Annales de la Faculté de Droit d'Istanbul, 76: 113–145

DOI: 10.26650/annales.2025.76.0005
http://annales.istanbul.edu.tr/

Annales de la Faculté de Droit d'Istanbul

RESEARCH ARTICLE

Submitted: 19.11.2024
Revision Requested: 07.01.2025
Last Revision Received: 15.01.2025
Accepted: 06.03.2025
Published Online: 23.05.2025

Re-thinking Part-Time Employment Contracts under Turkish Law within the context of Divisible Monetary Benefits and Especially Concerning Remuneration for Additional Hours considering the Court of Justice of the European Union's Case Law

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Abstract

This study examines the treatment differences between part-time and full-time employees in Turkish labour law, focusing on divisible and indivisible benefits and additional working hours. It highlights the Turkish Labour Code's Article 13, which mandates pro rata temporis, requiring that divisible monetary benefits be calculated proportionally to hours worked. The paper argues that the views put forward in the doctrine regarding indivisible benefits, which suggest that solutions should be reached based on the purpose of granting indivisible benefits, should also apply to divisible monetary benefits. Given the law's broad regulation concerning divisible benefits, it is stated that this regulation should be limited through teleological interpretation and that divisible monetary benefits that are independent of working hours should also be provided fully to part-time employees, rather than proportionally. This paper also highlights the discrepancy in premium rates for hours that exceed normal working hours. It argues that this difference lacks a legitimate basis. Drawing on recent rulings by the Court of Justice of the European Union, it proposes revising Turkish labour laws to align more closely with EU principles and ensure that part-time employees receive fair compensation and benefits without facing systematic disadvantages due to their employment contract type.

Keywords

Part-Time, Overtime, Additional hours, Divisible benefits

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To cite this article: Karademir A, "Re-thinking Part-Time Employment Contracts under Turkish Law within the context of Divisible Monetary Benefits and Especially Concerning Remuneration for Additional Hours considering the Court of Justice of the European Union's Case Law", (2025) 76 Annales de la Faculté de Droit d'Istanbul 113. https://doi.org/10.26650/annales.2025.76.0005

I. Introduction

The Court of Justice of the European Union (CJEU) made a significant decision on October 19, 2023[1], that directly affected employees working under part-time employment contracts. This decision pertains to the principle of non-discrimination between part-time and full-time employees and the principle of pro rata temporis. The CJEU interpreted the imposition of the same working hours required to qualify for additional compensation for overtime as unfavourable treatment towards part-time employees compared to full-time employees. The CJEU reaffirmed this stance in another decision in 2024[2].

In Turkish law, the principles of non-discrimination and pro rata temporis related to part-time employment contracts were developed with the European Union's regulatory framework in mind. While Turkish law prohibits 'different treatment', its objective is to prevent part-time employees from being disadvantaged simply because of the nature of their contract compared to their full-time counterparts. Although the above-mentioned decisions do not have a direct impact on Turkish labour law, they should still influence it, since, as in the cases addressed by the CJEU, it would be beneficial to explore new, more equitable approaches to compensation for extra hours for part-time employees that do not result in unfavourable treatment.

Additionally, while Turkish Labour Code[3] specifies that divisible monetary benefits must be paid in proportion to the employee's working hours, it does not address the distribution of non-divisible benefits[4]. In determining whether indivisible benefits should be provided fully or proportionally to the working hours of an employee working under a part-time employment contract, some authors contend that consideration should be given to the purpose of granting these indivisible benefits[5]. It is also worth examining whether this view put forward in the doctrine can be applied to divisible monetary benefits as well. Given that the provision in the law regarding

1 Case C-660/20 *MK v Lufthansa CityLine GmbH* [2023] ECLI:EU:C:2023:789.

2 See joined cases C-184/22 and C-185/22 *IK and CM v KfH Kuratorium für Dialyse und Nierentransplantation e. V.* [2024] ECLI:EU:C:2024:637.

3 Code Number 4857 dated 22.05.2003 (OG 10.06.2003/25134).

4 Nuri Çelik, Nurşen Caniklioğlu, Talat Canbolat and Ercüment Özkaraca, *İş Hukuku Dersleri* (36th edn, Beta 2023) 213.

5 Nurşen Caniklioğlu, 'İş Kanununun 10. Yılında Belirli Süreli İş Sözleşmesi ile Kısmi Süreli İş Sözleşmesi ve Uygulamada Yaşanan Sorunlar' in Ali Cengiz Köseoğlu (ed), 10. Yılında 4857 Sayılı İş Kanunu (Uygulama Sorunları ve Çözüm Önerileri) Sempozyumu (Ankara Yıldırım Beyazıt Üniversitesi Hukuk Fakültesi 2016) 200; Gülsevil Alpagut, 'Belirli ve Kısmi Süreli İş Sözleşmelerinde Ayırım Yasağı ve Oransallık İlkesi' in Talat Canbolat (ed), Prof. Dr. Ali Güzel'e Armağan Cilt I (Beta 2010) 25, 38; Hamdi Mollamahmutoğlu, Muhittin Astarlı and Ulaş Baysal, *İş Hukuku* (7th edn, Lykeion 2022) 742. Cf. Ömer Ekmekçi and Esra Yiğit, *Bireysel İş Hukuku* (On İki Levha 2024) 77. The authors state that 'the application of indivisible benefits to part-time employees is at the employer's discretion and is not a legal requirement. For instance, an employer may choose not to provide foreign language training to part-time workers. In such cases, the employee cannot claim partial access to this benefit based on their working hours." See and cf. Sarper Süzek and Süleyman Başterzi, *İş Hukuku* (Beta 2024) 279. The authors state that 'as a rule, part-time employees benefit from non-monetary benefits without discrimination.' Also see and cf. Ahmet Sevimli, *4857 Sayılı İş Kanununda Düzenlenen Kısmi Süreli İş Sözleşmeleri* (Beta 2019) 69. The author states that 'an employee's exclusion from a training program provided by the employer aimed at enhancing skills and abilities solely due to the part-time nature of their contract would violate the principle of prohibition of discrimination set forth in the Code.'

proportional payments of monetary benefits lacks specific limitations, it may result in unfair outcomes. Therefore, it is necessary to discuss whether there is an implicit gap in the law that might justify a teleological interpretation to prevent part-time employees from being disadvantaged merely due to their employment contract type.

II. Overview of the European Union Law on Extra Hours

A. In General

In European Union law, the concept of working hours is closely linked to employee health and safety. Accordingly, similar to Turkish law, EU regulations impose various limits on overtime. Directive 2003/88/EC[6], which provides fundamental rules on working and rest periods, restricts overtime although it does not define overtime work per se. The European Foundation for the Improvement of Living and Working Conditions ('Eurofound') defines overtime as work conducted beyond the employee's regular working hours, at the request and with the consent of the employer, outside the standard weekly working hours and for which the employee is entitled to compensation[7].

There is no uniform approach within EU member states regarding the compensation for work exceeding normal hours. For instance, overtime is either compensated financially or by time off in Croatia and Romania, while in Estonia, overtime compensation is only provided in monetary terms[8]. According to Eurofound's 2022 Report, the general practice is a 50% premium on regular hourly wages for overtime. However, in Germany, Ireland and the Netherlands, there is no statutory requirement for overtime pay, although collective or individual agreements may contain such provisions[9].

Austrian law differentiates between additional hours and overtime. The Working Hours Act[10] ('AZG') sets the regular daily working hours at 8 h and the weekly working

6 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 [2003] OJ L 299.

7 European Foundation for the Improvement of Living and Working Conditions, *Overtime in Europe: Regulation and practice, Publications Office of the European Union* (Publications Office of the European Union 2022) 1.

8 Ibid 7.

9 Ibid 7. It should be noted that under German law, according to 612 Paragraph 1 of the German Civil Code (BGB), if there is no specific provision in a collective or individual agreement, it is assumed that remuneration for work exceeding the regular working hours is implicitly agreed upon, provided that the employee has a legitimate expectation of being entitled to such remuneration. According to the German Federal Labour Court, 'the legitimate expectation required under 612 Paragraph 1 BGB exists in most areas of working life. However, there is no general rule that those in senior positions have a legitimate expectation of being compensated for overtime work. The expectation of remuneration is always determined by an objective standard, taking into account social norms, the nature, scope, and duration of the work, as well as the relationship between the parties, while disregarding the personal views of the parties. This expectation can particularly be inferred from collective agreements in the relevant sector that foresee overtime pay for similar work. The obligation to provide evidence and bear the burden of proof regarding the existence of an expectation of remuneration lies, according to general principles, with the person claiming compensation' (BAG 5 AZR 406/10, 17.08.2011).

10 For the full text of the relevant Act, see <https://www.ris.bka.gv.at> accessed November 11, 2024. For further reading on

hours at 40 h. Article 6 of the Act defines the concept of overtime, stipulating that overtime, *inter alia*, occurs when the standard weekly working hours are exceeded. In cases of overtime, employees are entitled to a 50% wage premium on the hourly rate. The general rule is that this amount is paid if not agreed otherwise in a collective or enterprise agreement (AZG Art. 10/2). On the contrary, the law specifies that part-time employees who exceed their agreed working hours receive a 25% premium on the hourly rate (AZG 19d/3), and they also have the right to additional time off in exchange for additional hours (AZG 19d/3b).

In Finnish law, a tiered wage system is also in place for extra working hours. Article 16 of the Finnish Working Hours Act[11] addresses overtime and additional hours separately. Similar to Turkish law, this regulation specifies that additional hours apply when the agreed working hours are set below the standard weekly working hours of 40 hours, covering up to 40 hours per week. Under Article 20/1, this compensation must be calculated on the basis of the employee's basic wage rate. The second paragraph, however, pertains to overtime pay and stipulates that, unlike additional hours, overtime should be paid at a premium rate. For the first 2 h exceeding the normal daily working hours (8 hours), the wage is paid at a 50% premium on the hourly rate. For hours beyond these first two, the hourly wage is increased by 100%. For weekly overtime, a 50% premium is applied. As observed, Finnish law differentiates between additional hours and overtime, favouring an increase in compensation for full-time employees.

As noted above, German law regulates the payment for extra working hours either through individual or collective agreements. As in Austria and Finland, different wage policies had been followed for workers with varied working hours in Germany as well. So much so that the Court of Justice of the European Union made particularly insightful assessments on two German disputes in 2023 and 2024 regarding differing wage policies applied to extra hours.

We present below the summaries of these decisions and the possible outcomes they may create. However, before addressing the explanations related to these decisions, it would be beneficial to outline the Court of Justice of the European Union's approach to equality claims of part-time employees in comparison to full-time employees, particularly in the context of compensation for work exceeding the regular working hours.

work beyond normal hours by employees working under part-time employment contracts under the Austrian law, see also Sascha Obrecht, 'Final Call für Lufthansa CityLine – Diskriminierung Teilzeitbeschäftigter bei Überstundenzuschlägen' (2024) 5 Das Recht der Arbeit 431, 436; Alpay Hekimler, 'Avusturya'da Kısmi Süreli Çalışma İle İlgili Yasal Düzenlemeler ve Uygulamaları' in Kübra Doğan Yenisey (ed), Prof. Dr. Savaş Taşkent'e Armağan (On İki Levha 2019) 143 ff.

11 For the full text of the relevant Act, see <https://www.finlex.fi/en/laki/kaannokset/2019/en20190872> accessed November 11, 2024.

B. Evolution of the Court of Justice of the European Union's Case Law with respect to Pay Equality Between Part-Time and Full-Time Employees

1. Previous Case Law

Over the years, the CJEU has had opportunities to assess the equality claims of part-time employees vis-à-vis full-time employees in various cases brought before it. The CJEU's Helmig and Others decision in 1994[12] is notable in this regard.

