SHAPING EU LAW THROUGH THE PRELIMINARY RULING PROCEDURE - THE UNITED KINGDOM'S CONTRIBUTION

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Abstract

Now that Article 50 of the Treaty on European Union has been triggered and negotiations regarding the withdrawal of the United Kingdom from the European Union are underway, the state's departure from the Union is becoming a reality. However, even if this process is finalised, it is important to draw attention to the fact that the United Kingdom's past contribution to the European project remains crucial and will maintain its relevancy in the future. The preliminary ruling procedure has been an invaluable tool for shaping and developing EU law, and the United Kingdom's withdrawal does not render void any of the rulings pronounced by the Court of Justice in answer to questions referred by British courts, rulings that have had a direct influence over the internal law of all Member States. In consideration of the essential role of the preliminary ruling procedure, this paper will present several instances where the judicial authority of the European Union was called upon to offer an interpretation on the compatibility of the United Kingdom's legislation with EU law and, by answering the questions referred by the British courts, established a binding precedent for the national courts of all Member States and furthered the process of judicial integration.

Keywords: *judicial integration – national court – preliminary ruling – withdrawal from the European Union – binding precedent.*

1. Introduction

The preliminary ruling procedure, currently contained in Article 267 of the Treaty on the Functioning of the European Union, has played a pivotal role in shaping EU law and furthering the process of integration between Member States of the Union. Upon being confronted with a disposition of EU law whose meaning is unclear, the national court can bring the matter to the attention of the Court of Justice of the European Union, who is competent to offer a legally binding interpretation of that disposition[1]. This procedure has been called the "jewel in the Crown" of the CJEU's jurisdiction[2] and has been essential in redefining the relationship between the national and EU legal systems. At first, this rapport was an horizontal one, with the Court in Luxembourg and the national courts being separate and equal. In time, as a consequence of the states' judicial authorities deferring numerous questions for preliminary rulings, the relationship between them and the CJEU took on a vertical aspect, with the latter holding a superior position to that of the national courts, whom it has enrolled as "enforcers and appliers of EU law"[3].

At present, the national courts are a central part of the EU judicial system, with the organisation's judicial authority occupying the highest position and the preliminary ruling procedure being the primary interface[4] between them - approximately two thirds of the cases that are brought before the CJEU concern matters of interpretation or validation of EU legislation.

The United Kingdom, albeit reticent to relinquish some of its competences to the EEC[5], as required by the participation in the European construction, became an active contributor to the development of Community (and, after the Treaty of Lisbon, EU) law once it finally became a member. At first, British courts manifested a restrictive approach to the referral process, only reaching out to the Court of Justice for particularly difficult matters regarding interpretation – a vestige, perhaps, of the UK's initial reluctance to submit itself to the jurisdiction of a supranational authority. However, as time passed and the state adapted to its new position, the British courts took the opposite stance and began referring questions for preliminary rulings whenever there was any amount of uncertainty regarding the correct interpretation of European law, to the extent that higher courts cautioned against overcrowding the CJEU with referrals where the ruling would be unlikely to have any application beyond the instant case.

It should also be mentioned that the UK has been an active intervenor in the procedure of the preliminary

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[1] Augustin Fuerea, *Dreptul Uniunii Europene. Principii, acțiuni, libertăți*, Universul Juridic, Bucharest, 2016, p. 95.

[2] Paul Craig, Gráinne de Búrca, *EU Law: Text, Cases, and Materials*, Fifth Edition, Oxford University Press, New York, 2011, p. 442.

[3] *Ibidem*, p. 443. For details about the preliminary ruling procedure and its role in creating seminal notions of EU law, see Mihaela Augustina Dumitrașcu, *Dreptul Uniunii Europene si specificitatea acestuia*, Second Edition, Universul Juridic, Bucharest, 2015.

[4] Thomas de la Mare, Catherine Donnelly, "Preliminary rulings and EU legal integration: evolution and stasis", *The Evolution of EU Law*, Second Edition, Paul Craig, Gráinne de Búrca (ed.), Oxford University Press, Oxford, 2011, p. 363.

