acquired, to which the worker is entitled when he starts parental leave, and to ensure that, at the end of that leave, with regard to those rights, he will find himself in the same situation as he was before the leave (judgments of 22 October 2009, *Meerts*, C-116/08, EU:C:2009:645, paragraph 39, and of 27 February 2014, *Lyreco Belgium*, C-588/12, EU:C:2014:99, paragraph 43).

49 Having regard to the objective of equal treatment between men and women which is pursued by the framework agreement on parental leave, clause 2.6 thereof must be interpreted as articulating a particularly important principle of EU social law which cannot therefore be interpreted restrictively (see, to that effect, judgment of 22 October 2009, *Meerts*, C-116/08, EU:C:2009:645, paragraph 42).

50 It is clear from the objectives of the framework agreement on parental leave that the concept of 'rights acquired or in the process of being acquired' within the meaning of clause 2.6 covers all the rights and benefits, whether in cash or in kind, derived directly or indirectly from the employment relationship, which the worker is entitled to claim from the employer at the date on which parental leave starts (judgment of 22 October 2009, *Meerts*, C-116/08, EU:C:2009:645, paragraph 43).

51 Such rights and benefits include all those relating to employment conditions, such as the right of a full-time worker on part-time parental leave to a period of notice in the event of the employer's unilateral termination of a contract of indefinite duration, the length of which depends on the worker's length of service in the company and the aim of which is to facilitate the search for a new job (judgment of 22 October 2009, *Meerts*, C-116/08, EU:C:2009:645, paragraph 44).

52 It is true that, whilst on part-time parental leave, a worker employed under a full-time contract does not work the same number of hours as someone working full-time. However, that does not mean that the two workers are in a different position in relation to the initial employment contract with their employer (judgment of 22 October 2009, *Meerts*, C-116/08, EU:C:2009:645, paragraph 51).

53 As the Court has already held, in respect of a worker employed under a full-time contract who is on part-time parental leave, the unilateral termination by the employer must be regarded as relating to a full-time employment contract (see, to that effect, judgment of 22 October 2009, *Meerts*, C-116/08, EU:C:2009:645, paragraph 55).

54 Under those circumstances, the Court held that clauses 2.6 and 2.7 of the framework agreement on parental leave must be interpreted as precluding, where an employer unilaterally terminates a worker's full-time employment contract of indefinite duration, without urgent cause or without observing the statutory period of notice, whilst the worker is on part-time parental leave, the compensation to be paid to the worker from being determined on the basis of the reduced salary being received when the dismissal takes place (judgment of 22 October 2009, *Meerts*, C-116/08, EU:C:2009:645, paragraph 56).

55 In the present case, as regards, in the first place, compensation for dismissal such as that at issue in the main proceedings, it must be held that that compensation is paid because of the employment relationship between the recipient and his former employer. Therefore, such compensation comes within the scope of clause 2.6 of the framework agreement on parental leave.

56 As is clear from the case-law cited in paragraph 54 of the present judgment, where a worker employed full-time and for an indefinite duration is dismissed at the time he takes part-time parental leave, his compensation payment for dismissal must be determined entirely on the basis of the full-time salary of that worker.

57 National legislation which would result in the rights flowing from the employment relationship being reduced in the event of parental leave could discourage workers from taking such leave and could encourage employers to dismiss workers who are on parental leave rather than other workers. This would run directly counter to the aim of the framework agreement on parental leave, one of the objectives of which is to make it easier to reconcile working and family life (judgment of 22 October 2009, *Meerts*, C-116/08, EU:C:2009:645, paragraph 47).

58 In those circumstances, clause 2.6 of the framework agreement on parental leave precludes a national provision, such as that at issue in the main proceedings, which involves taking into account the reduced salary received by the worker on part-time parental leave when the dismissal takes place, by providing that the compensation payment for dismissal for a worker who has worked on both a full-time and part-time basis for the same undertaking is calculated in proportion to the periods of each of those types of employment completed since the worker joined the undertaking.

59 As regards, in the second place, the redeployment leave allowance provided for by the national legislation at issue in the main proceedings, that allowance is related to redeployment leave. It is clear from the order for reference that, in the undertakings covered by that legislation, the employer is to offer each employee, for whom he envisages dismissal on economic grounds, redeployment leave for the purposes of enabling the employee to benefit from training initiatives and the services of a support team in the job search process.

60 It is necessary to assess whether a benefit such as the redeployment leave allowance falls within the scope of clause 2.6 of the framework agreement on parental leave and if so, whether that provision precludes the method of calculating that allowance laid down in legislation such as that at issue in the main proceedings.

61 In the light of the case-law referred to in paragraph 50 of the present judgment, having regard to its award criteria, a benefit such as the redeployment leave allowance constitutes a right derived from the employment relationship, which the worker is entitled to claim from the employer. The mere fact that the payment of such an allowance is not automatic, in so far as it must be requested by the dismissed worker from his employer, and that that payment takes place during the period of redeployment leave which exceeds the notice period does not appear to be capable of altering that finding.