On the other hand, it should be noted that the CJEU had issued rulings on allegations of inequality in compensation for working hours between part-time and full-time employees even before the Helmig and Others decision. Indeed, the CJEU's Jenkins decision in 1981[13] can be cited as an example of this. What distinguishes the Helmig and Others decision from the perspective of the CJEU's previous practice is the difference in the methodology applied in this case. Therefore, to present the development in the CJEU's approach, it would be useful to briefly mention the Jenkins decision before discussing the Helmig and Others decision in detail.

In the case of Jenkins, the specific issue was the fact that Mrs. Jenkins, a part-time employee, received an hourly wage lower than that of full-time employees, which was evaluated in the context of indirect discrimination against women. According to the CJEU's opinion, if the hourly pay rate varies between part-time and full-time work, it is up to the national courts to determine on a case-by-case basis, taking into account the case specifics, its background, and the employer's intent, whether a pay structure actually constitutes gender-based discrimination[14].

The first decision in which the CJEU investigated whether there was a 'different treatment' before addressing the part-time employee's claims in the context of discrimination against women was the Helmig and Others decision. In this ruling, the CJEU determined that part-time employees were not subjected to unfavourable treatment. The decision stated that these employees received the same total pay as the full-time employees for the same number of hours. The fact that part-time employees did not receive overtime pay until they reached the same working hours as full-time employees was not deemed by the CJEU to constitute discriminatory treatment at that time[15]. The principle, in this case, is that each hour worked should be compensated

12 Joined cases C-399/92, C-409/92, C-425/92, C-34/93, C-50/93 and C-78/93 *Stadt Lengerich v Angelika Helmig and Waltraud Schmidt v Deutsche Angestellten-Krankenkasse and Elke Herzog v Arbeiter-Samariter-Bund Landverband Hamburg eV and Dagmar Lange v Bundesknappschaft Bochum and Angelika Kussfeld v Firma Detlef Bogdol GmbH and Ursula Ludewig v Kreis Segeberg* [1994] ECLI:EU:C:1994:415.

13 Case 96/80 *J.P. Jenkins v Kingsgate (Clothing Productions) Ltd.* [1981] ECLI:EU:C:1981:80.

14 Ibid para. 14.

15 Joined cases C-399/92, C-409/92, C-425/92, C-34/93, C-50/93 and C-78/93 *Stadt Lengerich v Angelika Helmig and Waltraud Schmidt v Deutsche Angestellten-Krankenkasse and Elke Herzog v Arbeiter-Samariter-Bund Landverband Hamburg eV and Dagmar Lange v Bundesknappschaft Bochum and Angelika Kussfeld v Firma Detlef Bogdol GmbH and Ursula Ludewig v Kreis Segeberg* [1994] ECLI:EU:C:1994:415, paras. 29, 31. See also Obrecht (n 10) 434.

consistently. Thus, the 19th hour of work for an employee contracted to work 18 hours should be paid the same as the 19th hour for an employee contracted for 40 hours. Failing this, employees might argue that they are being discriminated against. This approach, assuming a uniformity of hours regardless of the conditions under which the employees worked, ultimately led the CJEU to decide that the claimants had no grounds for a claim under the rules covering the prohibition of non-discrimination[16].

Setting aside positive or negative criticisms regarding the outcome of the decision, this ruling sparked the initial discussions on the relationship between the remuneration of working hours for part-time employees and the principle of equality. With the Helmig and Others decision, the CJEU introduced a significant novelty and adopted a method of analysis characterised as the 'double test[17].' Accordingly, it should first be examined whether the application of a single triggering threshold for overtime compensation constitutes differential treatment. Then, it should be determined whether this application results in indirect discrimination[18].

In its decision in Elsner-Lakeberg in 2004[19], the CJEU diverged from the Helmig and Others decision by adopting the view that each component of compensation should be evaluated separately rather than through an overall assessment. In the Elsner-Lakeberg case, Mrs. Elsner Lakeberg was a part-time teacher. Her working hours were 15 hours per week and 60 hours per month. For full-time teachers, the weekly working time was 24.5 hours and the monthly working time was 98 hours. Mrs. Elsner Lakeberg requested compensation for the 2.5 hours of overtime she worked within the month, but her request was denied. According to the regulation applicable to her situation, overtime that did not exceed 3 hours per month was not compensated[20]. Although the CJEU acknowledged that overtime compensation was calculated the same way for part-time and full-time employees, it concluded that applying the same 3-hour limit to everyone constituted unfavourable treatment for part-time employees. The reason is that 3 hours of overtime corresponded to 3% of the monthly working time for a full-time employee but 5% for a part-time employee. Therefore, applying the same overtime threshold (3 hours) to everyone placed a greater burden on part-time employees[21].

16 Barry Fitzpatrick, Docksey Christopher and Rikki Holtmaat, 'Overtime Payments for Part-time Workers: Joined Cases C-399/92, C-409/92, C-425/92, C-34/93, C-50/93 and C-78/93, Angelika Helmig v Stadt Lengerig and others [1995] IRLR 216 (ECJ)', (1995) Industrial Law Journal 24(4) 387, 391.

17 Ibid 389.

18 Joined cases C-399/92, C-409/92, C-425/92, C-34/93, C-50/93 and C-78/93 *Stadt Lengerich v Angelika Helmig and Waltraud Schmidt v Deutsche Angestellten-Krankenkasse and Elke Herzog v Arbeiter-Samariter-Bund Landverband Hamburg eV and Dagmar Lange v Bundesknappschaft Bochum and Angelika Kussfeld v Firma Detlef Bogdol GmbH and Ursula Ludewig v Kreis Segeberg* [1994] ECLI:EU:C:1994:415, para. 23.