[5] Augustin Fuerea, „BREXIT – trecut, prezent, viitor", *Curierul judiciar*, nr. 12/2016, C.H.Beck, p. 631.

ruling, "submitting observations in roughly thirty to forty cases per year from other Member States"[6].

As a consequence of the UK's traditionally involved role in the shaping of EU law through the preliminary ruling procedure, the state's withdrawal from the organisation is likely to have an impact on the future evolution of the relationship between the national and EU judicial systems. It is for this reason that particular attention should be paid to the British contribution to the development of EU law and the deepening of legal integration.

2. Preliminary rulings and their impact on national legislation

The cases presented in this section were submitted to the Court of Justice by the United Kingdom's national courts, who were in doubt over the correct interpretation and application of Community/EU law and whether British legislation was in accordance with it. The judgments pronounced in these cases had important consequences for the Member States' legislation, with a particular impact on the way that the UK's institutions (judicial or otherwise) enforced EU law. As a consequence of their ample effect on national law, these judgements also affected the way both the European Union and its judicial authority were perceived by British citizens.

2.1. The Queen v./ Immigration Appeal Tribunal and Surinder Singh, ex parte Secretary of State for Home Department[7]

This case was brought before the Court of Justice by a national court of the UK, in order to obtain an interpretation of certain dispositions of the Treaty establishing the European Economic Community (now TFEU) and of secondary law concerning the right of residence of a Community (now EU) citizen's spouse, when said citizen returned to his or her country of origin, also a Member State, in order to establish a residence there.

The main proceedings, during which this question was raised, regarded the fact that Secretary of State for the Home Department had decided to deport Surinder Singh, an Indian citizen, who had been married since 1982 to a British national, Rashpal Purewal. Between 1983-1985 the two worked in Germany, and then decided to return to the United Kingdom, in order to set up a business. In 1987, at the wife's request, they divorced and, consequently, the British authorities decided to shorten Surinder Singh's residence permit, refusing to grant him indefinite leave to remain in the country as the spouse of a British citizen.

The following question was raised in front of the national court: if a married woman, national of a Member State, were to exercise the right recognised to her by the Treaty and worked in another Member State, and, subsequently, returned to her Member State of origin in order to open and run a business with her husband, would the relevant Community legislation entitle her spouse (not a Community national) to enter and remain in that Member State with his wife? More clearly, would a couple in that specific situation (returning to the Member State of origin) enjoy the same benefits that would be granted to a couple, consisting of a Community citizen and a national of a third-party state, who decided to move to a different Member State?[8]

The Court's observations were that the Treaty's provisions regarding the free movement of workers aim to facilitate the pursuit of all types of economic and occupational activities, anywhere on the Community's territory, and forbid any measures that would disadvantage those citizens who want to pursue said activities in a different Member State. It is for this reason that the nationals of Member States have the explicit right to enter and reside on the territory of any other Member States in order to pursue an economic activity[9].

A citizen of a Member State could be discouraged from leaving his country of origin in order to pursue an economic activity as an employed or self-employed person on the territory of the Community if, upon returning to the state of origin, with a view to continue pursuing such activities, the conditions which would apply „were not at least equivalent to those which he would enjoy under the Treaty or secondary law in the territory of another Member State"[10]. The Community citizen's spouse being barred from entering the state of origin and living there with him would certainly qualify as such a deterring measure.

It follows that the Member State must allow the citizen's spouse (regardless of his or her nationality) access and the right of residence on its territory, if said spouse travelled with the citizen to another Member State, so that the latter could pursue and economic activity, and then returned to the country of origin with the same purpose. The spouse, national of a third-party state, must enjoy the same rights that would be guaranteed to him or her in case the Community citizen decided to travel to another Member State[11].

This case – and its corresponding judgment – represented an important moment for the United Kingdom and caused significant ripples with regard to

[6] Thomas de la Mare, Catherine Donnelly, *op.cit.*, p. 373.

[7] Judgment of the Court of 7 July 1992, *The Queen v./ Immigration Appeal Tribunal and Surinder Singh, ex parte Secretary of State for Home Department*, C-370/90, ECLI:EU:C:1992:296.

[8] *Ibidem*, para. 9.

