ECLI:EU:C:2021:210

JUDGMENT OF THE COURT (Fifth Chamber)

17 March 2021 (*)

[Text rectified by order of 15 April 2021]

(References for a preliminary ruling – Social policy – Protection of the safety and health of workers – Organisation of working time – Directive 2003/88/EC – Article 2 – Definition of 'working time' – Article 3 – Minimum period of daily rest – Workers having concluded several employment contracts with the same employer – Application by worker)

In Case C-585/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunalul Bucureşti (Regional Court, Bucharest, Romania), made by decision of 24 July 2019, received at the Court on 2 August 2019, in the proceedings

Academia de Studii Economice din Bucureops ti

v

Organismul Intermediar pentru Programul Operaţional Capital Uman – Ministerul Educaţiei Naţionale,

THE COURT (Fifth Chamber),

composed of E. Regan, President of the Chamber, M. Ilešič, E. Juhász, C. Lycourgos (Rapporteur) and I. Jarukaitis, Judges,

Advocate General: G. Pitruzzella,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– the Academia de Studii Economice din Bucureşti, by N. Istudor and D. Dumitrescu and by E. Găman, s,

– the Romanian Government, by E. Gane and A. Rotăreanu and by S.-A. Purza, acting as Agents,

– the Belgian Government, by L. Van den Broeck and M. Jacobs and by S. Baeyens, acting as Agents,

– the Danish Government, initially by J. Nymann-Lindegren, P. Ngo and M.S. Wolff, and subsequently by J. Nymann-Lindegren and M.S. Wolff, acting as Agents,

– the Latvian Government, initially by V. Soņeca and L. Juškeviča, and subsequently by V. Soņeca, acting as Agents,

– the Netherlands Government, by M. Bulterman and C.S. Schillemans, acting as Agents,

– the Austrian Government, by J. Schmoll, acting as Agent,

– the Polish Government, by B. Majczyna, acting as Agent,

– the Finnish Government, initially by A. Laine and subsequently by H. Leppo, acting as Agents,

– the Kingdom of Norway, by I. Thue and J.T. Kaasin, acting as Agents,

– the European Commission, initially by C. Gheorghiu and M. van Beek, and subsequently by C. Gheorghiu, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 11 November 2020,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 2(1), Article 3 and Article 6(b) 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 (OJ 2003 L 299, p. 9).

2 The request has been made in proceedings between the Academia de Studii Economice din Bucureşti (Academy of Economic Studies in Bucharest, Romania) (‘ASE’) and the Organismul Intermediar pentru Programul Operaţional Capital Uman – Ministerul Educaţiei Naţionale (Intermediate Body for the Operational Programme ‘Human Capital’ – Ministry of National Education, Romania) (the ‘IO POCU MEN’), concerning a financial correction established by the latter, within the framework of a funding programme, for failure by ASE to comply with the maximum number of hours a person may work per day.

Legal context

European Union law

3 Article 1 of Directive 2003/88 provides:

‘1. The Directive lays down minimum safety and health requirements for the organisation of working time.

2. This Directive applies to:

(a) minimum periods of daily rest, weekly rest and annual leave, to breaks and maximum weekly working time; and

(b) certain aspects of night work, shift work and patterns of work.

3. This Directive shall apply to all sectors of activity, both public and private, within the meaning of Article 2 of [Council] Directive 89/391/EEC [of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work (OJ 1989 L 183, p. 1)], without prejudice to Articles 14, 17, 18 and 19 of this Directive.

…’

4 According to Article 2(1) of Directive 2003/88:

‘For the purposes of this Directive the following definitions shall apply:

1. “working time” means any period during which the worker is working, at the employer’s disposal and carrying out his activity or duties, in accordance with national laws and/or practice;

2. “rest period” means any period which is not working time;

…’

5 Article 3 of that directive, entitled ‘Daily rest’, provides:

‘Member States shall take the measures necessary to ensure that every worker is entitled to a minimum daily rest period of 11 consecutive hours per 24-hour period.’

6 Article 6 of Directive 2003/88, entitled ‘Maximum weekly working time’, provides:

‘Member States shall take the measures necessary to ensure that, in keeping with the need to protect the safety and health of workers:

(a) the period of weekly working time is limited by means of laws, regulations or administrative provisions or by collective agreements or agreements between the two sides of industry;

(b) the average working time for each seven-day period, including overtime, does not exceed 48 hours.’