19 Case C-285/02 *Edeltraud Elsner-Lakeberg v Land Nordrhein-Westfalen* [2004] ECLI:EU:C:2004:320.

20 Ibid. paras. 6, 7, and 8.

21 Ibid para. 17.

2. Recent Decisions of the Court of Justice of the European Union

a. MK v Lufthansa CityLine GmbH

The Court of Justice of the European Union issued a significant decision directly affecting employees working under part-time employment contracts on October 19, 2023. In this decision, the CJEU took a clear stance on the application of the principles of non-discrimination and pro rata temporis. The case at issue originated from a dispute in German judicial practice. In the specific case, the claimant had been working as a pilot for the Lufthansa CityLine airline since 2001, and from 2010, the claimant's working hours, under a part-time employment contract, corresponded to 90% of a full-time pilot's working hours. According to the agreement between the parties, the claimant's wages were reduced by 10%, but the claimant was granted an additional 37 days of leave per year[22].

The disputed provisions in the case were found in the collective agreement to which the defendant airline was a party. Under this collective agreement, overtime pay ('additional pay') increases incrementally according to various flight hours. Generally, under the section titled 'Compensation for Additional Flight Duty Hours' in the collective agreement, overtime pay was set at 1/100 of the basic wage starting from the 106th monthly flight duty hour, 1/85 from the 121st flight duty hour, and 1/73 from the 136th flight duty hour. For long-haul flights, however, lower thresholds of 93, 106, and 120 flight duty hours were set to qualify for additional pay. The CJEU referred to the flight duty hours required to qualify for overtime pay, as set in the collective agreement, as 'trigger thresholds[23].'

The claimant argued that he should be entitled to overtime pay once he exceeded a reduced trigger threshold proportional to his part-time hours. According to the claimant, the part-time nature of his employment contract placed him in a worse position than a full-time employee, disregarding the principle of pro rata temporis, with no valid justification for this different treatment[24].

The claimant requested that the employer pay the wage differential resulting from the proportionally reduced trigger thresholds according to his part-time working hours. The trial court ruled in favour of the claimant, but upon appeal, the State Labour Court dismissed the case. During the appeal review, the German Federal Labour Court referred the matter to the Court of Justice of the European Union, asking whether failing to proportionally reduce the trigger thresholds based on the claimant's working hours was consistent with the provisions of the Framework Agreement[25]. Essentially, the Federal Labour Court's

22 Case C-660/20 *MK v Lufthansa CityLine GmbH* [2023] ECLI:EU:C:2023:789, para. 14.

23 Ibid. paras. 15, 16.

24 Ibid para. 19.

25 Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by

question was as follows: If a national law permits overtime pay to be contingent on the same working hour thresholds for both part-time and full-time employees, does this constitute less favourable treatment of part-time employees compared to their full-time counterparts under Article 4.1 of the Framework Agreement[26]?

The CJEU first determined that the claimant already qualified for a certain payment when exceeding the stipulated working hours, but this payment was based only on the basic wage. Thus, he was not entitled to the 'additional' (overtime) pay from the first hour of exceeding his assigned working hours. In this situation, the core of the dispute was not whether a part-time employee should receive compensation for hours exceeding their stipulated working hours but rather whether the employee should qualify for the 'additional' pay specified in the collective agreement[27]. In other words, it centred on whether the high trigger thresholds set for full-time pilots should be proportionally reduced based on the working hours of the claimant pilot.

The CJEU rightly emphasised that a pilot working under a part-time employment contract must complete as many flight duty hours as a full-time pilot to qualify for additional pay, and these thresholds were not proportionally reduced according to his individual working hours. Under these conditions, the CJEU found that part-time pilots were unlikely to reach the trigger thresholds necessary to qualify for additional pay or would do so far less frequently than their full-time counterparts. Although the hourly pay rate for both pilot categories appeared equal up to the trigger thresholds, these thresholds represented a longer flight duty for part-time pilots and, therefore, a greater burden than for full-time pilots. Since part-time employees would rarely meet the conditions to qualify for additional pay, the claimant was subject to unfavourable treatment, violating Article 4.1 of the Framework Agreement[28].

The CJEU also evaluated whether this disparity in the trigger thresholds could be justified. Some of the compelling reasons highlighted in the judgement included that equalising the trigger thresholds for both categories of pilots ignored the potential extra burdens outside of work associated with part-time employment[29]. Moreover, implementing a single trigger threshold instead of establishing adjusted thresholds according to employment type would conflict with the airline's goal of deterring excessive working hours among pilots[30]. Consequently, the CJEU held that setting the same trigger thresholds for part-time and full-time employees constitutes unfavourable treatment.

UNICE, CEEP and the ETUC [1998] OJ L 014.

26 Case C-660/20 *MK v Lufthansa CityLine GmbH* [2023] ECLI:EU:C:2023:789, para. 29.

27 Jacob Joussen, 'Die nächste Etappe zur Mehrarbeitsvergütung bei Teilzeitbeschäftigung - Anmerkung zu EuGH, Urteil vom 19.10.2023 – C-660/20 (MK/Lufthansa CityLine)' (2024) 2 Recht der Arbeit 118, 119.

28 Case C-660/20 *MK v Lufthansa CityLine GmbH* [2023] ECLI:EU:C:2023:789, para. 47.

29 Ibid para. 63.

30 Ibid para. 65.

b. IK and CM v KfH Kuratorium für Dialyse und Nierentransplantation e. V.

The CJEU maintained the principles and reasoning it adopted in 2023 in another decision it issued in 2024. The case in the Court of Justice of the European Union's decision of July 29, 2024, also stemmed from a dispute that arose within German judicial practice. In this case, the defendant employer was a company providing dialysis services. The claimants, who were employed as care assistants under part-time employment contracts with the defendant, argued that the provision in the collective agreement requiring them to exceed the trigger thresholds applied to full-time care assistants to qualify for additional pay was unlawful. The claimants requested that the time off granted in exchange for the additional hours worked be calculated based on the specific structure of their own (part-time) employment contracts. In other words, the claimants sought redress for the adverse treatment resulting from the application of the overtime scheme for full-time care assistants to them (without any proportional adjustment)[31].

