Case C-374/24

Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice

Date lodged:

24 May 2024

Referring court:

Tribunal du travail du Brabant Wallon (Belgium)

Date of the decision to refer:

8 April 2024

Applicant:

UF

Defendant:

Union Nationale des Mutualités Libres (Partenamut) (UNMLibres)

Subject matter of the main proceedings

UF is applying for the payment of EUR 2 041.91 as a lump-sum maternity payment for self-employed workers, plus interest starting from the date of the application (10 March 2006).

Questions referred for a preliminary ruling

Should Article 97 of l'arrêté royal du 20 juillet 1971 instituant une assurance indemnités et une assurance maternité en faveur des travailleurs indépendants et des conjoints aidants (Royal Decree of 20 July 1971 establishing benefit insurance and maternity insurance for self-employed workers and assisting spouses) [which] states that *'maternity allowance is reduced by the amount of the benefits that the holder may claim under the loi relative à l'assurance obligatoire soins de santé et indemnités coordonnée le 14 juillet 1994 (law relating to compulsory insurance for healthcare and benefits coordinated on 14 July 1994) (weeks of maternity leave referred to in Article 93)'* be interpreted as being contrary to Article 8 of Directive 2010/41/EU of the European Parliament and of the Council of 7 July

2010 concerning the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC by not allowing sufficient benefits for the applicant, Ms UF, who had been working both as a part-time-time employee and as a self-employed worker on a supplementary basis since 1 January 2002, and had been contributing to both the employee and self-employed schemes[?] Ms UF gave birth on 1 March 2006 and received only EUR 3 074 for her maternity leave from 16 February 2006 to 31 May 2006, which was calculated solely on the basis of her employee scheme.

Given the fact that the applicant has contributed to both social security schemes since 1 January 2002 and has only received social security benefits for employees based on Article 97 of the aforementioned Royal Decree, in this case, her aforementioned maternity allowance and no social security benefit from the scheme for self-employed workers to which she has also contributed, is this legislation contrary to Article 5 of Directive 2006/54/EC, which provides that *'Without prejudice to Article 4, there shall be no direct or indirect discrimination on grounds of sex in occupational social security schemes, in particular as regards:(a) the scope of such schemes and the conditions of access to them; (b) the obligation to contribute and the calculation of contributions; (c) the calculation of benefits, including supplementary benefits due in respect of a spouse or dependants, and the conditions governing the duration and retention of entitlement to benefits.'*?

The application of Article 97 of the aforementioned Royal Decree results in unfavourable treatment of a woman on maternity leave who is employed part-time and self-employed on a supplementary basis and can only claim maternity allowance calculated on the basis of her part-time employment, does that therefore constitute discrimination based on sex according to Article 21 of the Charter of Fundamental Rights of the European Union read in conjunction with Articles 33 and 34 of the Charter of Fundamental Rights of the European Union? To that effect, Recital 23 of Directive 2006/54/EC states that *'It is clear from the case-law of the Court of Justice that unfavourable treatment of a woman related to pregnancy or maternity constitutes direct discrimination on grounds of sex. Such treatment should therefore be expressly covered by this Directive.*'

Provisions of European Union law relied on

The Treaty on the Functioning of the European Union

Article 157 (ex Article 141 TEC)

'1. Each Member State shall ensure that the principle of equal pay for male and female workers for equal work or work of equal value is applied.

[…]'

Charter of Fundamental Rights of the European Union ('the Charter'):

Article 21 (Non- discrimination)

'1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.

[…]'

Article 33 (Family and professional life)

'1. The family shall enjoy legal, economic and social protection.

2. To reconcile family and professional life, everyone shall have the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave and to parental leave following the birth or adoption of a child.'

Article 34 (Social security and social assistance)

'1. The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Union law and national laws and practices.

[…]'

European Convention for the Protection of Human Rights and Fundamental Freedoms ('the ECHR') (to which the Union adherespursuant to Article 6(2) TEU)

Article 14 – Prohibition of discrimination

'The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.'

Protocol No 1 to the ECHR

Article 1

'Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.'

Protocol No 12 to the ECHR

‘1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, […]

2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1.’

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) (‘Directive 92/85’)

Article 2

‘Definitions

For the purposes of this Directive:

(a) pregnant worker shall mean a pregnant worker who informs her employer of her condition, in accordance with national legislation and/or national practice;

[…]’

Article 8

‘Maternity leave

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.’