7 In accordance with Article 17 of that directive:

‘1. With due regard for the general principles of the protection of the safety and health of workers, Member States may derogate from Articles 3 to 6, 8 and 16 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, and particularly in the case of:

(a) managing executives or other persons with autonomous decision-taking powers;

(b) family workers; or

(c) workers officiating at religious ceremonies in churches and religious communities.

…'

8 Article 23 of Directive 2003/88 provides:

'Without prejudice to the right of Member States to develop, in the light of changing circumstances, different legislative, regulatory or contractual provisions in the field of working time, as long as the minimum requirements provided for in this Directive are complied with, implementation of this Directive shall not constitute valid grounds for reducing the general level of protection afforded to workers.'

Romanian law

9 Article 111 of Legea nr. 53/2003 privind Codul muncii (Law No 53/2003 establishing the Labour Code) of 24 January 2003, as amended, (Monitorul Oficial al României, Part I, No 345 of 18 May 2011) ('the Labour Code') provides:

'"working time" means any period during which the worker is working, at the employer's disposal and carrying out his activity or duties, in accordance with his individual employment contract, the applicable collective labour agreement and/or legislation in force.'

10 Article 112(1) of the Labour Code provides as follows:

'Normal working time for full-time workers is 8 hours a day and 40 hours a week.'

11 Article 114(1) of that code provides that:

'The statutory maximum working time may not exceed 48 hours per week, including overtime.'

12 Article 119 of that code provides:

'The employer is obliged to keep records of the hours worked by each employee and to submit that register to check the work inspectorate whenever requested to do so.'

13 Article 120 of that code provides:

'1. Work performed outside the normal weekly working time provided for in Article 112 shall be regarded as overtime.

2. Overtime may not be carried out without the agreement of the employee except in cases of force majeure or urgent tasks aimed at preventing accidents or eliminating the consequences thereof.'

14 Paragraph 135(1) of the Labour Code provides:

Workers shall be entitled to a rest period of at least 12 consecutive hours between any 2 working days.' '

The dispute in the main proceedings and the questions referred for a preliminary ruling

15 The ASE is participating in Project POSDRU/89/1.5/S/59184, a sectoral operational programme for human resources development, entitled 'Performance and excellence in post-doctoral research in economic sciences in Romania' ('the project').

16 By the Report establishing irregularities and determining financial corrections of 4 June 2018 ('the Report establishing irregularities'), OI POCU MEN declared ineligible a credit entry by ASE in the amount of 13 490.42 Romanian lei (RON) (approximately EUR 2 800), relating to salary costs for employees in the project implementation team. The sums corresponding to those costs were declared ineligible on the ground that the number of hours which those employees could have worked on a daily basis was exceeded.

17 An internal appeal brought by the ASE against the Report establishing irregularities was rejected by OI POCU MEN on the basis, inter alia, of Article 3 of Directive 2003/88, which provides for a limit of 13 hours which an employee may work per day, as, according to that authority, that limit does not apply to each of that employee's contracts of employment taken separately.

18 By an action brought before the referring court, the ASE challenges that rejection decision.

19 The referring court states that the sums declared ineligible correspond to the salary costs of certain experts, who, during the period from October 2012 to January 2013, had, on some days, combined the hours worked as part of the basic working hours, namely eight hours per day, with the hours worked in connection with the project as well as other projects or activities. The total number of hours worked per day by those experts exceeded the limit of hours per day laid down in instructions of the project managing authority, that limit deriving, according to OI POCU MEN, from Articles 3 and 6 of Directive 2003/88.

20 In those circumstances the Tribunalul București (Regional Court, Bucharest, Romania) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Should "working time", as defined in Article 2(1) of Directive 2003/88, be understood as meaning "any period during which the worker is working, at the employer's disposal and carrying out his activity or duties" under a single (full-time) contract or under all (employment) contracts concluded by that worker?

(2) Should the requirements imposed on Member States by Article 3 of Directive 2003/88 (the obligation to take the measures necessary to ensure that every worker is entitled to at least 11 consecutive hours' rest per 24-hour period) and Article 6(b) thereof (fixing an average weekly working time not exceeding [48] hours, including overtime) be interpreted as introducing limits with regard to individual contracts or with regard to all the contracts concluded with the same employer or with different employers?

