



Press and Information

Court of Justice of the European Union

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Judgment in Case C-193/17

Cresco Investigation GmbH v Markus Achatzi

The grant under Austrian law of a paid public holiday on Good Friday only to employees who are members of certain churches constitutes discrimination on grounds of religion prohibited under EU law

Until Austria amends its legislation in order to restore equal treatment, a private employer must, subject to certain conditions, also grant his other employees a paid public holiday on Good Friday

In Austria, where the majority of the population belongs to the Roman Catholic Church, Good Friday is a paid public holiday only for members of the Evangelical Churches of the Augsburg and Helvetic Confessions, the Old Catholic Church and the United Methodist Church. This special regime allows members of those churches to practise their religion on a religious holiday that is particularly important for them, without having to obtain their employer's consent to take a day's leave.

If a member of one of those churches works on that day, he is entitled to additional pay in respect of that public holiday.

Mr Markus Achatzi is an employee of Cresco Investigation, a private detective agency, and is not a member of any of the churches in question. He claims that he suffered discrimination by being denied public holiday pay for the work he did on 3 April 2015, which was Good Friday, and, for that reason, seeks such pay from his employer.

The Oberster Gerichtshof (Supreme Court, Austria), which is hearing the case, has asked the Court whether the Austrian legislation at issue is compatible with the EU law prohibition on discrimination on grounds of religion.¹

In today's judgment, the Court finds that national legislation, such as that at issue, under which, first, Good Friday is a public holiday only for employees who are members of certain Christian churches and, second, only those employees are entitled, if required to work on that public holiday, to additional payment, constitutes direct discrimination on grounds of religion.

Such legislation cannot be justified either as a measure necessary for the protection of the rights and freedoms of others or as a specific measure intended to compensate for disadvantages linked to religion.

Until Austria has amended its legislation, in order to restore equal treatment, a private employer who is subject to that legislation is obliged also to grant his other employees a public holiday on Good Friday, provided that they have sought prior permission from their employer to be absent from work on that day, and, consequently, to recognise that those employees are entitled to a payment in addition to their regular salary for work done on that day where the employer has refused to agree to such a request.

¹ As established in Article 21 of the Charter of Fundamental Rights of the European Union and Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16).

With regard to direct discrimination on grounds of religion, the Court finds that the Austrian legislation at issue gives rise to a difference in treatment that is directly based on the religion of employees. The test used by the legislation in order to differentiate is based directly on whether an employee belongs to a particular religion.

Further, that legislation has the effect of treating comparable situations differently on the basis of religion. The Court notes, in that regard, in particular, that the grant of a public holiday on Good Friday to an employee who is a member of one of the churches in question is not subject to the condition that the employee must perform a particular religious duty on that day, but is subject only to the condition that such an employee must formally belong to one of those churches. Thus, that employee remains free to choose, as he wishes, how to spend his time on that public holiday, and may, for example, use it for rest or leisure purposes.

With regard to possible justifications for that direct discrimination, the Court notes that the objective of granting a public holiday on Good Friday to employees who are members of one of the churches in question is to take account of the particular importance of the religious celebrations associated with that day for members of those churches. However, the Court concludes that **the legislation at issue cannot be considered necessary for the protection of freedom of religion**.

Provision is made in Austrian law, for employees not belonging to the churches in question, to celebrate a religious festival that does not coincide with any of the standard public holidays in Austria not by the grant of an additional public holiday, but principally by the imposition of a duty of care on employers vis-à-vis their employees, which allows the latter to obtain, if they so wish, the right to be absent from their work for the amount of time necessary to perform certain religious rites.

Nor can the Austrian legislation at issue be regarded as including specific measures the aim of which is to compensate for a disadvantage linked to religion in accordance with the principle of proportionality and, as far as possible, the principle of equal treatment.

The provisions at issue grant a 24-hour rest period on Good Friday to employees who are members of one of the churches in question, while employees belonging to other religions, whose important festivals do not coincide with the standard public holidays in Austria, can, in principle, be absent from work in order to perform the religious rites associated with those festivals only if they are so authorised by their employer in accordance with the duty of care. It follows that the measures at issue go beyond what is necessary to compensate for that alleged disadvantage and establish a difference in treatment between employees who are subject to comparable religious duties that does not guarantee, as far as is possible, observance of the principle of equal treatment.

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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