

**Case C-706/23**

**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:**

17 November 2023

**Referring court:**

Curtea de Apel Iași (Romania)

**Date of the decision to refer:**

10 October 2023

**Appellant and defendant:**

Școala gimnazială ‘Mihai Eminescu’ Vaslui

**Respondent and applicant:**

Uniunea Sindicală ‘Didactica’ Vaslui, for and on behalf of the following members:

KM and Others

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**Subject matter of the main proceedings**

Appeal against the judgment of the Tribunalul Vaslui (Regional Court, Vaslui, Romania), by which the appellant and defendant (‘the defendant’) was ordered to pay members of the trade union (‘the workers at issue’), represented by the respondent and applicant Uniunea Sindicală ‘Didactica’ Vaslui (Vaslui Teachers’ Trade Union, the ‘applicant’), holiday pay and meal allowances relating to part-time, fixed-term employment contracts entered into with the defendant. The question at the heart of the dispute is whether the workers at issue are entitled to such allowances where, during the same period, they have also entered into full-time employment contracts of indefinite duration and have received holiday pay and meal allowances in relation to those contracts.

## **Subject matter and legal basis of the request**

On the basis of Article 267 TFEU, the Court is asked for an interpretation of Clause 4.1 of the Framework Agreement on part-time work annexed to Directive 97/81/EC, Clause 4.1 of the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, annexed to Directive 1999/70/EC, Article 7(1) of Directive 2003/88/EC and Article 31(2) of the Charter of Fundamental Rights of the European Union.

## **Questions referred for a preliminary ruling**

1. Are Article 7(1) of Directive 2003/88, Article 31(2) of the Charter of Fundamental Rights of the European Union, Clause 4[.1] of the Framework Agreement on part-time work, annexed to Directive 97/81/EC, [and] Clause 4[.1] of the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, annexed to Council Directive 1999/70/EC of 28 June 1999, to be interpreted as precluding national legislation which provides that, where a worker has multiple employment contracts in the field of teaching in schools – [namely] a full-time contract of indefinite duration [in relation to] the basic post held and a part-time fixed-term contract[, that is to say] a contract with hourly pay – the worker is entitled to remuneration in respect of paid leave calculated in relation to the basic post only?

2. Are Clause 4[.1] of the Framework Agreement on part-time work, annexed to Directive 97/81/EC, Clause 4[.1] of the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, annexed to Council Directive 1999/70/EC of 28 June 1999, and Article 7(1) of Directive 2003/88, to be interpreted as precluding national laws and practices which, where schoolteachers have multiple employment contracts – [namely] a full-time contract in relation to the basic post held and a part-time fixed-term contract[, that is to say, a] contract with hourly pay – prevent a meal allowance from being granted in proportion to the actual time worked under the part-time fixed-term contract and prevent that allowance from being included in the calculation of paid annual leave?

## **Provisions of European Union law and case-law relied on**

Charter of Fundamental Rights of the European Union, Article 31(2)

Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time, Article 7

Framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, annexed to Council Directive 1999/70/EC of 28 June 1999, Clause 4.1

Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC, annexed to Council Directive 97/81/EC of 15 December 1997, Clause 4.1

Judgment of 19 November 2019, *TSN* (C-609/17 and C-610/17, EU:C:2019:981); judgment of 9 December 2021, *Staatssecretaris van Financiën (Remuneration during paid annual leave)* (C-217/20, EU:C:2021:987, paragraphs 19 and 26-28); judgment of 10 June 2010, *Bruno and Others* (C-395/08 and C-396/08, EU:C:2010:329, paragraphs 24 and 32-34); judgment of 14 September 2016, *de Diego Porras* (C-596/14, EU:C:2016:683); judgment of 13 September 2007, *Del Cerro Alonso* (C-307/05, EU:C:2007:509, paragraphs 57 and 58); judgment of 17 March 2021, *Academia de Studii Economice din București* (C-585/19, EU:C:2021:210); judgment of 5 November 2014, *Österreichischer Gewerkschaftsbund* (C-476/12, EU:C:2014:2332, paragraph 16); judgment of 11 November 2015, *Greenfield* (C-219/14, EU:C:2015:745)

### **Provisions of national law and case-law relied on**

#### **Law on National Education No 1 of 5 January 2011**

Article 254(1): 'In schools, teaching staff (...) may be hired on an individual employment contract of indefinite duration or for a fixed term for a period not exceeding one school year, with the option of extending the contract, or on an hourly basis, according to the conditions provided for by law'.