Article 11

‘ […]

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;

[…]'

Council Directive 86/613/EEC of 11 December 1986 on the application of the principle of equal treatment between men and women engaged in an activity, including agriculture, in a self-employed capacity, and on the protection of self-employed women during pregnancy and motherhood ('Directive 86/613').

Article 8

'Member States shall undertake to examine whether, and under what conditions, female self-employed workers and the wives of self-employed workers may, during interruptions in their occupational activity owing to pregnancy or motherhood,

- have access to services supplying temporary replacements or existing national social services,

or

- be entitled to cash benefits under a social security scheme or under any other public social protection system.'

Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing [Directive 86/613]

Article 8

'1. The Member States shall take the necessary measures to ensure that female self-employed workers […] may, in accordance with national law, be granted a sufficient maternity allowance enabling interruptions in their occupational activity owing to pregnancy or motherhood for at least 14 weeks.

2. The Member States may decide whether the maternity allowance referred to in paragraph 1 is granted on a mandatory or voluntary basis.

3. The allowance referred to in paragraph 1 shall be deemed sufficient if it guarantees an income at least equivalent to:

(a) the allowance which the person concerned would receive in the event of a break in her activities on grounds connected with her state of health and/or;

(b) the average loss of income or profit in relation to a comparable preceding period subject to any ceiling laid down under national law and/or;

(c) any other family related allowance established by national law, subject to any ceiling laid down under national law.

[…]'

Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC – Annex: Framework agreement on part-time work ('Directive 97/81')

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 ('Directive 2006/54').

Recital 23

'It is clear from the case-law of the Court of Justice that unfavourable treatment of a woman related to pregnancy or maternity constitutes direct discrimination on grounds of sex. Such treatment should therefore be expressly covered by this Directive.'

Article 5

'… [T]here shall be no direct or indirect discrimination on grounds of sex in occupational social security schemes, in particular as regards:

(a) the scope of such schemes and the conditions of access to them;

(b) the obligation to contribute and the calculation of contributions;

(c) the calculation of benefits […] and the conditions governing the duration and retention of entitlement to benefits.'

Article 6

Personal scope

This Chapter shall apply to members of the working population, including self-employed persons, persons whose activity is interrupted by illness, maternity, […], in accordance with national law and/or practice.'

Article 14

'Prohibition of discrimination

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;

[…]

(c) employment and working conditions, including dismissals, as well as pay as provided for in Article 141 of the Treaty;

[…]'

Provisions of national law relied on

Scheme for employees

Law of 14 July 1994 on Compulsory Health Care and Indemnity Insurance, coordinated on 14 July 1994

Article 113

'The holder […] shall receive, for each working day of maternity protection periods […] a benefit entitled 'maternity allowance'.

Article 114

'Pre-natal leave shall begin, at the request of the holder, at the earliest from the sixth week preceding the expected due date. […]

Post-natal leave shall cover a period of nine weeks, starting from the date of delivery.'

Royal decree of 3 July 1996 implementing the law on compulsory insurance for healthcare and benefits, coordinated on 14 July 1994

Article 216

'The rate of maternity allowance [for active workers] is set at [82%] of lost earnings […] for the first thirty days of the maternity protection period […] and at 75% of the same amount from the thirty-first day of that period'.

Scheme for self-employed workers

The Royal Decree of 20 July 1971 establishing benefit insurance and maternity insurance for self-employed workers and assisting spouses ('the Royal Decree of 20 July 1971')

Article 3

‘The following shall be holders of the insurance established by this decree:

1. Self-employed workers […] excluding […]

(b) persons who […] are not required to make any contributions or who are only required to make a reduced contribution’

Article 93(1)

‘Maternity leave covers a period of twelve weeks […] during which the holder may not conduct their usual professional work or any other professional work.’

Article 94:

‘The amount of maternity allowance granted [to self-employed workers] is:

1 EUR 511.38 per week for the first four weeks of maternity leave;

2°EUR 467.73 per week from the fifth week of maternity leave;

In the case of part-time maternity leave, the amount of maternity allowance set in the previous paragraph shall be reduced by half.’

Article 97:

‘…

Maternity allowance shall be reduced by the amount of the benefits which the holder may claim under the law relating to compulsory insurance for healthcare and benefits coordinated on 14 July 1994’.