[9] *Ibidem*, para. 16 and 17.

[10] *Ibidem*, para. 19.

[11] *Ibidem*, para. 21 and 23.

British legislation concerning immigration for those individuals married to UK nationals who have travelled and pursued economic activities in other Member States.

At present, nationals of a third-party state can apply for an European Economic Area[12] permit in the UK if they fulfil the following requirements: they have lived in another Member State alongside a family member who is a British national; the two have genuinely[13] lived in that state; the British family member has the right to permanent residence in the other state or, as long as he lived there, was working, self-employed, studying or had the necessary means to be self-sufficient. If the British national has been back in the UK for more than three months, at the time of the application, it must be proven that he finds himself in one of the mentioned situations (is pursuing an economic activity, studying or is self-sufficient) in order for the spouse, citizen of a third-party state, to be able to obtain the residence permit.

The notion of British „family member" covers the spouse or partner; parents and grandparents (and their spouses or partners), if the national of third-party state is younger than 21 years old or is dependent on them; children and grandchildren (and their spouses or partners), if the person applying for a permit is dependent on them[14].

On occasion, this judgment has been criticised, in the UK, for creating a way to elude British legislation regarding the right of entry and residence for citizens from third-party states, an accusation which has contributed to the public perception that the EU and its judicial authority overextend themselves and interfere in the Member States' immigration policies.

2.2. Dr. Pamela Mary Enderby v./ Frenchay Health Authority and Secretary of State for Health[15]

Through the judgment pronounced in this case, the Court of Justice reaffirmed the principle of equal pay for men and women, transferring the burden of proof from the worker to the employer in those cases where there are sufficient grounds to suspect the existence of discriminatory practices based on the sex of the workers.

The appellant in the main proceedings was a female therapist, Dr. Pamela Enderby, employed by the Frenchay Health Authority. She stated that the members of her profession, predominantly women, were considerably underpaid in comparison to other similar professions, where most employees were men. As an example, the appellant, whose annual pay was 10.106UKL despite having a level of seniority in the National Health System, presented the case of a clinical psychologist, payed 12.527UKL per year, and that of a principal pharmacist, payed 14.106UKL for the same amount of time

Dr. Enderby's claim was dismissed by the national Employment Tribunal, who considered that, following separate collective negotiations and considering the difficulty in filling the positions of clinical psychologist and pharmacist, it was justified for these differences in pay to exist and that they were not discriminatory in nature. This decision was brought in front of the Court of Appeal, who referred several questions to the Court of Justice in order to establish whether the principle of equal pay for men and women requires that the employer be the one responsible for proving the absence of sex-based discrimination when the remuneration awarded for a job carried out almost exclusively by women is lower than that awarded for a job of equal value, carried out predominantly by men[16].

The Court in Luxembourg was keen to mention that the Treaty provides a framework for the close cooperation between itself and the national courts, „based on a division of responsibilities between them". The Court considered that, according to said division, it is strictly the duty of the national court before which the main proceedings take place (and who „must assume the responsibility for the subsequent judicial decision") to determine, taking into account the particularities of each case, both the need for a preliminary ruling from the Court of Justice and the pertinence of it with regard to the main dispute[17]. Therefore when the Court in Luxembourg receives a request for a preliminary ruling that is not evidently irrelevant to the case, it must respond and is not held to appraise the validity of the hypothesis, which is verified, if necessary, by the national court.

With regard to the existence of sex-based discrimination, the burden of proof normally lies with the worker who, considering himself to be the victim of such discrimination, brings legal action against his employer and, consequently, must support his claim. However, the burden of proof could shift when necessary in order "to avoid depriving workers who appear to be the victims of discrimination of any effective means of enforcing the principle of equal pay"[18].

Consequently, when relevant (in the national court's opinion) statistics indicate the existence of a

[12] The Agreement on the European Economic Area, which entered into force on 1 January 1994, created an „Internal Market" which reunites the Member States of the European Union with three members of the European Free Trade Association – Iceland, Liechtenstein and Norway.

[13] In order to verify this fact, the applicant and the British family member must prove that they lived together in the other Member State for a considerable amount of time and that they integrated there.

[14] The requirements for a residence permit can be found on the official website of the United Kingdom's Government, https://www.gov.uk/family-permit/surinder-singh, accessed on 10 March 2018.

[15] Judgment of the Court of 27 October 1993, *Dr. Pamela Mary Enderby v./ Frenchay Health Authority and Secretary of State for Health*, C-127/92, ECLI:EU:C:1993:859.

[16] *Ibidem*, para. 7.

[17] *Ibidem*, para. 10.

[18] *Ibidem*, para. 14.

considerable difference between the pay granted for services of equal value, of which one is performed almost exclusively by women and one, predominantly by men, the Treaty demands of the employer to prove the said difference is based on objective criteria that do not involve sex-based discrimination[19].

Even when the rates of pay are established following separate processes of collective bargaining for each professional group, without there being any sort of discrimination within one particular group, the employer is not always exempt from providing justifications for the discrepancy. Should the results of the negotiations lead to said groups, having the same employer and syndicate, being treated differently, the former could still be expected to prove that he doesn't disregard the Treaty when establishing the rates of pay[20].

If the employer could invoke the absence of discrimination within each process of collective bargaining in order to justify the difference in remuneration rates, he could easily elude the principle of equal pay for men and women by engaging, each time, in distinct negotiations.

It is solely for the national court (the only one competent to make findings of fact) to determine, through the application of the principle of proportionality if needed, whether and to what extent the lack of candidates for a certain job and the need to entice them by offering a higher salary constitute objective economic reasons that justify the discrepancy between the pay rates for two services, of which one is carried out almost exclusively by women, and the other, by men[21].

The Court of Justice's judgment represented a step forward for the affirmation and enforcement of the principle of equal pay by removing the possibility for the employers to evade it through the use of distinct collective bargaining processes or other such measures.

2.3. Carole Louise Webb v./ EMO Air Cargo (UK) Ltd.[22]

This case confirmed the Court of Justice's position with regard to the fact that, in case of discrimination based on the worker's pregnancy, the fact that a sick man, absent from work for a similar period of time, would have been treated the same way does not constitute a valid defence.

The appellant in the main proceedings was Carole Louise Webb, a female employee of the EMO Air Cargo (UK) Ltd., a company that employed 16 people, of which 4 worked in the import operations department. One of those 4 was a Mrs. Stewart, who became pregnant and intended to depart on maternity leave. In order to cover for her during the period of absence, the company hired Mrs. Webb, for an unlimited period, with an understanding that she would continue to work there even after Mrs. Stewart's return from her maternity leave. Two weeks after being recruited, Mrs. Webb discovered that she, too, was pregnant and was going to give birth around the same time as Mrs. Stewart. The employer was made aware of this fact and decided to fire Mrs. Webb, on the grounds that she would not be able to fulfil the duties she had been hired to perform, which included those that Mrs. Stewart would have normally been responsible for[23].

Mrs. Webb was of the opinion that she had been the victim of sex-based discrimination and brought legal action against her employer before the Industrial Tribunal. Her claims were rejected on the basis that "the true and main reason" she had been fired was not her sex, but the fact that, in the future, she would find herself in the impossibility of fulfilling the role she had been recruited for – specifically, covering for Mrs. Stewart during her absence on maternity leave. According to the Tribunal, if a man had been hired for the same reason and, subsequently, had notified the employer that he would be absent for a period of time similar to that applicable in Mrs. Webb's case, he would have also been fired. Furthermore, the national jurisdiction dismissed the possibility of the case being an example of indirect discrimination, as "the reasonable needs of their business required that the person recruited to cover for Mrs. Stewart during her maternity leave be available"[24]. Appeals made by Mrs. Webb were unsuccessful, but she was allowed to appeal to the House of Lords[25]. The supreme court considered that the case's "special feature" was the fact that the claimant, who had been fired because of her pregnancy, had been hired specifically to replace, at least temporarily, another female worker who was, herself, absent for the same reason.

Unsure whether the importance of the duties Mrs. Webb had been recruited for justified her firing, the supreme court of the UK decided to stay the proceedings and issue a request for a preliminary ruling[26].