Article 267(1): 'Teachers shall be entitled to 62 working days of paid annual leave during school holidays; (...)'

#### **Romanian Labour Code**

Article 35(1): 'Every employee has the right to work for several employers or for the same employer, under individual employment contracts, without their working hours overlapping, receiving the corresponding pay for each of them. No employer may treat unfavourably any employee who exercises that right'.

Article 106: '1. An employee hired on a part-time contract shall enjoy the same rights as a full-time employee, under the conditions determined by the law and by applicable collective bargaining agreements.

2. Salary rights shall be recognised in proportion to the actual working time, in relation to the rights established for ordinary working hours'.

Article 144(1): 'All employees are guaranteed the right to paid annual leave'.

Article 150: '1. During holiday periods, employees shall be entitled to holiday pay, which shall not be less than their basic salary, and to allowances and benefits of a permanent nature due for that period, as provided for in their individual employment contract.

2. Holiday pay shall be equal to the daily average of the salary rights referred to in paragraph 1 during the three months prior to the month in which the leave is taken, multiplied by the number of days of leave’.

**Framework Law No 153 of 28 June 2017** on the remuneration of staff paid from public funds

Article 18: ‘1. From 1 December 2018, authorising officers shall be required to pay a monthly meal allowance equal to one twelfth of two guaranteed gross national minimum basic salaries (...).

2. The meal allowance referred to in paragraph 1 shall be granted in proportion to the actual working time during the previous month, according to the classification provided for in Article 25(1).

...’.

Annex I, Section B, of that law, entitled ‘Specific provisions for schoolteachers’, provides as follows:

Article 11: ‘Teaching staff shall be entitled to holiday, pursuant to Law No 1/2011, (...) receiving holiday pay calculated in accordance with the provisions of the law applicable to staff paid from public funds’.

Article 12(1): ‘Teaching staff (...) may also be paid on an hourly basis or on a cumulative basis, in accordance with the provisions of Law No 1/2011 (...).’

**Decree No 4165 of 24 July 2018** of the Ministry of National Education, ratifying the implementing rules for the preparation of the classification project and the classification plan for schoolteachers and for the classification of schoolteachers under the system of hourly pay.

Article 6(2): ‘The specific duties of teaching staff on hourly pay shall be set out in the individual employment contract – as distinct from the contract for the basic post – for the provision of teaching under the system of hourly pay’.

**Decree No 5559 of 7 October 2011** of the Ministry of Education, Research, Youth and Sport, ratifying the implementing rules for the use of leave by schoolteachers.

Article 5: ‘1. In-service teachers who also work under a system of hourly pay shall be entitled to paid leave only for the basic post for which the employment contract was entered into.

2. Retired teaching staff hired on a fixed-term employment contract under a system of hourly pay, on a full-time or part-time basis, shall be entitled to leave in proportion to the actual time worked, calculated in accordance with Article 2(5)’.

**Decree No 4050 of 29 June 2021** of the Ministry of National Education, ratifying the implementing rules for the use of leave by teaching, management, administration and supervisory staff and research personnel in the state education sector.

Article 3: '2. Teachers who have performed teaching activities for part of the school/academic year shall be entitled to leave for a duration calculated in proportion to the period for which they worked during that school/academic year.

...

5. Teachers on part-time working hours shall be entitled to leave in proportion to the actual time worked, calculated on the basis of paragraphs 2 to 4. Teachers employed on a part-time basis in two or more schools shall be entitled to leave from each school, in proportion to the time worked'.

Article 5: '1. In-service teachers who also work under a system of hourly pay shall be entitled to paid leave only for the basic post for which the individual employment contract was entered into.

2. Retired teaching staff hired on an employment contract under a system of hourly pay, on a full-time or part-time basis, shall be entitled to leave in proportion to the actual time worked, calculated in accordance with the provisions of Article 3'.

Decision No 297 of 6 May 2021 of the Curtea Constituțională din România (Constitutional Court, Romania), Decision No 5 of 20 January 2020 of the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice, Romania), Civil Judgment No 476 of 18 May 2023 of the Tribunalul Arad (Regional Court, Arad, Romania) and Civil Judgment No 663 of 9 June 2023 of the Tribunalul Galați (Regional Court, Galați, Romania).