Succinct presentation of the facts and procedure in the main proceedings

1 Between January 2002 and December 2010, UF worked in two professional jobs alongside each other as follows:

– she was employed part-time (50%) as an assistant at the University,

– alongside this she was a self-employed lawyer on a supplementary basis.

2 During this period, UF therefore contributed to both social security schemes (for employees and self-employed workers).

3 Taking into account the amount of income she earned from her self-employed work, her contributions to that scheme were nevertheless not calculated on the basis of supplementary self-employed work (i.e., reduced or zero social security contributions), but on the basis of the scheme for workers whose primary activity

was in self-employment, i.e., EUR 4 234.16 for 2006. As she contributes as a worker whose primary activity is in self-employment, in principle UF benefits from maternity insurance for self-employed workers.

4 UF was on maternity leave from 16 February to 31 May 2006 (she gave birth on 1 March 2006), and received a gross maternity allowance for that period, in her capacity as an employed worker, of EUR 3 458.54 based on (Article 113 of) the law of 14 July 1994 on compulsory insurance for healthcare and benefits.

5 This amount was calculated based on her part-time salary (in Belgium, benefits due to employees on maternity leave are calculated as a percentage of the earnings lost with a ceiling of EUR 132.02 per day) and only covers part of her work.

6 For the other part (the self-employed work), on 10 March 2006, UF applied to Partena (social security insurance fund for self-employed workers) for payment of a lump-sum maternity allowance of EUR 2 041.91 provided for self-employed workers. She was refused this amount on 25 September 2006 on the grounds that the benefit mentioned in paragraph 4 of this summary had already been paid to her.

7 According to Article 97 of the royal decree of 20 July 1971, 'the [lump-sum] maternity allowance shall be reduced by the amount of the benefits which the holder may claim under the law relating to compulsory insurance for healthcare and benefits coordinated on 14 July 1994'. UF had already received benefits amounting to more than this.

8 During maternity leave, self-employed workers are obliged to continue to pay their social security contributions while being forced to stop working (see 'Provisions of national law relied on', Article 93(1) of the royal decree).

9 On 23 October 2006, UF brought an appeal against that decision before the Tribunal du Travail (Labour Court), Brussels.

10 On 9 November 2006, in response to a new form being sent applying for maternity allowance for a self-employed worker, Partena confirmed the refusal on the grounds that the allowance is payable *'only in the event that the allowance granted via the general (employed) system is lower than the lump sum granted.'*

11 On 29 June 2012, the Labour Court in Brussels referred the case to the Tribunal du Travail du Brabant Wallon, division Nivelles (Labour Court, Walloon Brabant, Nivelles Division, Belgium) at the request of UF.

12 As Partena had declared that it was unable to pay the allowance applied for, UF made an application on 18 December 2015 to force UNML (Partenamut [Union nationale des mutualités libres (National Union of Free Mutual Insurance Schemes])) to become a third party to the case.

13 On 11 May 2017, the Labour Court, Walloon Brabant, Nivelles Division, Belgium, dismissed Partena as a third party as it ruled that it did not owe the allowance applied for, and referred two questions for a preliminary ruling regarding the interpretation of Articles 21 and 23 of the Charter, Directive 92/85, Directive 2006/54, Directive 86/613 and the Framework agreement on part-time work, concluded on 6 June 1997 ('the framework agreement on part-time work'), which is in the Annex to [Directive 97/81].

14 This was case C-321/17, in which the Court, by means of an order dated 5 October 2017, concluded that the request for a preliminary ruling was manifestly inadmissible on the following grounds:

– the factual context of the dispute in the main proceedings was presented in a manner which contained significant gaps;

– the order for reference did not state the reasons why UF would not be entitled to the lump-sum allowance;

– the referring court, which referred, in its questions, to the royal decree of 20 July 1971, did not set out, in its decision, the tenor of the provisions of that decree that might apply in the main proceedings;

– the referring court did not set out with the requisite precision and clarity the reasons why it considered the requested interpretation to be necessary or useful for the purpose of resolving the case in the main proceedings. Moreover, there was no explanation of the link between EU law and the national legislation applicable to the dispute in the main proceedings.

15 The Court specified that 'the referring court retains the right to submit a new request for a preliminary ruling when it is in a position to provide the Court with all of the information enabling the Court to make a ruling (see, to that effect order of 12 May 2016, *Security Service and Others*, C-692/15 to C-694/15, EU:C:2016:344, paragraph 30 and the case-law cited).'

