

Case C-377/21**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:**

21 June 2021

Referring court:

Cour du travail de Mons (Belgium)

Date of the decision to refer:

15 June 2021

Appellants, defendants in the original proceedings:

Ville de Mons

Zone de secours Hainaut – Centre

Respondent, applicant in the original proceedings:

RM

1. Subject matter and facts of the dispute

- 1 RM was recruited on 1 April 2001 as a full-time professional firefighter by the Ville de Mons (City of Mons) and taken on again in that same capacity on 1 January 2015 by the Zone de secours Hainaut-Centre (Hainaut-Central Emergency Service), which was established as part of the reorganisation of the firefighting services. From 1 January 1982 to 31 July 2002, he had been a part-time voluntary firefighter for the Ville de Mouscron (City of Mouscron), whilst at the same time also having undertaken periods of employment as a driver or a guard.
- 2 When calculating his length of service, the City of Mons, and subsequently the Hainaut-Central Emergency Service, used, in essence, first, the 811 working hours actually undertaken as a part-time voluntary firefighter (three months and 17 days) and, second, accredited as professional experience the periods of activity as a driver or a guard, up to a ceiling of six years.

- 3 RM disputes that calculation and claims that account should be taken of the total period for which he was a part-time voluntary firefighter, from 1 January 1982 to 31 July 2002 (20 years and seven months). Following an unsuccessful letter of formal notice of 15 April 2016, he brought the matter before the tribunal du travail du Hainaut, division de Mons (Hainaut Labour Court, Mons Division), by application of 23 May 2016.
- 4 By judgment of 25 February 2019, the Hainaut Labour Court, Mons Division, essentially determined RM's length of service, for the period from 1 January 1982 to 31 July 2020, to be 20 years and seven months, explaining that that period must be accredited without taking into account the volume of the work actually undertaken and deducting the periods already recognised on another basis (the six years' experience as a driver of heavy goods vehicles and the activity as a professional firefighter from 1 April 2001 to 31 July 2002). Furthermore, it held that the action for payment was time-barred in respect of the salary arrears prior to 15 April 2011 (five years before the letter of formal notice of 15 April 2016).
- 5 By applications of 16 and 20 April 2020, the City of Mons and the Hainaut-Central Emergency Service appealed against that judgment.

2. The provisions at issue

A. EU 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 ('the Framework Agreement on part-time work')

- 6 Clause 2, which is entitled 'Scope', provides:
 - '1. This Agreement applies to part-time workers who have an employment contract or employment relationship as defined by the law, collective agreement or practice in force in each Member State.'
- 7 Clause 4, which is entitled 'Principle of non-discrimination', provides:
 - '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.
 3. The arrangements for the application of this clause shall be defined by the Member States and/or social partners, having regard to European legislation, national law, collective agreements and practice.

4. Where justified by objective reasons, Member States after consultation of the social partners in accordance with national law, collective agreements or practice and/or social partners may, where appropriate, make access to particular conditions of employment subject to a period of service, time worked or earnings qualification. Qualifications relating to access by part-time workers to particular conditions of employment should be reviewed periodically having regard to the principle of non-discrimination as expressed in Clause 4.1.’

B. Belgian legislation

Arrêté royal du 20 mars 2002 fixant les dispositions générales relatives à la valorisation des services antérieurs accomplis par des membres volontaires des services publics d'incendie recrutés en tant que membres professionnels (Royal Decree of 20 March 2002 laying down general rules on the accreditation of the previous services provided by volunteer members of the public fire services recruited as professional members) (which entered into force on 9 April 2002)

Article 1 provides that professional firefighters are to be awarded, when calculating their remuneration, a length of service equivalent to the number of years of service undertaken as a volunteer within a public fire service.

Arrêté royal du 2 juin 2006 modifiant l'arrêté royal du 20 mars 2002 (Royal Decree of 2 June 2006 amending the Royal Decree of 20 March 2002)

Article 1 expressly stated that that equivalence applies ex officio only to personnel recruited from 9 April 2002 and that each public fire service may grant it to personnel recruited before 9 April 2002.

Statuts administratif et pécuniaire du personnel non enseignant de la Ville de Mons (Administrative and financial statutes applicable to non-teaching personnel of the City of Mons)

8 Article 13 provides:

‘The length of service acquired by a voluntary officer of the Fire Service shall not be taken into account in the event that that officer is appointed as a professional within that service.’

9 Article 13a (inserted pursuant to the Royal Decree of 2 June 2006 amending the Royal Decree of 20 March 2002, cited above) essentially provides:

With effect from 1 July 2007, the professional members of the fire service shall be awarded, when calculating their remuneration, a length of service equivalent to the number of years of service undertaken as a volunteer within a public fire service subject to the following rules:

1. in the case of officers who entered the service before 9 April 2002: on a pro rata basis in respect of the services actually provided (actual number of hours worked per year);
2. in the case of officers who entered the service after 9 April 2002: the volume of services provided is irrelevant.

3. The positions of the parties

A. RM

- 10 RM claims that the period undertaken as a volunteer firefighter must be accredited in its entirety and not on a pro rata basis in respect of the period for which services were provided. Taking that period into account on a pro rata basis in respect of the period for which services were provided constitutes an unjustified difference in treatment between full-time workers and part-time workers.
- 11 Accordingly, the period when he worked as a volunteer firefighter that should be taken into account when calculating his length of service must include the entirety of the 20 years and seven months between 1 January 1982 and 31 July 2002.

B. The appellants

- 12 The appellants contend that RM's length of service was established in accordance with the applicable legislation, having regard to the date of his recruitment as a full-time professional firefighter (1 April 2001). Article 13a of the Administrative and financial statutes applicable to non-teaching personnel of the City of Mons provides, in particular, in relation to officers recruited prior to 9 April 2002, that the years undertaken as a volunteer firefighter are to be taken into account in the calculation of the length of service on a pro rata basis in respect of the services actually provided (actual number of hours worked per year).
- 13 Since RM is now covered by the scheme for full-time workers, he cannot rely on legislation relating to part-time workers.
- 14 In the alternative, the appellants propose that a request be made to the Court of Justice for a preliminary ruling to interpret the Framework Agreement on part-time work, in particular Clause 4 thereof.

4. The Labour Court's assessment

- 15 The full-time rules on the basis of which RM was recruited by no means prevent him from being able to rely, in relation to his length of service for financial purposes (which is being used to determine his salary level), on legislation relating to part-time workers in respect of the period during which he worked part time.

- 16 Volunteer firefighters are indeed covered by the Framework Agreement on part-time work, in accordance with Clause 2 thereof, because their employment relationship is defined by the national legislation.
- 17 Determination of the length of service for financial purposes of part-time workers falls within the scope of Clause 4 of the Framework Agreement on part-time work, which relates to employment conditions.
- 18 In any event, an interpretation of Clause 4 of the Framework Agreement on part-time work is required.
- 19 In those circumstances, acceding to the request made by the appellants in the alternative, the Labour Court refers the question set out below to the Court of Justice for a preliminary ruling.

5. The question referred for a preliminary ruling

- 20 The Labour Court refers the following question:

Is Clause 4 of the Framework Agreement implemented by Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC to be interpreted as not precluding national legislation which, for the calculation of the salary of professional firefighters employed on a full-time basis, accredits, in respect of the length of service for financial purposes, the services provided on a part-time basis as a volunteer firefighter according to the volume of work, that is to say the duration of the services actually provided, in line with the principle of '*pro rata temporis*', and not according to the period over which the services were provided?