62 In those circumstances, clause 2.6 of the framework agreement on parental leave is applicable to a benefit such as the redeployment leave allowance.

63 As regards the method for calculating that allowance, it is evident from the order for reference that the legislation at issue in the main proceedings provides that, where a worker employed full-time and for an indefinite duration is dismissed at the time he is on part-time parental leave, that allowance is calculated, at least in part, on the basis of the reduced salary being received when the dismissal takes place.

64 In the same way as for the compensation payment for dismissal, a benefit such as the redeployment leave allowance must, pursuant to clause 2.6 of the framework agreement on parental leave, be determined entirely on the basis of the full-time salary of that worker.

65 In light of the above, the answer to the first and second questions is that clause 2.6 of the framework agreement on parental leave must be interpreted as precluding, where a worker employed full-time and for an indefinite duration is dismissed at the time he is on part-time parental leave, the compensation payment for dismissal and the redeployment leave allowance to be paid to that worker being determined at least in part on the basis of the reduced salary being received when the dismissal takes place.

The third question

66 By its third question, the referring court asks, in essence, whether Article 157 TFEU must be interpreted as precluding legislation such as that at issue in the main proceedings which provides that, where a worker employed full-time and for an indefinite duration is dismissed at the time he is on part-time parental leave, that worker receives a compensation payment for dismissal and a redeployment leave allowance determined at least in part on the basis of the reduced salary which he receives when the dismissal takes place, in circumstances when a far greater number of women than men choose to take part-time parental leave and when that difference in treatment which results therefrom cannot be explained by objective factors unrelated to any sex discrimination.

67 As a preliminary point, it must be pointed out that since Article 157 TFEU is mandatory in nature, the prohibition on discrimination between men and women applies not only to the action of public authorities but also extends to all agreements which are intended to regulate paid labour collectively, as well as to contracts between individuals (see, to that effect, judgments of 8 April 1976, *Defrenne*, 43/75, EU:C:1976:56, paragraph 39, and of 18 November 2004, *Sass*, C-284/02, EU:C:2004:722, paragraph 25).

68 Thus, the principle established by that article may be invoked before national courts, in particular in cases of discrimination arising directly from legislative provisions or collective labour agreements, as well as in cases in which work is carried out in the same establishment or service, whether private or public (see, to that effect, judgments of 8 April 1976, *Defrenne*, 43/75, EU:C:1976:56, paragraph 40, and of 13 January 2004, *Allonby*, C-256/01, EU:C:2004:18, paragraph 45).

69 In accordance with Article 157(2) TFEU, 'pay' means the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which the worker receives directly or indirectly, in respect of his employment, from his employer.

70 It is apparent from the Court's case-law that the concept of 'pay' within the meaning of Article 157(2) TFEU must be interpreted broadly. It covers, in particular, any consideration, whether in cash or in kind, whether immediate or future, provided that the worker receives it, albeit indirectly, in respect of his employment from his employer, and irrespective of whether it is received under a contract of employment, by virtue of legislative provisions or on a voluntary basis. Moreover, the fact that certain benefits are paid after the termination of the employment relationship does not prevent them from being in the nature of pay within the meaning of that provision (judgments of 6 December 2012, *Dittrich and Others*, C-124/11, C-125/11 and C-143/11, EU:C:2012:771, paragraph 35, and of 19 September 2018, *Bedi*, C-312/17, EU:C:2018:734, paragraph 33).

71 As regards the compensation granted by an employer to a worker when he is made redundant, the Court has already stated that such compensation is a form of deferred pay to which the worker is entitled by reason of his employment but which is paid to him on termination of the employment relationship with a view to enabling him to adjust to the new circumstances arising from such a termination (judgments of 17 May 1990, *Barber*, C-262/88, EU:C:1990:209, paragraph 13, and of 19 September 2018, *Bedi*, C-312/17, EU:C:2018:734, paragraph 35).

72 In the present case, it should be pointed out that benefits such as the compensation payment for dismissal and the redeployment leave allowance fulfil the requirements recalled in paragraphs 70 and 71 of the present judgment. In those circumstances, such benefits must be categorised as 'pay' within the meaning of Article 157 TFEU.

73 In order to assess whether there is discrimination, it should be recalled that, according to settled case-law, discrimination involves the application of different rules to comparable situations or the application of the same rule to different situations (judgments of 13 February 1996, *Gillespie and Others*, C-342/93, EU:C:1996:46, paragraph 16, and of 14 July 2016, *Ornano*, C-335/15, EU:C:2016:564, paragraph 39).

74 In that regard, the French Government submits that it is not necessary to compare a worker on part-time parental leave to a worker who works full-time by referring to clause 4.2 of the framework agreement on part-time work according to which 'where appropriate, the principle of *pro rata temporis* shall apply'.

75 The French Government and Praxair MRC rely also on paragraph 63 of the judgment of 16 July 2009, *Gómez-Limón Sánchez-Camacho* (C-537/07, EU:C:2009:462), in which the Court held that the principle of equal treatment for men and women does not preclude a worker, during part-time parental leave, 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. It is therefore not necessary to compare a worker on part-time parental leave to a worker who works full-time.