### **Succinct presentation of the facts and procedure in the main proceedings**

- 1 The workers at issue are members of the teaching staff of the defendant, which is a secondary school. The workers have entered into full-time employment contracts of indefinite duration with the defendant and, in one case, with an upper-secondary school.
- 2 At the same time, during the school years 2019-2020, 2020-2021, 2021-2022 and 2022-2023, the workers at issue also entered into part-time, fixed-term employment contracts with the defendant for periods ranging from 2 to 20 hours per week, under the system of hourly pay. Chapter 1 of those contracts, entitled 'Leave', provides that, 'in accordance with the provisions of the Labour Code (...), leave shall be granted only for the basic post (...)'.

- 3 The defendant calculated the holiday pay and meal allowances of the workers at issue for the period in question solely in relation to income from their full-time employment contracts of indefinite duration, in accordance with Decrees Nos 5559/2011 and 4050/2021 of the Ministry of National Education.
- 4 The workers at issue, represented by the applicant, brought an action before the Regional Court of Vaslui, requesting that the defendant be ordered to grant holiday pay and meal allowances in relation to the work carried out under part-time, fixed-term contracts.
- 5 By civil judgment of 17 March 2023, the Regional Court of Vaslui upheld that action. In the first place, the court considered that Decrees Nos 5559/2011 and 4050/2021 of the Ministry of National Education – which are administrative acts – are contrary to the hierarchically superior provisions of Article 144(1) of the Labour Code and Law No 1/2011. In the second place, the court found that those decrees violated the provisions of EU law which the Court is asked to interpret in the present case. Although the national legislation allows the 48-hour working work to be exceeded under employment contracts signed with several employers or with the same employer, where several posts are held, EU law requires paid leave to be granted for each individual contract. In the third place, the court held that the defendant’s refusal to grant the meal allowance in proportion to the actual working time was not justified under Law No 153/2017.
- 6 The defendant appealed against that judgment before the Curtea de apel Iași (Court of Appeal of Iași, Romania), which is the referring court.

#### **The essential arguments of the parties in the main proceedings**

- 7 The parties in the main proceedings do not put forward any substantive arguments in relation to the questions raised by the referring court.

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

- 8 As regards the *first question referred for a preliminary ruling*, the referring court states that its request for a preliminary ruling does not concern the non-pecuniary component of the leave of the workers at issue, since they are entitled to 62 working days of paid annual leave. Instead, it seeks to determine the amount of the pecuniary component of the holiday entitlement.
- 9 The referring court notes that, according to the case-law of the Court of Justice, Article 7(1) of Directive 2003/88 establishes for each worker a right to paid annual leave, for the duration of which remuneration must be maintained. Although the structure of the ordinary remuneration of a worker is determined, as such, by the provisions and practices governed by the law of the Member States, that structure cannot affect the worker’s right to enjoy, during his or her period of

rest and relaxation, economic conditions which are comparable to those relating to the exercise of his or her employment.

- 10 As the Court has consistently held, the objective of Directive 97/81 is, first, to promote part-time work and, secondly, to eliminate discrimination between part-time workers and full-time workers. In the light of those objectives, Clause 4 of the Framework Agreement must be interpreted as articulating a principle of European Union social law which cannot be interpreted restrictively. Consequently, economic conditions – such as those relating to remuneration – cannot be excluded from the concept of ‘employment conditions’ within the meaning of that clause.
- 11 The referring court states that the provisions of Romanian law recognise the right to paid annual leave for all teaching staff, regardless of whether they work under an individual permanent or fixed-term employment contract, and on a full-time or part-time basis.
- 12 However, active teaching staff who, because they have several employment contracts, also work under the system of hourly pay, are entitled to paid leave only for the basic post for which the individual employment contract was entered into.
- 13 Accordingly, the national rule establishes different legal treatment as regards holiday pay between employees hired on a single employment contract – who are entitled to holiday pay in relation to their salary – and employees who work under two separate contracts, who are entitled to holiday pay only in relation to the income they earn from their basic post. Retired teaching staff hired on an employment contract under a system of hourly pay, on a full-time or part-time basis, are also entitled to paid leave in proportion to the actual time worked.
- 14 According to the referring court, the workers’ employment conditions include the right to paid leave. Furthermore, the difference in treatment established by Decrees Nos 5559/2011 and 4050/2021 of the Ministry of National Education is unfavourable to employees who work under several contracts, since the salary rights in respect of leave, although equivalent to those of a worker who has worked full time, are not linked to income earned from working under part-time, fixed-term contracts.
- 15 The referring court also points out that the difference in treatment of employment conditions, as regards the right to paid leave, does not concern workers who work under a single part-time or fixed-term employment contract, but only those hired under two separate contracts.
- 16 As for the justification for the difference in treatment, the referring court states that Decrees Nos 5559/2011 and 4050/2021 of the Ministry of National Education make no provision for the legitimate purpose pursued and do not specify how the legislative means are proportionate.

