



Judgment of the Court of Justice in Case C-706/23 | Școala gimnazială 'Mihai Eminescu'

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The Court explains the requirements of EU law as regards non-discrimination against workers in the event of the accumulation of contracts of employment

The entitlements of a person employed on a full-time basis who carries on, in parallel, activity on a part-time basis which is remunerated by the hour must be calculated on the basis of the work performed and the income received in connection with both contracts

Between 2019 and 2022, fourteen teachers working on a full-time basis for an indefinite period in pre-university educational establishments in Romania also carried on, within those same establishments, activity on a part-time basis for a fixed term, remunerated by the hour, from September to June of each school year. During that period, the pecuniary entitlements connected with annual leave, as well as their meal allowances, were calculated exclusively on the basis of their full-time employment contract of indefinite duration. Arguing that they were also entitled, in respect of their part-time activity remunerated by the hour, to annual leave and meal allowances calculated in proportion to the working time completed in that connection, those teachers, through the intermediary of their trade union, brought proceedings before the Regional Court, Vaslui (Romania), which upheld their action in 2023. The employer has brought an appeal against that ruling before the Court of Appeal, Iași (Romania), which has decided to refer questions to the Court of Justice for a preliminary ruling.

The Court of Appeal asks, in essence, whether EU law ¹ precludes a piece of national legislation which, in the event of the accumulation of contracts by the same employee, provides that the pecuniary entitlements in question are to be calculated solely on the basis of that employee's full-time employment contract of indefinite duration.

In its judgment, delivered today, the Court of Justice begins by recalling that every worker is entitled to paid annual leave of at least four weeks. ² That right constitutes a fundamental principle of EU social law. Consequently, there may be no derogations from that principle and its implementation must be confined within the limits laid down by the directive concerning certain aspects of the organisation of working time.

Thus, for the duration of the annual leave, the worker must receive, under his or her contract of employment, remuneration which puts him or her, as regards salary, in a position comparable to periods of work. In the present case, the situation is characterised by an accumulation of employment contracts by the same employees. The exclusion of the hours worked by those employees in connection with their part-time fixed-term contract from the calculation of the remuneration payable in respect of paid annual leave has thus led the Court also to examine the framework agreements on part-time work and on fixed-term work, which are set out in the annexes to Directive 97/81/EC and Directive 1999/70/EC, ³ respectively, and to apply them, ultimately, to that situation involving accumulation.

The Court considers that each employee in that situation is covered by both the concept of 'fixed-term worker' and that of 'part-time worker' which are set out in those framework agreements, and that the meal allowance, as a component of remuneration, is covered by the concept of 'employment conditions'.

Next, the Court notes that each framework agreement contains a clause which prohibits any less favourable treatment of fixed-term workers in relation to comparable permanent workers and any less favourable treatment of part-time workers in relation to comparable full-time workers. Those prohibitions constitute expressions of the general principle of equality. The Court also recalls that those clauses must not be interpreted restrictively, because they are intended to guarantee

social protection against any discrimination, even where an employee accumulates two contracts of employment, as in the present case.

Lastly, the Court considers that the difference in treatment found between the two categories of workers is not justified on objective grounds and that the principle *pro rata temporis* set out in the two framework agreements is not being applied correctly.

Therefore, EU law precludes a piece of national legislation such as the Romanian legislation giving rise to the dispute.

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 of the European Union about the interpretation of EU law or the validity of an EU act.

The General Court has jurisdiction to deal with requests for a preliminary ruling coming exclusively within the following areas (1) the common system of value added tax (VAT), (2) excise duties, (3) the Customs Code, (4) the tariff classification of goods under the Combined Nomenclature, (5) compensation and assistance to passengers in the event of denied boarding or delay or cancellation of transport services, or (6) the system for greenhouse gas emission allowance trading. The Court of Justice has jurisdiction to deal with all other requests for a preliminary ruling.

Neither the Court of Justice nor the General Court decides the national dispute itself. It is for the national court or tribunal to resolve the case in accordance with the ruling by the Court of Justice or by the General Court, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

Unofficial document for media use, not binding on the Court of Justice. The presentation of the facts and the legal context refers to the relevant period and is based on the case file.

The [full text and, as the case may be, an abstract](#) of the judgment is published on the CURIA website on the day of delivery.

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¹ Article 7(1) of [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, read in the light of Article 31(2) of the Charter of Fundamental Rights of the European Union, as well as the respective first paragraphs of the fourth clauses of the framework agreements on part-time work and on fixed-term work, set out in the annexes to Directive 97/81/EC and Directive 1999/70/EC, respectively.

² In accordance with Article 7(1) of Directive 2003/88.

³ [Council Directive 97/81/EC](#) of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC, and [Council Directive 1999/70/EC](#) of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP.