



Key Issues: Social Policy – Working Time – Work performed by Foster Parents

Case: Sindicatul Familia Constanța

Reference: Case C-147/17, CJEU (Grand Chamber), 20 November 2018

Legislation: Directive 2003/88/EC

The natural person applicants in the main proceedings are employed as foster parents by the Directorate-General — a public institution in Romania whose purpose is to coordinate the activities of social assistance and protection of the family and the rights of minors at the level of provinces and districts of the municipality of Bucharest. They are required to take into their own homes children who have been withdrawn from the custody of their parents permanently or temporarily and to provide for the upbringing and maintenance of those children. Each foster parent entered into an individual employment contract with that Directorate-General and a placement agreement for each child placed in their care.

Those foster parents and the Sindicatul Familia Constanța trade union which represents them brought an action before the Tribunalul Constanța (Regional Court, Constanța, Romania) seeking an order against the Directorate-General for additional payments equal to a 100% increase of the base salary for their role in respect of work performed on weekly rest days, public holidays and other non-working days, as well as compensation equivalent to an allowance in lieu of paid annual leave for the years 2012 to 2015. As their action was dismissed, they appealed against that judgment to the referring court.

The Curtea de Apel Constanța (Court of Appeal, Constanța, Romania) decided to stay the proceedings and to refer a number of questions to the Court of Justice of the EU (CJEU) for a preliminary ruling

Consideration by CJEU

The CJEU noted that Article 1(3) of Directive 2003/88 defines the scope of that directive as ‘all sectors of activity, both public and private’, including ‘service activities’ (by reference to Article 2 of Directive 89/391).

However, as is clear from the first subparagraph of Article 2(2) of Directive 89/391, that directive is not applicable where characteristics peculiar to certain specific public service activities, inter alia the armed forces or the police, or to certain specific activities in the civil protection services, inevitably conflict with it. The second subparagraph of that provision states, however, that in such a case the safety and health of the workers must be ensured as far as possible in the light of the objectives of that directive.

The CJEU noted that integration, on a continuous and long-term basis, into the home and family of a foster parent, of children who on account of their difficult family situation are particularly vulnerable, constitutes an appropriate measure to safeguard the best interests of the child, as enshrined in Article 24 of the Charter of Fundamental Rights of the European Union.

In those circumstances, regularly granting foster parents the right to be separated from their foster child after a certain number of hours of work, or during periods such as weekly or annual rest days, which are generally considered opportune times to develop family life, would go directly against the objective pursued by the Romanian authorities to integrate foster children, on a continuous and long-term basis, into the home and family of the foster parent.

The CJEU held that:

Article 1(3) of Directive 2003/88/EC (the Working Time Directive) must be interpreted as meaning that the work performed by a foster parent under an employment contract with a public authority, which consists in taking in a child, integrating that child into his or her household and ensuring, on a continuous basis, the harmonious upbringing and education of that child, does not come within the scope of the Working Time Directive.

Why is this decision important?

The Working Time Directive (and the Working Time Regulations) have assumed an important role in UK employment law but it is important to remember there are certain groups and activities that are excluded from the scope of the Directive. This decision makes clear that foster parents, who are employed by a public authority, are one of those excluded groups.

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Elliott Duffy Garrett | 40 Linenhall Street | Belfast | BT2 8BA

W:	<u>www.edglegal.com</u>	E:	<u>kevin.mcveigh@edglegal.com</u>
T:	+44 (0) 28 9024 5034	F:	+44 (0) 28 9024 1337