The Court of Justice decided that the relevant secondary law[27] prohibits the firing of a female worker

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[19] *Ibidem*, para. 19.

[20] *Ibidem*, para. 23.

[21] *Ibidem*, para. 29.

[22] Judgment of the Court of 14 July 1994, *Carole Louise Webb v./ EMO Air Cargo (UK) Ltd.*, C-32/93, ECLI:EU:C:1994:300.

[23] *Ibidem*, para. 3 and 4.

[24] *Ibidem*, para. 11 and 12.

[25] The House of Lords (specifically the Law Lords) was the supreme court of the United Kingdom until the Constitutional Reform Act 2005, which created the Supreme Court of the United Kigndom.

[26] *Ibidem*, para. 14 and 15.

[27] Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions. This act was repealed by Directive 2006/54/EC of

who has been contracted for an undetermined amount of time in order to replace another employee for the duration of the latter's maternity leave and who isn't able to fulfil that role because, a short while after her recruitment, she has discovered that she is also pregnant.

Dismissing a female worker because she is pregnant constitutes direct discrimination based on sex, and the situation of a woman who, because of her gravidity, is unable to fulfil the duties she has been hired for cannot be compared to that of a man who is similarly incapable for medical or other reasons: "pregnancy is not in any way comparable with a pathological condition, and even less so with unavailability for work on non-medical grounds, both of which are situations that may justify the dismissal of a woman without discriminating on grounds of sex"[28].

Firing a pregnant woman, who has been hired for an indefinite amount of time, cannot be justified based on her inability to fulfil one of the fundamental conditions of the employment contract, even when the worker's availability is, for the employer, an essential factor for the proper functioning of the business. The reasoning behind this position is that protection granted by Community/EU law to pregnant women cannot be conditioned on whether their presence in the workplace during maternity leave is crucial for the business, any contrary interpretation rendering "ineffective the provisions of the directive"[29].

The Court's interpretation could be criticised for disproportionally affecting employers who find themselves in a situation similar to the one presented here, where a small business must continue employing two workers who are incapable to fulfil their contractual obligations, one of whom has been hired, shortly before becoming unavailable for work, specifically to carry out the tasks of the other absent employee. Moreover, this could discourage employers from hiring female workers due to a concern that they would, later on, find themselves in such a position. A possible solution would be to legislate a mandatory period of performing work duties, before an employee is allowed to take a prolonged leave of absence.

2.4. S. Coleman v./ Attridge Law and Steve Law[30]

Prior to this case, protection against direct discrimination and harassment on grounds of disability was only recognised for the disabled individuals themselves. As a consequence of the Court's ruling, the scope of the protection was extended and a new type of action was created, which can be brought before national Employment Tribunals.

The claimant in the main proceedings, Mrs. Coleman, was hired, starting with 2001, as a legal secretary. In 2002, she gave birth to a son who suffered from several congenital disorders, requiring specialized care, which was mainly provided by the mother. In 2005, Mrs. Coleman accepted to end her employment contract and entered voluntary redundancy. Shortly afterwards, she brought an action before the Employment Tribunal, London South, claiming that she had been the victim of unfair constructive dismissal and of discrimination based on the fact that her son was disabled, which forced her to stop working for her former employer. These discriminatory acts included, according to the claimant: refusal of reintegrating her on the position she had occupied prior to departing on maternity leave; refusal of allowing her the same flexibility as regarded her working hours and "the same working conditions as those of her colleagues who [were] parents of non-disabled children"; insulting the claimant when she asked to requested time off to care for her child, despite the fact that other employees had been granted that benefit; ignoring the formal complaint she made regarding these discriminatory acts; "abusive and insulting comments" targeting both her and her child, specifically because of the latter's disability; being threatened with dismissal when she was late for work "because of problems related to her son's condition", when other employees had not been reprimanded for the same situation[31].

