

with Council Directive 97/81/EC ⁽¹⁾ of 15 December 1997, in particular Clause 5(1)(a) of the Annex thereto, which states that, in the context of the principle of non-discrimination between part-time and full-time workers, the Member States, following consultations with the social partners in accordance with national law or practice, should identify and review obstacles of a legal or administrative nature which may limit the opportunities for part-time work and, where appropriate, eliminate them?

2. Are the national provisions requiring employers to compile and maintain numerous social-security documents under Articles 157 to 169 of the Programme Law of 22 December 1989, and under which non-compliance with those provisions is punishable under criminal law, or may result in the imposition of administrative fines and civil-law penalties, compatible with the provisions of Community law and with Council Directive 97/81/EC of 15 December 1997, in particular Clause 5(1)(a) of the Annex thereto, which states that, in the context of the principle of non-discrimination between part-time and full-time workers, the Member States, following consultations with the social partners in accordance with national law or practice, should identify and review obstacles of a legal or administrative nature which may limit the opportunities for part-time work and, where appropriate, eliminate them?

⁽¹⁾ Council Directive 97/81/EC concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC (OJ 1998 L 14, p. 9).

Reference for a preliminary ruling from the Supreme Court of the United Kingdom made on 2 April 2010 — Williams and others v British Airways plc

(Case C-155/10)

(2010/C 161/32)

Language of the case: English

Referring court

Supreme Court of the United Kingdom

Parties to the main proceedings

Applicant: Williams and others

Defendant: British Airways plc

Questions referred

- (i) Under (a) articles 7 of Council Directives 93/104/EC ⁽¹⁾ and 2003/88/EC ⁽²⁾ and (b) clause 3 of the European Agreement annexed to the Council Directive 2000/79/EC ⁽³⁾: (1) to what, if any, extent does European law define or lay down any requirements as to the nature and/or level of the payments required to be made in respect of periods of paid annual leave; and (2) to what, if any, extent may Member States determine how such payments are to be calculated?
- (ii) In particular, is it sufficient that, under national law and/or practice and/or under the collective agreements and/or contractual arrangements negotiated between employers and workers, the payment made enables and encourages the worker to take and to enjoy, in the fullest sense of these words, his or her annual leave; and does not involve any sensible risk that the worker will not do so?
- (iii) Or is it required that the pay should either (a) correspond precisely with or (b) be broadly comparable to the worker's 'normal' pay?

Further, in the event of an affirmative answer to question (iii)(a) or (b):

- (iv) Is the relevant measure or comparison (a) pay that the worker would have earned during the particular leave period if he or she had been working, instead of on leave, or (b) pay which he or she was earning during some other, and if so what, period when he or she was working?
- (v) How should 'normal' or 'comparable' pay be assessed in circumstances where (a) a worker's remuneration while working is supplemented if and to the extent that he or she engages in a particular activity, (b) where there is an annual or other limit on the extent to which, or time during which, the worker may engage in that activity, and that limit has been already exceeded or almost exceeded at the time(s) when annual leave is taken, so that the worker would not in fact have been permitted to engage in that activity had he been working, instead of on leave?

⁽¹⁾ Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organization of working time, OJ L 307, p. 18

⁽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, OJ L 299, p. 9

⁽³⁾ Council Directive 2000/79/EC of 27 November 2000 concerning the European Agreement on the Organisation of Working Time of Mobile Workers in Civil Aviation concluded by the Association of European Airlines (AEA), the European Transport Workers' Federation (ETF), the European Cockpit Association (ECA), the European Regions Airline Association (ERA) and the International Air Carrier Association (IACA) (Text with EEA relevance), OJ L 302