In its 2024 decision, the CJEU repeated the principles established in the Lufthansa CityLine decision. Accordingly, for part-time care assistants, like the claimants, if the working hours that qualify them for additional pay are not proportionally reduced in line with the individually agreed working hours in their contracts, it should be concluded that they are subject to 'less favourable' treatment compared to full-time employees under Article 4.1 of the Framework Agreement. The primary grounds the CJEU used to reach this conclusion were, again, that part-time employees must bear a greater burden to qualify for additional pay and that setting a uniform overtime threshold conflicts with the purpose of deterring excessive working hours[32].

Another reason the CJEU cited for finding that the part-time care assistants in this case were subject to adverse treatment was the risk of exploitation of flexible working arrangements. According to the decision, exceeding the part-time working hours agreed upon by the parties imposes a lower financial burden on the employer than exceeding the working hours of a full-time employee, as these additional hours do not incur a premium payment in this case. This arrangement actually encourages employers to impose overtime on employees with part-time contracts rather than on those with full-time contracts[33].

Another important issue discussed in the CJEU's ruling was whether setting a reduced overtime threshold specifically for part-time employees could be considered unfair to full-time employees. In other words, the question to be answered was

31 See joined cases C-184/22 and C-185/22 *IK and CM v KfH Kuratorium für Dialyse und Nierentransplantation e. V.* [2024] ECLI:EU:C:2024:637, paras. 20, 21.

32 Ibid. paras. 40, 41, 50.

33 Ibid para. 49.

whether allowing part-time employees to qualify for additional pay from the first hour they exceed the working hours set in their contracts, similar to full-time employees, would constitute adverse treatment towards full-time employees. The CJEU's answer to this question was negative. According to the decision, this assumption is incorrect, as, in this case, full-time employees, in terms of overtime, would be treated in the same way as part-time employees based on the principle of pro rata temporis[34]. In summary, the CJEU stated that, in this scenario, there was no injustice against full-time employees and that they were not subject to discriminatory treatment.

3. Repercussions of Recent Decisions of the Court of Justice of the European Union

The *Lufthansa CityLine* decision is likely to significantly influence the issue of objective justifications for less favourable treatment of part-time employees regarding overtime pay. Indeed, according to a scholarly opinion, this case marks the first time the CJEU has taken a clear position on the question of objective justification for less favourable treatment, so much so it is seen as 'surprising' considering its depth of analysis[35].

Note that the CJEU's recent decisions have had repercussions in German law on both the collective and individual labour law levels. It has been argued that the abovementioned decisions undermine the autonomy of the social partners in collective labour law and increasingly create inequality for full-time employees in terms of individual labour law. In contrast, it has also been emphasised that the principle of equality is what precisely as the CJEU put it and the CJEU rightfully paid due consideration to time-off of the part-time employees as a default objective of the legal regime of work beyond regular working hours[36].

Similarly, a view that positively assesses the CJEU's decisions suggests that the tiered wage policy established for working hours, as mentioned above, needs to be re-evaluated in Austrian law as well and the Austrian Supreme Court of Justice needs to reconsider its approach with respect to making reference to the Helmig decision when adjudicating on the remuneration of work beyond normal hours[37].

34 Ibid para. 51.

35 Eva Kocher, 'A first step to clarity: Review of ECJ judgement of 19 October 2023, C-660/20 (MK vs Lufthansa CityLine GmbH), ECLI:EU:C:2023:789' (2024) 15(2) European Labour Law Journal 368, 374. See also François Biltgen, 'Sieben Jahrzehnte europäische Einigung und Bundesarbeitsgericht' (2024) 5 Recht der Arbeit 257, 270. The author states that the background to this case involved, on the one hand, the possibility of contradictory case law from the CJEU and, on the other hand, an intense legal debate in Germany. Since a decision in 2018, the Federal Labour Court has held the view that different remuneration constitutes discrimination. However, other courts and a portion of the German legal literature had expressed doubts about this stance. See also, Dieter Krimphove, 'Die Arbeitsrechlitche Rechtsprechung des EuGH im Jahre 2023' (2024) 1 Arbeitsrecht Aktuell 1, 5. According to the author, the Lufthansa CityLine decision has an 'enduring relevance'.

36 For supporting views and criticisms, see Kocher (n 35) 374-375.

37 Obrecht (n 10) 439. See also, OGH 8 ObA 89/11p, 28.06.2012. In the case brought before the Austrian Supreme Court, under the collective agreement in question, part-time employees are not entitled to any payment for the first two hours

All in all, the Court of Justice of the European Union's decisions in 2023 and 2024 are significant for shifting the focus from formal equality to substantive equality (or 'contextual approach') between part-time and full-time employees and for solidifying this approach in its rulings. Indeed, while formal equality is based on the principle that similar cases should be treated in the same way, focusing on impartiality by ensuring equal treatment in comparable situations or different treatment in non-comparable ones and thus remaining passive and fixed in relation to the context of the comparison, substantive equality, however, actively seeks to alter the context to foster more equitable outcomes, incorporating social dimensions[38] and adding to the equation the notion of 'effect' the relevant treatment has on a particular group of people[39], which in fact, was what the CJEU considered by taking into account the potential non-work-related burdens faced by part-time employees.

Lastly, it is natural for the recent decisions of the CJEU to have implications for Turkish law as well. These decisions have created an opportunity to re-evaluate the principles adopted in the law, particularly regarding the compensation of work beyond regular working hours. Therefore, it would be beneficial to outline the legal regime concerning part-time employment contracts in Turkish Law, particularly in the context of rules, scholarly opinions and their applications that may lead to claims of different or less favourable treatment for part-time employees.

III. Part-Time Employment Contracts in Turkish Law

A. In General

In Turkish law, the legal framework for part-time employment contracts was first established by Labour Code No. 4857 as a product of the need for flexibility in working life[40]. During Labour Code No. 1475[41], there had been no provision regulating part-

exceeding their contractually agreed working hours. However, once the initial two-hour period is exceeded, they are entitled to an additional payment of 25% of the hourly wage for each subsequent additional hour. In contrast, full-time employees are entitled to a 50% increase over the hourly wage for each overtime hour. The applicant argues that part-time employees should also be entitled to a 50% increase over the hourly wage for each hour exceeding their individually agreed weekly working hours, just like full-time employees. According to the applicant, this is because part-time employees often bear greater burdens due to responsibilities such as childcare, caregiving, or taking on a second part-time job to meet their economic needs. The Austrian Supreme Court, however, referred to the CJEU's decision in *Helmig*. According to the ruling, 'if the remuneration paid to full-time employees for the same work and the same number of hours is higher than that paid to part-time employees, [only then] an inequality exists. This means that part-time employees must not receive lower pay than full-time employees for the same number of hours worked. In this context, there is no discrimination against part-time employees as claimed by the applicant.

38 Marc de Vos, 'The European Court of Justice and the March Towards Substantive Equality in European Union Anti-Discrimination Law' (2020) International Journal of Discrimination and the Law 20(1) 62, 63-64.

39 Rikki Holtmaat, 'The Issue of Overtime Payments for Part-Time Workers in the Helmig Case - Some Thoughts on Equality and Gender' in Yota Kravaritou (ed), The Regulation of Working Time in the European Union: Gender Approach (Peter Lang 1999) 422 ff.

40 Can Tuncay, 'Brief History and Flexibilisation Efforts of Turkish Labour Law' (2013) 15(Özel Sayı) Dokuz Eylül Üniversitesi Hukuk Fakültesi Dergisi 341, 355; Süzek and Başterzi (n 5) 276; Miraç Şamil Pekşen, 'Kısmi Süreli İş Sözleşmesiyle Çalışanların Hafta Tatili Hakkı' (2023) (54) Türkiye Adalet Akademisi Dergisi 339, 342.

41 Code Number 1475 dated 25.08.1971 (OG 01.09.1971/13943).

time employment contracts. However, it should be noted that part-time work has been accepted in doctrine and court rulings during this period as well[42]. On the other hand, the lack of a legal regulation on part-time employment contracts before the enactment of Code No. 4857 led to disputes[43]. In this regard, it was appropriate for Labour Code No. 4857 and the regulations[44] introduced concerning working hours to provide a legal definition for part-time employment contracts and, albeit partially, bring the issue into the legal framework. However, it should also be noted that the legal regime adopted for part-time employment contracts, particularly concerning employee entitlements, lacks adequate comprehensiveness and may still lead to uncertainties on certain significant points[45]. One of these uncertainties pertains to the legal consequences if a part-time employee works beyond the agreed working hours in the contract. Before examining considerations regarding such work, it is beneficial to clarify the concept of a part-time employment contract and reflect on its characteristics.

B. Concept and General Characteristics of Part-Time Employment Contracts

The legal framework for part-time employment contracts is found in Article 13 of the Labour Code and Article 393/2 of the Turkish Code of Obligations[46]. While Article 393/2 of the Turkish Code of Obligations does not define the concept of 'part-time', it specifies that such work is a type of employment contract. According to Article 13 of the Labour Code, if the regular weekly working hours of an employee are significantly less than those of a comparable full-time employee, the contract is a part-time employment contract.

Note that the Turkish Code of Obligations, unlike the Labour Code, does not require the criterion of 'significantly fewer' working hours. In the Maritime Labour Code[47] and the Press Labour Code[48], part-time employment contracts are not regulated. However, because the Turkish Code of Obligations is a general law, part-time employment contracts can be established under these laws without the criterion

42 Şener Akyol, 'İşin Düzenlenmesi Açısından Yargıtay'ın 1975 Yılı Kararlarının Değerlendirilmesi' Yargıtayın İş Hukuku Kararlarının Değerlendirilmesi 1975, (İş Hukuku ve Sosyal Güvenlik Hukuku Türk Milli Komitesi 1976) 34 ff; Tankut Centel, *Kısmi Çalışma* (Kazancı 1992) 26; Mollamahmutoğlu, Astarlı and Baysal (n 5) 426; Caniklioğlu (n 5) 180; Pekşen (n 40) 343.

43 See Emin Zeytinoğlu, 'Kısmi Süreli Fazla Çalışma Şekilleri ve 4857 Sayılı İş Kanunundaki Görünüm' (2004) 62(1-2) 449, 454.

44 See Regulation on Overtime and Work in Excess Hours Related to the Labour Code (OG 06.04.2004/25425). See also the Regulation on Working Hours Related to the Labour Code (OG 06.04.2004/25425).

45 Mollamahmutoğlu, Astarlı and Baysal (n 5) 432; Caniklioğlu (n 5) 180; Pekşen (n 40) 344.

46 Code Number 6098 dated 11.01.2011 (OG 04.02.2011/27836).

47 Code Number 854 dated 20.04.1967 (OG 29.04.1967/12586).

48 Code Number 5953 dated 13.06.1952 (OG 20.06.1952/8140).

of 'significantly less working hours[49].'

The reasoning of Articles 5 and 13 of the Labour Code states that part-time employment contracts were regulated in line with European Union legislation. In EU law, the main legislation regarding part-time employment contracts is Council Directive 97/81/EC[50] and the Framework Agreement[51] on Part-Time Work annexed to the Directive. According to Article 3 of the Framework Agreement, the term "part-time worker" means an employee whose normal working hours, calculated on a weekly basis or on average over a period of employment of up to one year, are less than those of a comparable full-time worker. Similarly, in the definition in the International Labour Organisation's Part-Time Work Convention No. 175, the term "part-time employee" refers to an employee whose normal working hours are agreed to be less than those of a comparable full-time employee. When the international regulations and the provisions of the Turkish Labour Code are compared, it should be stated that the definition introduced by the Turkish Labour Code does not align with international definitions in terms of the 'significantly less' criterion[52].

In Turkish doctrine, it is emphasised that a part-time employment contract consists of three elements[53]. Accordingly, the distinguishing feature of a part-time employment contract is the reduction in working hours. The matter expressed as 'significantly less' in the Labour Code is concretised in Article 6 of the Regulation on Working Hours Related to the Labour Code as work performed up to two-thirds of the comparable work done under a full-time employment contract in the workplace. Second, part-time work is fundamentally a contractual work regime. In other words, work arrangements where the law mandates a reduction in working hours cannot be characterised as part-time employment contracts[54]. This element is also referred to as 'voluntariness[55].' The third element of a part-time employment contract is that such work must be regular and continuous[56].

49 Canikliоğlu (n 5) 185.

50 Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC [1998] OJ L 014.

51 See above (n25).

52 Canikliоğlu (n 5) 182.

53 Ünal Narmanlıoğlu, *İş Hukuku Ferdi İş İlişkileri I* (Beta 2014) 231; Serkan Odaman, *Esneklik Prensibi Çerçevesinde Yargıtay Kararları Işığında Türk İş Hukukunda Çalışma Süreleri ve Yöntemleri* (Legal 2013) 142 ff; Muzaffer Koç and İbrahim Görücü, '4857 Sayılı İş Kanunu'na Göre Kısmi Çalışma Uygulaması ve Sonuçları' (2011) 1(28) Çalışma ve Toplum 149, 151; Sevimli (n 5) 10 ff; Gizem Sarıbay, 'Kısmi Süreli İş Sözleşmeleri' in Mehmet Uçum (ed), Prof. Dr. Devrim Ulucan'a Armağan (Legal 2008) 278 ff; Çiğdem Yorulmaz, *Kısmi Süreli İş Sözleşmesi* (Yetkin 2008) 26 ff.

54 Mollamahmutoğlu, Astarlı and Baysal (n 5) 433; Şahin Çil, *İş Hukukunda İşçinin Ücreti* (Turhan 2010) 173-174; Ömer Uğur, '4857 Sayılı İş Kanununa Göre Kısmi Süreli İş Sözleşmelerinde Ücret' (2021) 6(11) İstanbul Medeniyet Üniversitesi Hukuk Fakültesi Dergisi 97, 103.

55 See Canikliоğlu (n 5) 181.

56 Uğur (n 54) 102.

C. Prohibition of Discrimination

Pursuant to Article 13/2 of the Labour Code, an employee employed under a part-time employment contract may not be subject to different treatment compared to a full-time counterpart solely due to the part-time nature of the employment contract, unless there is a justified reason for such a distinction. Similarly, Article 5 of the Code stipulates that the employer cannot treat a part-time employee differently from a full-time employee without essential grounds. The reasoning behind these provisions is to prevent an employee, who may be seen as less integrated into the workplace due to working fewer hours than a full-time employee, from being subjected to less favourable conditions[57]. If an employee working under a part-time employment contract is subject to different treatment solely because of the contract type, the employee has the right to claim the rights they were deprived of, along with compensation equal to up to four months' salary (Labour Code, Art. 5/6).

The reasoning behind the prohibition of discrimination is expressly provided in Article 4 of the Framework Agreement and Article 4 of ILO Convention No. 175. According to these provisions, employees working under part-time employment contracts should not be subject to 'less favourable' conditions than full-time employees merely because they work part-time. In this regard, it is understood that the primary objective of the prohibition of discrimination (or prohibition of 'differential treatment' as referred to in Article 13 of the Labour Code) is to protect the employee working under a part-time employment contract by preventing 'less favourable' treatments.

When determining whether the employer has violated the prohibition of discrimination, it is not necessary for the employer to have acted with the intent to discriminate. As stated in the Turkish doctrine, the aim of the prohibition is not only to hold the person engaging in discriminatory behaviour accountable but also to prevent discriminatory practices[58]. Indeed, in the Court of Justice of the European Union's decisions mentioned above, it is understood that employers did not act solely with discriminatory intent, as evidenced by their defences, such as 'compensating for workload[59]' or arguing that 'subjecting both part-time and full-time employees to the same trigger thresholds would be unfair to full-time employees[60].' Nevertheless, the CJEU rightly determined that the prohibition of discrimination was violated.

Regarding whether the discrimination is based on a justified reason (or 'substantial' reason, as referred to in Article 5 of the Labour Code), it should be noted that economic

57 Mollamahmutoğlu, Astarlı and Baysal (n 5) 741.

58 Kübra Doğan Yenisey, 'Eşit Davranma İlkesinin Uygulanmasında Metodoloji ve Orantılılık İlkesi' (2005) 2(7) Legal İş Hukuku ve Sosyal Güvenlik Hukuku Dergisi 973, 983; Alpagut (n 5) 30.

59 See Case C-660/20 *MK v Lufthansa CityLine GmbH* [2023] ECLI:EU:C:2023:789, para. 20.

60 See joined cases C-184/22 and C-185/22 *IK and CM v KfH Kuratorium für Dialyse und Nierentransplantation e. V.* [2024] ECLI:EU:C:2024:637, para. 28.

considerations alone do not constitute a justified reason under Turkish law. Similarly, in the CJEU's case law, it is explicitly emphasised that budgetary concerns do not justify discrimination[61]. Additionally, the mere fact that differential treatment is based on a collective agreement alone does not, in itself, constitute a justified reason for discrimination under Turkish law[62]. Similarly, no general, abstract provision of law alone is considered an objective justification for discrimination in the CJEU's case law[63]. According to the CJEU, whether a practice constitutes discrimination can be determined by considering the specific context in which differential treatment occurs, the unique characteristics of the tasks, or the legitimate social policy objectives of a member state. The disparity created among employees must be based on objective and transparent criteria to ensure it meets a real need, is appropriate for the objective, and is necessary for achieving that objective[64].

D. Determining the Comparable Full-Time Employee

Whether part-time employees are subject to discrimination without a justified reason is determined in comparison to the status of a comparable full-time employee. Therefore, identifying the comparable employee is important. According to Article 13/3 of the Labour Code, the comparable employee is an employee who works full-time in the same or a similar job in the workplace. If there is no such employee in the workplace, a full-time employee who performs the same or similar work in a suitable workplace within the same branch of activity is taken as the basis. This provision aligns with the international regulations inspired by Turkish law.