- 17 The Constitutional Court and several national courts consider that the difference in treatment of teaching staff working under several contracts does not amount to discriminatory treatment. The Constitutional Court has thus held that ‘the legislature has the right to determine the method of calculating the amount of holiday pay due’. In that sense, the legislature has laid down the rule that, where they have several contracts, employees are only entitled to leave corresponding to the basic workplace, and not to the other workplace. That legislation applies equally to all employees, without preference or discrimination. The method of calculation of the amount of holiday pay in the event of public employees having several employment contracts (...) falls within the exclusive competence of the legislature and is not a constitutional question, as long as the legislature recognises the right to paid leave’.
- 18 The case-law of the specialised labour courts also considers that the provisions of Decrees Nos 5559/2011 and 4050/2021 of the Ministry of National Education fall within the discretion available to the Member States when transposing EU directives, since the introduction of a system of hourly pay seeks to ensure the continuity of teaching, both in the event of the incapacity for work of the post holder, and in difficult-to-access areas where there may be a shortage of teaching staff.
- 19 The existence of differences of interpretation as to the extent of the protection afforded by EU law through Clause 4.1 of the Framework Agreement on part-time work and Clause 4.1 of the framework agreement on fixed-term work, as well as the applicability of those clauses in the event of the same worker having several employment contracts, led the referring court to refer that first question to the Court for a preliminary ruling.
- 20 As regards *the second question referred for a preliminary ruling*, the referring court recalls that, according to the case-law of the Court of Justice on Clause 4.1 of the Framework Agreement on part-time work and Clause 4.1 of the framework agreement on fixed-term work, ‘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 or her employment, from his or her employer. That concept includes any consideration, whether immediate or future, provided that the worker receives it, albeit indirectly, in respect of his or her employment from his or her employer.
- 21 The referring court states that the meal allowance has become commonplace for Romanian public sector employees under Law No 153/2017 and that it consists of a monetary value added to the salary rights. The amount of the meal allowance is variable and is linked to the gross amount of the national guaranteed basic minimum salary. It is capped at one twelfth of twice the reference amount, calculated in relation to full-time work. The Court of Cassation has held that such rights fall within the category of monthly income from employment.

- 22 The meal allowance was granted to the workers at issue only in respect of the full-time employment contract of indefinite duration. They were denied the meal allowance in proportion to the actual working time under the part-time, fixed-term contract. Furthermore, it was not included in the basis for the calculation of the amount of holiday pay.
- 23 As with the calculation of holiday pay, teaching staff who have entered into several contracts receive different and unfavourable legal treatment, in so far as they receive a meal allowance only in relation to work carried out under a full-time, permanent contract. Such difference in treatment stems from the application of the rule of law that establishes the right to the meal allowance and sets a maximum level for that allowance, which is already reached by working full time. However, that rule does not indicate other objective reasons and does not specify the legitimate purpose pursued in providing for such a difference in treatment.
- 24 The defendant submits that the purpose of that rule is to ensure a balanced, healthy diet, and that as long as the workers at issue are granted the meal allowance for their basic post, they cannot also receive it for the post for which they are paid on an hourly basis, since the condition that it is granted in proportion to the working time relates to the working day, and not the hours worked. According to the referring court, however, that justification does not take into account the legal classification of the meal allowance, which is considered part of the remuneration for the work carried out.
- 25 Lastly, if the meal allowance is considered part of the ordinary pay of teaching staff on a part-time, fixed-term contract, it must also be included in the determination of the salary rights corresponding to leave.