16 By means of a judgment dated 3 February 2020, the Labour Court, Walloon Brabant, Nivelles Division, Belgium, referred two questions to the Court for a preliminary ruling that were identical to the previous questions.

17 This was case C-105/20, in which the Court, by means of an order dated 21 January 2021, concluded once again that the request for a preliminary ruling was manifestly inadmissible, ruling that:

– the referring court 'still does not set out with the requisite precision and clarity the reasons why it considers the interpretation of the Union provisions and decisions mentioned in the questions referred for a preliminary ruling to be necessary or useful for the purpose of resolving the case in the main proceedings, nor does it set out the link between Union law and the national legislation that applies to this dispute;'

– ‘a degree of connection has already been established between Union law and the national provisions in so far as UF claims discrimination contrary to Directive 92/85. However, it could be said that this connection, which is explained far too briefly, contains far too many gaps, especially given the fact that the referring court does not give the reasons that lead it to consider that the situation of discrimination between self-employed workers that it describes falls under the scope of application of that directive, when it only covers pregnant workers, workers who have recently given birth or are breastfeeding whose occupational activity is conducted under the direction of an employer (see, in this regard, the judgment of 19 September 2013, *Betriu Montull*, C-5/12, EU:C:2013:571, paragraph 59);’

– ‘the court does not give any indication […] of the reasons that led it to question the interpretation of the other EU law provisions and decisions mentioned in the questions referred for a preliminary ruling;’

– ‘the referring court therefore failed to explain with a sufficient degree of clarity and precision the link between EU law and the national legislation in question in the main proceedings and the reasons why it considered it necessary to interpret the EU law provisions and decisions mentioned in the questions referred for a preliminary ruling in order to resolve the dispute in the main proceedings. The referring court therefore failed to satisfy the requirement laid down in Article 94(c) of the Rules of Procedure.’

18 In June 2020, UF received EUR 377.20 net to cover her maternity leave as a self-employed worker in 2006.

19 For the duration of their maternity leave, self-employed workers are obliged to continue to pay their social security contributions (at the rate applicable to workers who are self-employed on a primary basis), and therefore to contribute to funding the scheme for self-employed workers, without being able to work (see paragraph 8 of this summary).

The essential arguments of the parties in the main proceedings

20 UF considers that she received an insufficient amount of maternity allowance in her capacity as a part-time self-employed worker.

21 She asks whether the fact that it is impossible to receive an adequate allowance from the benefits provided by the two schemes constitutes indirect discrimination based on sex or gender contrary to Articles 21 and 33 of the Charter, Directives 92/85, 2006/54, 86/613/EEC and the Framework agreement on part-time work, implemented by Directive 97/81 read in combination with Article 14 of the ECHR and Article 1 of the first additional protocol to the ECHR.

22 According to her, there could also be an infringement of her right to ownership (unrecoverable contributions paid into the self-employed social-security scheme

because, due to the rules regarding multiple schemes, a full-time worker cannot claim this benefit in addition to that provided by the employed scheme, and refusal to pay the benefit).

23 The UNML accepts that the case falls under its remit but considers that the time limit for the action has expired as the application to force it to become a third party to the case (see paragraph 12 of this summary) was not made until 18 December 2015.

24 The Auditorat du Travail (Public Prosecution Service for Labour [branch of the public prosecution service that acts in social security disputes to give an opinion on the claim]) initially ruled (written opinion of 6 June 2016) the following regarding the alleged insufficiency of the benefit:

– ‘each of the two schemes to which [UF] belongs must be examined separately’;

– the maternity allowance scheme for self-employed workers bears more similarity to the benefits system than it does to the principle of insurance: if a self-employed worker is sufficiently covered by another scheme, no allowance shall be allocated to her (subsidiarity);

– UF ‘received what she was entitled to’ from both schemes;

– ‘only [Directive 86/613, in particular Article 8] specifically envisages the protection of maternity among self-employed workers’, while conferring ‘broad powers of evaluation on the Member States’, which means that Belgium has more than satisfied the requirements of that Directive by providing a protection scheme for those workers;

– ‘a self-employed worker cannot simply be compared to an employee.’

25 Regarding the alleged discrimination, the Public Prosecution Service for Labour goes on to say, in the same opinion, that ‘the majority of the European instruments listed by the claimant are irrelevant to this case, as they only apply to employees’, and that ‘the only directive that covers maternity benefits for self-employed workers is not binding on this point.’ It adds that, in its view, in the absence of applicable European legislation, there are no grounds for referring a question for a preliminary ruling.