76 However, it is necessary to draw a distinction between, on the one hand, the rights which take into account specifically the circumstances of part-time parental leave and, on the other, the rights which do not specifically arise from those circumstances.

77 In that context, as is evident from paragraph 53 of the present judgment, as regards a worker employed under a full-time contract on part-time parental leave, the unilateral termination by the employer must be regarded as relating to a full-time employment contract.

78 Consequently, as is clear from paragraphs 51 and 55 of the judgment of 22 October 2009, *Meerts* (C-116/08, EU:C:2009:645), as regards the right to benefits such as the compensation payment for dismissal and the redeployment leave allowance, the circumstances of a worker on part-time parental leave, in relation to such benefits, is comparable to those of a full-time worker. Such a finding is equally applicable in the context of Article 157 TFEU.

79 According to the Court's settled case-law, the principle of equal pay enshrined in Article 157 TFEU, precludes not only the application of provisions leading to direct sex discrimination, but also the application of provisions which maintain different treatment between men and women at work as a result of the application of criteria not based on sex where those differences of treatment are not attributable to objective factors unrelated to sex discrimination (see, to that effect, judgments of 15 December 1994, *Helmig and Others*, C-399/92, C-409/92, C-425/92, C-34/93, C-50/93 and C-78/93, EU:C:1994:415, paragraph 20, and of 17 July 2014, *Leone*, C-173/13, EU:C:2014:2090, paragraph 40).

80 More specifically, the Court has consistently held that indirect discrimination on grounds of sex arises where a national measure, albeit formulated in neutral terms, puts considerably more workers of one sex at a disadvantage than the other. Such a measure is compatible with the principle of equal pay only if the difference in treatment between the two categories of workers to which it gives rise is justified by objective factors unrelated to any sex discrimination (see, to that effect, judgment of 17 July 2014, *Leone*, C-173/13, EU:C:2014:2090, paragraph 41 and the case-law cited).

81 In the present case, it follows from the application of national legislation such as that at issue in the main proceedings, which is formulated in neutral terms, that where a worker employed full-time and for an indefinite duration is dismissed at the time he is on part-time parental leave, that worker is at a disadvantage compared to a worker who is dismissed whilst he is employed full-time in so far as, in respect of the worker on part-time parental leave, the compensation payment for dismissal and the redeployment leave allowance are determined at least in part on the basis of the reduced salary being received at the time of his dismissal.

82 The referring court explains, in its third question, that a far greater number of women than men choose to take part-time parental leave. It states in its order for reference that, according to the Advocate General of the Cour de cassation (Court of Cassation), it follows from the national statistics of March 2016 that, in France, 96% of workers who took parental leave are women.

83 In such a case, national legislation such as that at issue in the main proceedings is compatible with the principle of equal treatment only if the difference in treatment between female workers and male workers thus created is, as the case may be, capable of being justified by objective factors unrelated to any sex discrimination.

84 It follows, in particular, from the wording of its third question that the referring court takes the view that that difference in treatment is not justified by such objective factors.

85 As for the French Government, as regards such a difference in treatment, it does not submit factors in its written observations which are objectively justified by reasons unrelated to any sex discrimination.

86 In those circumstances, national legislation such as that at issue in the main proceedings appears not to comply with the principle of equal pay for male and female workers for equal work or work of equal value, as provided for in Article 157 TFEU.

87 In the light of the foregoing, the answer to the third question is that Article 157 TFEU must be interpreted as precluding legislation such as that at issue in the main proceedings which provides that, where a worker employed full-time and for an indefinite duration is dismissed at the time he is on part-time parental leave, that worker receives a compensation payment for dismissal and a redeployment leave allowance determined at least in part on the basis of the reduced salary which he receives when the dismissal takes place, in circumstances when a far greater number of women than men choose to take part-time parental leave and when that difference in treatment which results therefrom cannot be explained by objective factors unrelated to any sex discrimination.

Costs

88 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:

1. **Clause 2.6 of the framework agreement on parental leave concluded on 14 December 1995, which is 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, as amended by Council Directive 97/75/EC of 15 December 1997, must be interpreted as precluding, where a worker employed full-time and for an indefinite duration is dismissed at the time he is on part-time parental leave, the compensation payment for dismissal and the redeployment leave allowance to be paid to that worker being determined at least in part on the basis of the reduced salary which he receives when the dismissal takes place.**

2. **Article 157 TFEU must be interpreted as precluding legislation such as that in the main proceedings which provides that, where a worker employed full-time and for an indefinite duration is dismissed at the time he is on part-time parental leave, that worker receives a compensation payment for dismissal and a redeployment leave allowance determined at least in part on the basis of the reduced salary being received when the dismissal takes place, in circumstances when a far greater number of women than men choose to take part-time parental leave and when that difference in treatment which results therefrom cannot be explained by objective factors unrelated to any sex discrimination.**

[Signatures]