



Press and Information

Court of Justice of the European Union

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Judgment in Case C-12/17

Tribunalul Botoșani and Ministerul Justiției v Maria Dicu

A provision of national law which, for the purpose of determining the duration of paid annual leave to which a worker is entitled, does not include a period of parental leave taken by that worker complies with EU law

The period of parental leave cannot be treated as a period of actual work

Ms Maria Dicu, a magistrate with the Tribunalul Botoșani (Regional Court, Botoșani), was on maternity leave from 1 October 2014 to 3 February 2015. From 4 February 2015 to 16 September 2015 she took parental leave to care for a child under the age of two. During that period, her employment relationship was suspended. Lastly, she took 30 days' paid annual leave from 17 September to 17 October 2015.

Pursuant to Romanian law, which provides for 35 days' paid annual leave, Ms Dicu asked the court to which she had been appointed to grant her the five remaining days of paid annual leave for 2015.

The Tribunalul Botoșani (Regional Court, Botoșani) refused that request on the ground that, under Romanian law, the duration of paid annual leave is commensurate with the period of time actually worked during the current year and, in that regard, that the period of parental leave she took in 2015 could not be regarded as a period of actual work for the purpose of determining her paid annual leave entitlement.

Ms Dicu challenged that decision before the Romanian courts. It is against that background that the Curtea de Apel Cluj (Court of Appeal, Cluj, Romania) has asked the Court of Justice whether EU law precludes a provision of national law which, for the purpose of determining the duration of a worker's paid annual leave, does not treat a period of parental leave as a period of actual work.

In today's judgment, the Court observes that EU law provides that every worker is entitled to paid annual leave of at least four weeks and that right must be regarded as a particularly important principle of EU social law. The Court notes that the purpose of that right, which is to enable a worker to rest, is based on the premiss the worker actually worked during the reference period.

However, the Court states that in certain specific situations in which the worker is unable to perform his duties as he or she is, for instance, on duly certified sick leave or on maternity leave, the right to paid annual leave cannot be made subject by a Member State to a condition that the worker has actually worked.

The Court finds that Ms Dicu, who was on parental leave during the reference period, is not in a specific situation of that kind.

In that regard, the Court states, first, that incapacity for work owing to sickness is, as a rule, not foreseeable and is beyond the worker's control, whereas, inasmuch as a worker on parental leave is not subject to physical or psychological constraints caused by an illness, he or she is in a different situation.

The Court considers, second, that maternity leave is intended to protect a woman's biological condition during and after pregnancy as well as the special relationship between a woman and her

child over the period which follows pregnancy and childbirth. That situation is therefore also different from that of a worker on parental leave.

In those circumstances, the Court concludes that in a situation such as that in the main proceedings, **the period of parental leave taken by the worker concerned during the reference period cannot be treated as a period of actual work for the purpose of determining that worker's entitlement to paid annual leave.** It follows that a provision of national law which, for the purpose of determining a worker's entitlement to paid annual leave in respect of a given reference period, does not treat the amount of time spent by that worker on parental leave during that reference period as a period of actual work complies with EU law.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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