(3) In the event that the answers to the first and second questions require an interpretation that prevents Member States, at national level, providing for the application per contract of Article 3 and Article 6(b) of Directive 2003/88, where there are no provisions of national law to the effect that the

minimum daily rest period and the maximum weekly working time are to apply to the worker (regardless of how many employment contracts are concluded with the same employer or with different employers), is a public institution of a Member State, acting on behalf of that State, able to rely on the direct application of Article 3 and Article 6(b) of Directive 2003/88 and sanction the employer for failure to observe the limits laid down by that directive with regard to daily rest and/or the maximum weekly working time?'

Consideration of the questions referred

Admissibility of the questions referred

21 [As rectified by order of 15 April 2021] The European Commission submits that the factual and legal situation described by the referring court does not contain sufficient information and explanations justifying the questions referred or the need to answer them. Furthermore, it agrees with the Romanian Government that the second and third questions referred are inadmissible in so far as they relate to Article 6 of Directive 2003/88. The Romanian Government adds that an answer from the Court regarding a situation in which an employee has concluded contracts with several different employers is of no use to the referring court, since the analysis provided in a preliminary ruling must relate to the situation at issue in the main proceedings, namely, in the present case, a situation in which the employee has concluded several contracts with one single employer. Furthermore, the Commission expresses doubts as to the applicability of Directive 2003/88 to the dispute in the main proceedings, on the ground that that dispute raises the question of workers' pay whereas, according to the case-law, that directive does not govern that issue.

22 In that regard, it must be borne in mind that, in the context of the cooperation between the Court and the national courts established in Article 267 TFEU, it is solely for the national court before which a dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine, in the light of the particular circumstances of the case, both the need of a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted concern the interpretation of EU law, the Court is, in principle, bound to give a ruling (judgment of 19 December 2019, *Darie*, C-592/18, EU:C:2019:1140, paragraph 24 and the case-law cited).

23 It follows that questions relating to EU law enjoy a presumption of relevance. The Court may refuse to give a ruling on a question referred by a national court only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to enable it to give a useful answer to the questions submitted to it (judgment of 8 October 2020, *Union des industries de la protection des plantes*, C-514/19, EU:C:2020:803, paragraph 29 and the case-law cited).

24 In the first place, the present case, as regards the questions referred in so far as they relate to the minimum daily rest period, it should be noted that the order for reference provides the necessary information relating to the facts of the dispute in the main proceedings and mentions the provisions of EU law and the applicable national legislation, making it possible to understand sufficiently the subject matter of the dispute and the questions referred.

25 In particular, in addition to the reference to the provisions of the Labour Code on daily working time and daily rest periods, namely Articles 111, 112 and 135 thereof, the order for reference states that the OI POCU MEN issued the debt instrument because the ASE failed to comply with the rules relating to the maximum number of hours that a person may work per day

and provides details concerning the calculation of hours worked per day by experts employed by the ASE.

26 Consequently, the questions referred are admissible in that regard.

27 In the second place, as regards the second and third questions referred, in so far as they relate to non-compliance with the maximum weekly working time, it should be noted, according to the order for reference, that even though OI POCU MEN relied both on Article 3 of Directive 2003/88 and Article 6(b) thereof in order to justify the Report establishing irregularities, the referring court gives no detailed indications, as the Advocate General observed in point 23 of his Opinion, as to why that provision is relevant, since only ASE's alleged failure to comply with the minimum daily rest period is set out.

28 In those circumstances, the second and third questions, in so far as they refer to Article 6 of Directive 2003/88, are inadmissible.

29 In the third place, as regards the questions referred, in so far as they concern the interpretation of the provisions of Directive 2003/88 with regard to employment contracts concluded by one worker with several employers, it should be noted that there is no evidence in the order for reference that the remuneration which OI POCU MEN considered to be ineligible expenditure in the Report establishing irregularities is linked to employment contracts that the experts concluded with the ASE, on one hand, and other employers on the other. Only the expenditure relating to the employment contracts that those experts concluded with the ASE are mentioned.

30 Consequently, the questions referred are also inadmissible in so far as they concern the interpretation of Article 2(1) and Article 3 of Directive 2003/88 with regard to employment contracts concluded by one worker with several employers.

31 Fourthly, with regard to the position expressed by the Commission that, since the dispute in the main proceedings concerns the remuneration of workers, it does not concern Directive 2003/88, it is important to recall that, with the exception of the specific case of paid annual leave, referred to in Article 7(1) thereof, the latter is limited to regulating certain aspects of the organisation of working time in order to ensure the protection of the safety and health of workers, so that, in principle, it does not apply to workers' pay (judgment of 30 April 2020,*Készenléti Rendőrség*, C-211/19, EU:C:2020:344, paragraph 23 and the case-law cited).

32 However, that finding does not mean that there is no need to answer the questions submitted in the present case.

33 The referring court considers that the interpretation of certain provisions of Directive 2003/88 is necessary to enable it to resolve the question of the lawfulness of the credit entry challenged by OI POCU MEN. In particular, in order to determine whether the ASE was correct to pay for the hours worked by its experts, that court seeks to ascertain whether it has complied with the rules on the maximum number of hours that a person may work per day.

34 In those circumstances, it must be held that the questions referred, in so far as they concern non-compliance with the provisions of Directive 2003/88 relating to the maximum number of hours that a person may work per day, are relevant for the purposes of resolving the dispute pending before the referring court and that, therefore, those questions are admissible.

The first and second questions

35 By its first and second questions, which it is appropriate to examine together, the referring court asks essentially whether Article 2(1) and Article 3 of Directive 2003/88 must be interpreted as meaning that, where an employee has concluded several contracts of employment with the same employer, the minimum daily rest period provided for in Article 3 applies to those contracts taken together or to each of those contracts taken separately.

36 As a preliminary matter, it must be recalled that the right of every worker to a limitation of maximum working hours and to daily and weekly rest periods not only constitutes a rule of EU social law of particular importance, but is also expressly enshrined in Article 31(2) of the Charter of Fundamental Rights of the European Union that Article 6(1) TEU recognises as having the same legal value as the Treaties (see, to that effect, judgment of 14 May 2019, *CCOO*, C-55/18, EU:C:2019:402, paragraph 30 and the case-law cited).

37 The provisions of Directive 2003/88, in particular Articles 3 thereof, give specific form to that fundamental right and must, therefore, be interpreted in the light of the latter (see, to that effect, the judgment of 14 May 2019, *CCOO*, C-55/18, EU:C:2019:402, paragraph 31 and the case-law cited).

38 That said, it follows from the settled case-law of the Court that, for the purpose of interpreting a provision of EU law, it is necessary to consider not only its wording but also the context in which it occurs and the objectives pursued by the rules of which it is part (see, in particular, judgment of 6 October 2020, *Jobcenter Krefeld*, C-181/19, EU:C:2020:794, paragraph 61 and the case-law cited).

39 In the first place, as regards the wording of Article 2(1) and Article 3 of Directive 2003/88, it should be noted that Article 2(1) thereof defines ‘working time’ as any period during which the worker is working, at the employer’s disposal and carrying out his activity or duties, in accordance with national laws and/or practices.

40 Article 3 of that directive requires Member States to take the measures necessary to ensure that ‘every worker’ is entitled to a minimum rest period of 11 consecutive hours per 24-hour period (see, to that effect, judgment of 14 May 2019, *CCOO*, C-55/18, EU:C:2019:402, paragraph 38).

41 The use of the words ‘any worker’ supports an interpretation of Article 3 that applies to the worker where several contracts of employment have been concluded between one worker and the same employer. By using the indefinite adjective ‘any’, Article 3 puts the emphasis on the worker, so that during each 24-hour period, he or she may benefit from a minimum daily rest period of 11 consecutive hours, regardless of whether or not he or she has concluded several contracts with the employer.

42 Second, as regards the context of Article 2(1) and Article 3 of Directive 2003/88, it should be observed that, in Article 2(2) thereof, ‘rest period’ is defined as any period that is not working time.

43 The Court has repeatedly held that that concept and the concept of ‘working time’ are mutually exclusive, and that Directive 2003/88 does not provide for any intermediate category between working time and rest periods (judgment of 10 September 2015, *Federación de Servicios Privados del sindicato Comisiones obreras*, C-266/14, EU:C:2015:578, paragraphs 25 and 26 and the case-law cited).

44 Furthermore, Article 2 of that directive is not one of the provisions from which it is possible to derogate (judgment of 10 September 2015, *Federación de Servicios Privados del sindicato Comisiones obreras*, C-266/14, EU:C:2015:578, paragraph 28 and the case-law cited).

45 In those circumstances, it is not possible to satisfy the requirement laid down in Article 3 of that directive, namely that every worker is entitled to at least 11 consecutive hours per day, if those rest periods are examined separately for each contract that binds that worker to his employer. In such a situation, the hours considered to constitute rest periods under one contract would, as illustrated by the dispute in the main proceedings, be capable of constituting working time under another contract. The same period cannot, in accordance with the case-law referred to in paragraph 43 of the present judgment, be classified at the same time as working time and rest period.

46 It follows that the employment contracts concluded by a worker with his employer must be examined together in order to establish whether the period described as daily rest corresponds to the definition of the rest period in Article 2(2) of Directive 2003/88, namely that it is a period which does not constitute working time.

47 Thirdly, the interpretation which follows from the wording and context of Article 2(1) and Article 3 of Directive 2003/88 is also confirmed by the aim of that directive.

48 It must be recalled that the aim of Directive 2003/88 is to lay down minimum requirements intended to improve the living and working conditions of workers through approximation of national provisions concerning, in particular, the duration of working time (judgment of 14 May 2019, *CCOO*, C-55/18, EU:C:2019:402, paragraph 36 and the case-law cited).

49 That harmonisation of the organisation of working time at EU level is designed to guarantee better protection of the safety and health of workers by ensuring that they are entitled to minimum rest periods – particularly daily and weekly – and to adequate breaks and by setting a maximum limit on the weekly working time (see, to that effect, (judgment of 14 May 2019, *CCOO*, C-55/18, EU:C:2019:402, paragraph 37 and the case-law cited).

50 If the minimum requirements laid down in Article 3 of Directive 2003/88 were to be interpreted as applying separately to each contract concluded by the worker with his employer, the guarantee of that worker's improved protection would thereby be undermined, since, by the combination of working time provided for separately by each of the contracts concluded with the employer it would be impossible to guarantee the daily rest period of 11 consecutive hours for each 24-hour period, even though that period has been considered by the EU legislature to enable the worker to be able to recover from the fatigue inherent in daily work.

51 Furthermore, according to the case-law of the Court, the worker must be regarded as the weaker party in the employment relationship, so that it is necessary to prevent the employer from being able to impose on him a restriction of his rights (judgment of 14 May 2019, *CCOO*, C-55/18, EU:C:2019:402, paragraph 44 and the case-law cited).

52 On account of that position of weakness, such a worker may be dissuaded from explicitly claiming his rights vis-à-vis his employer where, in particular, doing so may expose him to measures taken by the employer likely to affect the employment relationship in a manner detrimental to that worker (see, to that effect, judgment of 14 May 2019, *CCOO*, C-55/18, EU:C:2019:402, paragraphs 45 and the case-law cited).

53 If the provisions of Directive 2003/88 relating to the minimum daily rest period were to be interpreted as applying separately to each contract of employment concluded by a worker with the same employer, that would expose that worker to the possibility of pressure from his or her employer intended to split his or her working time into a number of contracts, which would be liable to render those provisions redundant.

54 Finally, it must be stated that the discretion relied on by the ASE and the Polish and Romanian Governments, that the Member States have in determining the arrangements for implementing the provisions of Article 3 of that directive, is irrelevant to the answer to be given to the first and second questions referred. As the Advocate General observed in point 57 of his Opinion, the question referred to the Court concerns not the manner in which those provisions are implemented but their scope. In accordance with Article 23 of that directive, without prejudice to the right of Member States to develop different laws, regulations and contractual provisions in the field of working time, the minimum requirements laid down by Directive 2003/88 must be observed.

55 It follows from the foregoing examination that, in the present case, since some experts used to implement the project are linked to the ASE by several contracts of employment, it is necessary, in order to verify that the provisions of Article 3 of Directive 2003/88 have been complied with, to examine those contracts together.

56 It should be added, in the light of the particular characteristics of the experts at issue in the main proceedings, that the Commission observes, in essence, that Directive 2003/88 applies only to ‘workers’ within the meaning of that directive.

57 According to the Court’s case-law, the essential feature of an employment relationship is 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 (judgment of 20 November 2018, *Sindicatul Familia Constanliana and Others*, C-147/17, EU:C:2018:926, paragraph 41).

58 It follows that an employment relationship implies the existence of a hierarchical relationship between the worker and his employer. Whether such a relationship exists must, in each particular case, be assessed on the basis of all the factors and circumstances characterising the relationship between the parties (judgment of 11 April 2019, *Bosworth and Hurley*, C-603/17, EU:C:2019:310, paragraph 26).