The national court decided to stay the main proceedings concerning Mrs. Coleman's dismissal and to refer several questions for a preliminary ruling, regarding the correct interpretation of the relevant secondary law[32]. Of particular interest is the answer to the question of said legislation offering protection against discrimination and harassment for "employees who, though they are not themselves disabled, are treated less favourably or harassed on the ground of their association with a person who is disabled"[33]. The Court in Luxembourg considered that protection against discrimination as regards employment and occupation must not be limited to people who are, themselves, disabled, as the principle of equal treatment, protected through secondary law, does not apply to a particular category of persons, but according to certain reasons provided within said legislation: "Where an employer treats an employee who is not himself disabled less favourably than another employee

the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.

[28] Judgment of the Court of 14 July 1994, *Carole Louise Webb v./ EMO Air Cargo (UK) Ltd.*, C-32/93, ECLI:EU:C:1994:300, para. 24 and 25. The Court of Justice had previously drawn a clear distinction between pregnancy and illness in *Hertz v./ Aldi Marked K/S*, C-179/88, ECLI:EU:C:1990:384.

[29] *Ibidem*, para. 26.

[30] Judgment of the Court of 17 July 2008, *S. Coleman v./ Attridge Law and Steve Law*, C-303/06, ECLI:EU:C:2008:415.

[31] *Ibidem*, para. 19-26.

[32] Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

[33] *Ibidem*, para. 27.

is, has been or would be treated in a comparable situation, and it is established that the less favourable treatment of that employee is based on the disability of his child, whose care is provided primarily by that employee, such treatment is contrary to the prohibition of direct discrimination laid down by Article 2(2)(a)"[34]. The same comments apply to cases of harassment, which is considered a form of discrimination and is also prohibited: "Where it is established that the unwanted conduct amounting to harassment which is suffered by an employee who is not himself disabled is related to the disability of his child, whose care is provided primarily by that employee, such conduct is contrary to the prohibition of harassment laid down by Article 2(3)"[35].

As a consequence of this ruling, employees can now invoke the protection granted by EU law against discrimination and harassment even in cases where the victim of such behaviour is targeted not for having a disability, but due to caring for or being associated with somebody who is disabled.

2.5. Williams and Others v./ British Airways plc.[36]

The impact of this case on British law has been recently amplified by several judgments given by the national courts, with great importance for the field of employment law, in particular for matters regarding working time. These judgments conformed to the CJEU's preliminary ruling, according to which employers have the obligation to include any supplementary remuneration and other elements of that nature when calculating the payments made in respect of paid annual leave.

The appellants in the main proceedings were pilots hired by British Airways. The terms of their employment contracts were the result of negotiations between British Airways and the pilots' union, the British Air Line Pilots Association[37]. According to those terms, the pilots' remuneration consisted of three elements: a fixed annual sum and two types of supplementary payments. One of them depended on the time spent flying, was fully taxable and was calculated at the rate of GBP 10 per planned flying hour. The second type of payment varied according to the time spent away from base, with a rate of GBP 2.73 per hour, and only 18% of it was taxable[38].

Among the conditions agreed upon by the pilots' union and British Airways was the provision that the payment made in respect to paid annual leave was based only on the fixed annual sum[39]. The pilots considered that, according to relevant EU legislation[40], the paid annual leave sum should be calculated based upon their entire remuneration, including the two types of supplementary payments. The Employment Tribunal and the Employment Appeal Tribunal found in favour of the appellants, but the Court of Appeal found in favour of British Airways, adopting the view that only the fixed annual sum should be considered remuneration[41]. The case was brought before the Supreme Court of the United Kingdom, who, in doubt over the meaning of "paid annual leave" and the extent to which Member States could impose "conditions for entitlement to, and granting of, such leave", decided to stay the proceedings and to refer several questions to the CJEU for a preliminary ruling.

According to the Court in Luxembourg, the article that the pilots based their claims on must be interpreted to mean that "every worker is entitled to paid annual leave of at least four weeks and that that right to paid annual leave must be regarded as a particularly important principle of Community social law"[42]. Furthermore, the right to paid annual leave is consecrated by the Charter of Fundamental Rights of the European Union, in Art. 31 par. (2). The notion of "paid annual leave" should be interpreted to mean that,, during the specified period of time, destined for rest, the workers' remuneration should be maintained at its normal level. The objective is to ensure that the workers' financial position is, during such leave, comparable to their usual one, so that quality of life is not affected during the rest period: "an allowance, the amount of which is just sufficient to ensure that there is no serious risk that the worker will not take his leave, will not satisfy the requirements of EU law". To that end, "where the remuneration received by the worker is composed of several components, the determination of that normal remuneration and, consequently, of the amount to which that worker is entitled during his annual leave requires a specific analysis"[43]. It is solely the national court's prerogative to determine which of the various elements that compose a worker's remuneration must be taken into consideration in a specific case.

