SUMMARY

ECJ 14 October 2010, case C-428/09 (Union Syndicale Solidaires Isère – v – Premier Ministre), Working time

<p>Persons employed under an educational commitment contract fall within the scope of the derogation in Article 17(3)(b) and/or (c) of the Directive, but the French legislation at issue fails to afford them appropriate protection and is, therefore, not compatible with the Directive.</p>

Facts

Decree 2006-950 inserted into the French Labour Code certain provisions in respect of "educational commitment contracts". An example of such a contract is where a person engages himself as an activity leader or a director of a holiday camp for schoolchildren. The rules governing the working hours of such persons – whose contracts must not have a duration exceeding 80 days in any 12-month period – entitle them to a minimum weekly rest period of 24 consecutive hours, but not to a daily rest period of 11 hours as required by Article 3 of the Working Time Directive 2003/88 ("the Directive"). A trade union applied to the *Conseil d'Etat*, the highest French administrative court, to annul said Decree on account of it being contrary to the Directive.

Article 17(1) of the Directive allows the Member States to derogate from certain of the Directive's provisions, including Article 3, "when, on account of the specific characteristics of the activity concerned, the duration of the working time is not measured and/or

predetermined or can be determined by the workers themselves". Article 17(3) allows the Member States to derogate from, (*inter alia*), Article 3 in certain cases, which include (b) "security and surveillance activities requiring a permanent presence in order to protect property and persons, particularly security guards and caretakers or security firms" and (c) "activities involving the need for continuity of service or production".

National proceedings

The *Conseil d'Etat* asked the ECJ (1) whether the Directive applies to casual or seasonal staff in holiday and leisure centres and, if so, (2) whether Article 17 of the Directive applies and, if so, (3) whether the conditions laid down in Article 17 are satisfied in the case of said casual or seasonal staff.

ECJ's ruling

1. The Directive applies to all sectors of activity within the meaning of Framework Directive 89/391 on Health and Safety, the scope whereof explicitly includes educational, cultural and leisure activities. The exceptions provided in Directive 89/391 (public service and civil protection activities) are to be interpreted restrictively (§ 19-24).

2. The concept of "worker" must be defined in accordance with objective criteria, the essential feature of an employment relationship being "that for a certain period of time a person performs services for and under the direction of another person in return for which he receives remuneration". The fact that individuals with "educational commitment contracts" are not subject to all provisions of the French Labour Code is not relevant, nor is the fact that such individuals are employed on a fixed-term contract for a maximum of 80 days per year (§ 25-32).

3. In view of the foregoing, the ECJ answers the first question affirmatively: the individuals at issue fall within the scope of the Directive (§ 33).

4. The second question has two parts: (a) do workers employed under educational commitment contracts come within the scope of the derogations of Article 17(1) or 17(3)(b) of

the Directive and, if so, (b) are the conditions for such a derogation satisfied (§ 34)?

5. As exceptions to the European rules for the organisation of working time, which aim to protect workers' health and safety and which are "of particular importance", the derogations in Article 17 must be interpreted restrictively (§ 35-40).

6. Article 17(1) of the Directive does not apply to persons employed under educational commitment contracts if, as seems to be the case, they are not free to decide the number of hours that they are to work (§ 41-43).

7. Does the derogation in Article 17(3)(b) in respect of security and surveillance activities apply? On the one hand, members of staff at holiday and leisure centres carry out activities designed to educate and occupy children, which would indicate a negative answer. On the other hand, they are responsible for those children's safety, which would indicate a positive answer to this question. Furthermore, the ECJ notes that activities performed by staff at holiday and leisure centres could also be covered by Article 17(3)(c) regarding "activities involving the need for continuity of service or production", since the children involved live, throughout the period of their stay, continuously with and under the supervision of the centre's staff (§ 44-48).

8. Article 17(3) provides that derogations from (inter alia) Article 3 are allowed only on the condition "that the workers concerned are afforded equivalent periods of compensatory rest or that, in exceptional cases in which it is not possible, for objective reasons, to grant such equivalent periods of compensatory rest, the workers concerned are afforded appropriate protection". In order to comply with this condition, the "equivalent periods of compensatory rest" must be such that (i) "the worker is not subject to any obligation vis-ˆ-vis his employer which may prevent him from pursuing freely and without interruption his own interests in order to neutralise the effects of work on his safety or health", (ii) such periods must follow on immediately from the working time which they are supposed to counteract and (iii) work

periods must alternate regularly with rest periods. Moreover, in order to be able to rest effectively, "the worker must be able to remove himself from his working environment for a specific number of hours which must not only be consecutive but must also directly follow a period of work". The provision of French law that the duration of an educational commitment contract may not exceed 80 days does not satisfy the Member States' obligation to ensure that equivalent periods of compensatory rest as required by Article 17(2) of the Directive are provided. In fact, a maximum number of working days per annum is not even relevant (§ 49-53).

9. Finally, the ECJ addressed the French government's argument that the exceptional nature of the activities of the staff at holiday and leisure centres does not allow provision of equivalent periods of compensatory rest, as the staff would then need to abandon the children under their supervision. Article 17(2) of the Directive allows derogation in such exceptional circumstances provided (i) the impossibility to provide compensatory rest is "for objective reasons" and (ii) the workers concerned are afforded "appropriate protection". It is conceivable that condition (i) is satisfied in the case of staff at holiday and leisure centres, but condition (ii) is not satisfied. The imposition of an annual ceiling on the number of days worked (80 per year) "cannot in any circumstances be regarded as appropriate protection", the objective of the "appropriate protection" rule being "exactly the same as that of the daily minimum rest period provided for in Article 3 of [the] Directive or the equivalent period of compensatory rest provided for in Article 17(2), namely to enable those workers to relax and dispel the fatigue caused by the performance of their duties" (§ 54-60).

Ruling

Persons employed under an educational commitment contract fall within the scope of the derogation in Article 17(3)(b) and/or (c) of the Directive, but the French legislation at issue fails to afford them appropriate protection and is, therefore, not compatible with the Directive.

Creator: European Court of Justice (ECJ)
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