59 Consequently, the time spent by the experts at issue in the main proceedings in providing services in connection with the project is relevant for the purpose of verifying whether the minimum daily rest period laid down in Article 3 of Directive 2003/88 was complied with provided that, in the context of that project, there was a relationship of subordination between the ASE and those experts. It appears from the documents before the Court that that was the case, but it is for the referring court to verify.

60 In addition, the ASE and the Danish Government relied on the derogating provisions of Directive 2003/88, in particular Article 17(1) thereof, in order to justify the non-application of Article 3 of that directive to certain workers.

61 It must be recalled, according to the Court’s case-law, as regards the possibilities of derogation provided for by Directive 2003/88, in particular in Article 17 thereof, as exceptions to the EU rules on the organisation of working time laid down by that directive, that those derogations must be interpreted in such a way as to limit their scope to what is strictly necessary in order to

safeguard the interests which those derogations enable to be protected (judgment of 21 February 2018, *Matzak*, C-518/15, EU:C:2018:82, paragraph 38 and the case-law cited).

62 Furthermore, it has been held that Article 17(1) of Directive 2003/88 applies to workers whose working time, as a whole, is not measured or predetermined, or can be determined by the workers themselves on account of the particular characteristics of the activity carried out (judgment of 26 July 2017, *Hälvä and Others*, C-175/16, EU:C:2017:617, paragraph 32 and the case-law cited).

63 In the present case, it is apparent from the order for reference that the experts at issue in the main proceedings had full-time employment contracts, providing for 40 hours per week. In those circumstances, it appears that at least some of the working time of those experts, even in the case of university lecturers, was determined by their employer, which precludes the derogation in Article 17(1) of Directive 2003/88 from being applicable to them. It is for the national court to ascertain whether that is the case.

64 In the light of all the foregoing considerations, the answer to the first and second questions referred is that Article 2(1) and Article 3 of Directive 2003/88 must be interpreted as meaning that, where an employee has concluded several contracts of employment with the same employer, the minimum daily rest period provided for in Article 3 thereof applies to those contracts taken as a whole and not to each of them taken separately.

The third question

65 By its third question, the referring court asks, in essence, whether, if Article 3 of Directive 2003/88 is to be interpreted as meaning that the minimum daily rest period laid down in that provision relates to all employment contracts concluded by a worker with the same employer, a public institution which acts on behalf of the State may rely on the direct effect of that provision against an employer which does not comply with it.

66 It is clear from settled case-law that, whenever the provisions of a directive appear, so far as their subject matter is concerned, to be unconditional and sufficiently precise, they may be relied upon before the national courts by individuals against the State where the latter has failed to implement the directive in domestic law by the end of the period prescribed or where it has failed to implement the directive correctly (see, to that effect, judgment of 6 November 2018, *Max-Planck-Gesellschaft zur Förderung der Wissenschaften*, C-684/16, EU:C:2018:874, paragraph 63 and the case-law cited).

67 However, it should be noted at the outset that, as the Advocate General observed in point 81 of his Opinion, no national provision has been challenged, in the present case, on the ground that it is incompatible with the provisions of Directive 2003/88.

68 It should be added that the question whether a national provision must be disapplied in so far as it is contrary to EU law arises only if no interpretation of that provision in conformity with EU law proves possible (judgment of 6 November 2018, *Bauer and Willmeroth*, C-569/16 and C-570/16, EU:C:2018:871, paragraph 65).

69 The principle that national law must be interpreted in conformity with EU law, under which the national court is bound to interpret national law, so far as possible, in conformity with the requirements of EU law, is inherent in the system of the Treaties, in that it enables that court to ensure, within the limits of its jurisdiction, the full effectiveness of EU law when it determines the

dispute before it (judgment of 14 May 2020, *Staatsanwaltschaft Offenburg*, C-615/18, EU:C:2020:376, paragraph 69 and the case-law cited).

70 In the present case, the Romanian Government points out in its written observations that, in Romania, where an employee concludes several contracts with the same employer, Article 135(1) of the Labour Code, read in conjunction with Articles 119 and 120 of that code, is to be applied.

71 Article 135(1) provides that employees are entitled to a rest period of not less than 12 consecutive hours between 2 working days.

72 Thus, the rights recognised in Article 135(1) appear to afford greater protection than those provided for in Article 3 of Directive 2003/88, under which the duration laid down for the minimum rest period, during each 24-hour period, is 11 consecutive hours.

73 In those circumstances, as the Advocate General observed in point 82 of his Opinion, there is nothing to suggest that OI POCU MEN could not have based its decision on the provisions of Romanian law, interpreted in the light of the relevant provisions of Directive 2003/88.

74 In the absence of any challenge to the compatibility of Romanian law with Article 3 of Directive 2003/88 and, in any event, in so far as it is obvious that it is possible to interpret that law in conformity with that article, there is no need to answer the third question.

The limitation of the temporal effects of the present judgment

75 In their written observations the Romanian Government and the ASE request the Court to limit the temporal effects of the present judgment.

76 First of all, as regards the Romanian Government's request if the Court were to adopt an interpretation of Article 2(1) and Article 3 of Directive 2003/88 as applying by employee, it should be noted that that request is motivated by the fact that such an application would have a systemic impact on the labour market in Romania where, according to that government, many workers have contracts with several employers. The request therefore concerns the situation where the present judgment relates to the case of contracts of employment concluded with several employers. Since the request for a preliminary ruling is inadmissible in so far as it concerns the interpretation of the provisions of Directive 2003/88 for such cases, there is no need to answer the request for limitation of the temporal effects of the present judgment in that regard.

77 As regards, next, the request made by the Romanian Government in the event that the Court were to apply Article 2(1) and Article 3 of Directive 2003/88 in respect of each of the contracts, considered separately, concluded by the worker with his employer, there is no need to answer it either, since it is apparent from paragraph 64 of the present judgment that the minimum daily rest period, as provided for in Article 3 of that directive, relates to all contracts concluded by the worker with the same employer.

78 Finally, as regards the request by the ASE, it must be recalled that, according to settled case-law, the interpretation which the Court, in the exercise of the jurisdiction conferred on it by Article 267 TFEU, gives to a rule of European Union law clarifies and defines the meaning and scope of that rule as it must be, or ought to have been, understood and applied from the time of its entry into force. It follows that the rule as thus interpreted may and must be applied by the courts to legal relationships arising and established before the judgment ruling on the request for interpretation, provided that in other respects the conditions for bringing an action relating to the

application of that rule before the courts having jurisdiction are satisfied (judgment of 3 October 2019, *Schuch-Ghannadan*, C-274/18, EU:C:2019:828, paragraph 60 and the case-law cited).

79 It is only quite exceptionally that the Court may, in application of the general principle of legal certainty inherent in the EU legal order, be moved to restrict for any person concerned the opportunity of relying on a provision which it has interpreted with a view to calling into question legal relationships established in good faith. Two essential criteria must be fulfilled before such a limitation can be imposed: those concerned must have acted in good faith and there must be a risk of serious difficulties (judgment of 3 October 2019, *Schuch-Ghannadan*, C-274/18, EU:C:2019:828, paragraph 61 and the case-law cited).

80 More specifically, the Court has taken that step only in quite specific circumstances, notably where there was a risk of serious economic repercussions owing in particular to the large number of legal relationships entered into in good faith on the basis of rules considered to be validly in force and where it appeared that individuals and national authorities had been led to adopt practices which did not comply with EU law by reason of objective, significant uncertainty regarding the implications of EU provisions, to which the conduct of other Member States or the European Commission may even have contributed (judgment of 3 October 2019, *Schuch-Ghannadan*, C-274/18, EU:C:2019:828, paragraph 62 and the case-law cited).

81 In the present case, it should be noted that the ASE merely asserts, without any other evidence, that account must be taken both of the good faith of the persons concerned and of the risk of serious disturbances of the economy in Romania. In so doing, it does not adduce sufficient evidence to show that the criterion relating to the good faith of those concerned is established, nor does it provide the Court with any specific information as to the number of legal relationships concerned or the nature and extent of the possible economic repercussions of the present judgment. Therefore, the two criteria referred to in paragraph 79 of the present judgment, which could justify limiting the temporal effects of the present judgment, cannot be regarded as being fulfilled.

82 It follows from the foregoing that it is not appropriate to limit the temporal effects of the present judgment.

Costs

83 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fifth Chamber) hereby rules:

Articles 2(1) and 3 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 must be interpreted as meaning that, where an employee has concluded several contracts of employment with the same employer, the minimum daily rest period provided for in Article 3 thereof applies to those contracts taken as a whole and not to each of those contracts taken separately.

[Signatures]

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* Language of the case: Romanian.