26 Subsequently (written opinion of 3 October 2022), the Public Prosecution Service for Labour deemed that there was indeed discrimination between full-time employees and full-time workers who pay into both schemes, i.e., as a part-time employee and a self-employed worker on a supplementary basis, in so far as full-time employees receive *full* maternity allowance for the duration of their maternity leave, while full-time workers who pay into both schemes only receive a *partial* allowance.

27 In its view, for her self-employed work, a worker who is paying into two separate schemes only receives a lump sum after the application of Article 97 of the aforementioned Royal Decree of 20 July 1971. Its opinion is that in practice, a worker who works part-time as an employee does not receive the lump sum given that the allowance that she receives from her employed work is, according to the rules, greater than the lump-sum payment provided by the self-employed scheme.

28 To conclude, it claims that workers who contribute to both schemes are obliged to cease all work and to pay their unrecoverable social security contributions for their self-employed work, while in return they do not receive an adequate allowance.

29 In its view, this situation constitutes discrimination in comparison with the situation of a full-time employee. It claims that the situation is even less justified when, as in this case, the part-time worker is paying contributions for her self-employed work on a supplementary basis that are calculated on the basis of the scheme for workers who are self-employed as a primary occupation.

Succinct presentation of the reasoning in the request for a preliminary ruling

The Charter

30 The referring court considers that UF has a right to invoke Articles 21, 33 and 34 of the Charter (which concern non-discrimination, protection of family and professional life and social security and social assistance respectively) as they do not distinguish between types of workers (employees or self-employed workers) but apply to everyone.

31 It adds that the Court recognises that Article 21 of the Charter has ‘an imperative nature as a general principle of Union law’ and that consequently ‘[non-discrimination] is sufficient in itself for individuals to have a right to invoke it as such in a dispute in a matter covered by Union law’ (judgments of 17 April 2018, *Egenberger*, C-414/16, EU:C:2018:257, paragraph 76, of 22 January 2019, *Cresco Investigation*, C-193/17, EU:C:2019:43, paragraph 76, of 11 September 2018, IR, C-68/17, EU:C:2018:696, paragraph 69).

Directive 92/85 and the specific nature of maternity leave and allowance

32 The referring court cites a great deal of case-law of the Court, in particular concerning the interpretation of Directive 92/85 and the specific nature of maternity leave.

33 Thus the Court ruled 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 legislator thus considered 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; of 19 September 2013, *Betriu Montull*, C-5/12, EU:C:2013:571, paragraph 48; and of 18 March 2014, *D.*, C-167/12, EU:C:2014:169, paragraph 32, of 21 May 2015, *Rosselle*, C-65/14, EU:C:2015:339, paragraph 30, and of 18 November 2020, *Syndicat* CFTC, C-463/19, EU:C:2020:932, paragraph 50).

– ‘in that context, and as can be seen from Recital 17 to the preamble to Directive 92/85, in order to avoid the risk that the provisions relating to maternity leave would be ineffective if they did not go hand in hand with maintaining rights connected with the employment contract, the EU legislator provided, in Article 11(2)(b) of Directive 92/85, that maintenance of a payment to, and/or entitlement to an adequate allowance for workers to whom the directive applies must be ensured in the case of the maternity leave referred to in Article 8 of that directive (judgments of 27 October 1998, *Boyle and Others*, C-411/96, EU:C:1998:506, paragraph 30, and of 21 May 2015, *Rosselle*, C-65/14, EU:C:2015:339, paragraph 45);

– ‘women taking maternity leave provided for by national legislation are in a specific position which requires them to be afforded special protection, but which is not comparable either to that of a man or to that of a woman actually at work (judgment of 13 February 1996, *Gillespie and Others*, C-342/93, EU:C:1996:46, paragraph 17 and of 14 July 2016, *Ornano*, C-335/15, EU:C:2016:564, paragraph 39) or who is on sick leave (judgments of 27 October 1998, *Boyle and Others*, C-411/96, EU:C:1998:506, paragraph 33, and of 18 November 2020, *Syndicat CFTC*, C-463/19, EU:C:2020:932, paragraph 50);

– ‘that maternity leave is intended, firstly, to protect a woman’s biological condition during and after pregnancy and, secondly, 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, of 30 April 1998, *Thibault*, C-136/95, EU:C:1998:178, paragraph 25, of 27 October 1998, *Boyle and Others*, C-411/96, EU:C:1998:506, paragraph 41, of 1 July 2010, *Gassmayr*, C-194/08, EU:C:2010:386, paragraph 81, of 4 October 2018, *Dicu*, C-12/17, EU:C:2018:799, paragraph 34 and of 18 November 2020, *Syndicat* CFTC, C-463/19, EU:C:2020:932, paragraph 52).

34 The referring court finds that the application of the principle of equal pay for men and women neither requires that women should continue to receive full pay during maternity leave, nor lays down specific criteria for determining the amount of benefit payable to them during that period (judgment of 13 February 1996, *Gillespie and Others*, C-342/93, EU:C:1996:46, paragraphs 18, 22, 24 and 25 and operative part)

35 With case-law of the Court to support its view, the referring court nevertheless points out that, pursuant to Directive 92/85, a worker must receive an income during her maternity leave that is 'at least equivalent to the amount that the worker concerned would receive in the event of a break in her activities on grounds connected with her state of health' (judgment of 1 July 2010, *Gassmayr*, C-194/08, EU:C:2010:386, paragraphs 49 and 83, see also judgment of 27 October 1998, *Boyle and Others*, C-411/96, EU:C:1998:506, paragraph 41, and of 14 July 2016, *Ornano*, C-335/15, EU:C:2016:564, paragraph 29). 'The concept of "pay" used in Article 11 of Directive 92/85, like the definition in Article 119 of the EC Treaty (subsequently Article 141 EC), encompasses the consideration paid directly or indirectly by the employer during the worker's maternity leave in respect of her employment. By contrast, the concept of an "allowance" to which Article 11 also refers includes all income received by the worker during her maternity leave which is not paid to her by her employer pursuant to the employment relationship' (judgments of 27 October 1998, *Boyle and Others*, C-411/96, EU:C:1998:506, paragraph 31, and 1 July 2010, *Parviainen*, C-471/08, EU:C:2010:391, paragraph 35, and of 14 July 2016, *Ornano*, C-335/15, EU:C:2010:564, paragraph 30).

36 'As regards remuneration specifically, even if a worker on maternity leave is not entitled to have her remuneration maintained in full, she must retain not only her basic salary but also the right to the benefits attached to her professional status' (judgment of 14 July 2016, *Ornano*, C-335/15, EU:C:2016:564, paragraph 21). 'The parties may not […] demand that their full remuneration be maintained during their maternity leave, as if they were at work like other workers.' (judgment of 30 March 2004, *Alabaster*, C-147/02, EU:C:2004:192, see also judgments of 13 February 1996, *Gillespie and Others*, C-342/93, EU:C:1996:46, paragraph 20, of 1 July 2010, *Gassmayr*, C-194/08, EU:C:2010:386, paragraph 82, and of 14 July 2016, *Ornano*, C-335/15, EU:C:2016:564, paragraph 31).

37 Under these circumstances, the referring court considers that if a woman works full time by combining part-time employed work with self-employed work on a supplementary basis during the remainder of her time and who has paid into two separate social security schemes, only granting her the maternity allowance arising from her part-time employed work, due to the non-concurrence rule laid down in Article 97 of the Royal Decree of 20 July 1971, amounts to jeopardising the objective of maternity leave.

38 It specifies, in relation to Directive 92/85, that the Court has recognised that this directive has a direct effect (judgments of 19 January 1982, Becker 8/81, EU:C:1982:7, paragraph 25, of 17 September 1996, *Cooperativa Agricola Zootecnica S. Antonio and Others*, C 246/94 to C 249/94, EU:C:1996:329, paragraph 17, of 17 July 2008, *Flughafen Köln/Bonn*, C 226/07, EU:C:2008:429, paragraph 23 and the case-law cited, and of 1 July 2010, *Gassmayr*, C 194/08, EU:C:2010:386, paragraphs 43, 49 and 52), therefore the directive may be directly invoked by an individual before a judge, and it states that it is implied in Articles 2 and 11 of the same directive that it only applies to employed workers.

39 Taking into account these considerations, the referring court is bringing the questions before the Court again having clarified and amended the questions it referred for a preliminary ruling according to the wording under the heading ‘Question referred for a preliminary ruling’ of this summary.