Regarding the instant case, the CJEU considered that the supplementary payment corresponding to the time spent in flight should be included when calculating

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[34] *Ibidem*, para. 38, 50 and 56 and operative part 1.

[35] *Ibidem*, para. 58 and operative part 2.

[36] Judgment of the Court of 15 September 2011, *Williams and Others v./ British Airways plc.*, C-155/10, ECLI:EU:C:2011:588.

[37] *Ibidem*, para. 7.

[38] *Ibidem*, para. 8.

[39] *Ibidem*, para. 10.

[40] Art. 7 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; Clause 3 of the Agreement annexed to 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.

[41] Judgment of the Court of 15 September 2011, *Williams and Others v./ British Airways plc.*, C-155/10, ECLI:EU:C:2011:588, para. 11 and 12.

[42] *Ibidem*, para. 17.

[43] *Ibidem*, para. 19-22.

the sum corresponding to the paid annual leave[44]. Moreover, all components "which relate to the personal and professional status of an airline pilot must be maintained during that worker's paid annual leave"[45].

The Court also underlined the fact that entitlement to an annual leave and to receiving a payment for the duration of it represent two aspects of a single right. EU law does not prohibit Member States from granting workers a superior level of protection in comparison to that guaranteed by the EU, which represents a minimum standard.

In closing, the ruling provides that the dispositions which had been referred to the Court for interpretation mean "that an airline pilot is entitled, during his annual leave, not only to the maintenance of his basic salary, but also, first, to all the components intrinsically linked to the performance of the tasks which he is required to carry out under his contract of employment and in respect of which a monetary amount, included in the calculation of his total remuneration, is provided and, second, to all the elements relating to his personal and professional status as an airline pilot"[46].

3. Conclusions

The judgements we have summarily presented are just a few of those pronounced in cases that the UK has submitted to the CJEU for a preliminary ruling. The importance of national courts cooperating with the Union's jurisdiction can be seen in the effects these rulings have on internal law and on the evolution of EU legislation and integration.

The UK has a long and rich history in the EU, having played a crucial part in establishing many of its policies, even as it eschewed others it considered detrimental to British interests. As a consequence of this position toward the EU, involved and sceptical at the same time, the UK's national courts have frequently referred preliminary questions and submitted observations to the CJEU in order to ensure that they applied EU law as conveniently as possible for the state. These questions and the rulings that the Court of Justice pronounced in answer to them have been an important contribution to the continuous effort of clarifying, improving and shaping EU law.

In the future, the absence of a country preoccupied with safeguarding its national interests could actually prove disadvantageous, leading to a decrease in referred questions and observations and, consequently, of important rulings of the CJEU, that are essential in maintaining the adaptability of EU law and in furthering the integration process.

It is advisable to continue focusing on the essential relationship between the CJEU and the Members States, and encourage the latter's contribution, through the preliminary ruling procedure, to the development of EU law – by increasing the participation of each individual Member, the risk of losing important contributions and slowing the process of integration as a consequence of a state departing from the European Union is lessened.

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- Judgment of the Court of 17 July 2008, *S. Coleman v./ Attridge Law and Steve Law*, C-303/06, ECLI:EU:C:2008:415
- Judgment of the Court of 15 September 2011, *Williams and Others v./ British Airways plc.*, C-155/10, ECLI:EU:C:2011:588
- Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation

[44] *Ibidem*, para. 24.
[45] *Ibidem*, para. 28.
[46] *Ibidem*, para. 31 and operative part.

- 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
- 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
- Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.
- Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation
- https://www.gov.uk/family-permit/surinder-singh, accessed on 10 March 2018