In Turkish doctrine, it is rightly stated that based on the phrase 'in a suitable workplace within the same branch of activity' in Article 13/3 of the Labour Code, not just any activity within that branch should be considered; rather, the closest occupational field within that branch that matches the work performed by the part-time employee should be taken into account. For example, if the petroleum, chemical, rubber, plastic, and pharmaceutical sectors, categorised as sector number 4, are considered, a worker operating in an oil field should not be directly compared to a worker employed in the pharmaceutical sector[65].

61 Case C-660/20 *MK v Lufthansa CityLine GmbH* [2023] ECLI:EU:C:2023:789, para. 66.

62 Alpagut (n 5) 31; Sevimli (n 5) 61; Hakan Balkan, *Bireysel İş Hukuku Açısından Kısmi Süreli İş Sözleşmeleri* (Beta 2021) 173. See also: 'In the event that it is established that the claimant worked on a part-time basis, the provision in Article 6/c of the Collective Agreement, which stipulates that part-time employees are not eligible for these benefits, should be considered invalid, given that the defendant failed to prove a justifiable reason for this provision. Accordingly, it should be accepted that the claimant is entitled to benefit from the provisions of the Collective Agreement in proportion to their working hours' (22nd CC of the Court of Cassation 20568/4851, 04.03.2019 <www.legalbank.net> accessed 23 October 2024).

63 Case C-660/20 *MK v Lufthansa CityLine GmbH* [2023] ECLI:EU:C:2023:789, para. 57.

64 Ibid para. 58.

65 Doğan Yenisey (n 58) 986; Alpagut (n 5) 34; Balkan (n 62) 172.

When determining whether a full-time employee is a comparable employee, it should also be examined whether the work they perform is the same or similar. Although the concepts of the same or similar work form the basis of the principle of equality in EU law,, there is no legal definition of these concepts in the directives related to this principle. However, according to the CJEU's established case law, the term 'same work' is entirely qualitative and focuses solely on the nature of the work actually performed. The assessment of whether employees perform the same work is to be made by the national courts. Evaluating whether employees are in a similar situation requires consideration of various factors, such as the type of work, skills required, effort, responsibilities, training requirements, and working conditions. The fact that employees are classified in the same job category according to their employment contracts or job descriptions alone does not prove that they perform the same or similar work[66].

Similar explanations to those in EU law have been provided in the Turkish doctrine regarding the comparison between the work performed by part-time employees and that of comparable full-time employees. Accordingly, it is stated that the work should be comparable in terms of effort, responsibility, and other requirements, as well as the physical and mental burden it imposes on the employee, its place in the production process, and its market value[67].

In ILO Convention No. 175 and the Framework Agreement, it is also regulated as a criterion for comparison that part-time employees and comparable full-time employees are subject to the same type of employment relationship. The term 'same type of employment relationship' refers to whether both the part-time and full-time employment contracts are, for example, fixed-term or indefinite, continuous or non-continuous, or whether they are based on a temporary employment relationship[68]. It should be noted that this criterion is not explicitly mentioned in the Labour Code. However, since similar working conditions must be observed when determining the comparable employee under Turkish law, it should be accepted that this criterion, recognised in EU law regarding the sameness of employment type, is implicitly included in Turkish law to the extent that it affects the outcome[69].

According to Article 13/3 of the Labour Code, if there is no such employee in the workplace, a full-time employee who performs the same or similar work in a suitable

66 Case C-381/99 *Susanna Brunnhofer v Bank der österreichischen Postsparkasse AG* [2001] ECR I-4961, paras 42, 44, 50; *Case C-243/95, Hill and Stapleton v. Revenue Commissioners* [1998] ECR I-3739, paras 34-35. For further explanations, see also Dilek Dulay Yangın, 'Ulusalüstü Hukukta Eşit Değerde İş İçin Eşit Ücret İlkesi' (2018) 15(59) Legal İş Hukuku ve Sosyal Güvenlik Hukuku Dergisi 829, 848 ff.

67 For the criteria used to determine the comparable employee, see Caniklioğlu (n 5) 171; Alpagut (n 5) 35; Gaye Burcu Yıldız, 'Bireysel İş İlişkisinin Kurulması, Hükümleri ve İşin Düzenlenmesi' Yargıtay'ın İş Hukuku ve Sosyal Güvenlik Hukuku Kararlarının Değerlendirilmesi 2015, (On İki Levha 2016) 151; Sarıbay (n 53); Balkan (n 62) 169.

68 Balkan (n 62) 170.

69 See and cf. ibid. 170.

workplace within the same branch of activity is taken as the basis. Although the working conditions of the comparable full-time employee in the workplace shall be considered when determining whether the prohibition of discrimination has been violated, the absence of such an employee within the workplace poses a significant challenge for the employer of the part-time employee[70]. In fact, national occupational standards can be used when determining whether the work is the same or similar. However, in our opinion, it is nearly impossible for the employer to know details about employees in another workplace within the relevant branch, such as their computer or language skills, years of service, or the value they generate for the workplace. Furthermore, considering that Turkish collective labour law practice is not as widespread as in Germany, expecting the employer to develop an intuition about the sector due to a lack of comparable data would be merely hypothetical. Additionally, it should be noted that the wage inquiry data from the Turkish Statistical Institute lacks sufficient up-to-date information and does not include distinguishing factors or details on various additional payments[71]. In this situation, the legal requirement that the employer should be aware of practices in other workplaces, coupled with the fact that data from these workplaces are not stored by national authorities, leading to a lack of essential information before the trial stage, presents a significant contradiction in a rule-of-law state where predictability of the future and the avoidance of randomness are essential.

The above-mentioned criticisms are also valid in terms of the trial stage. As is well known, in cases where there is a dispute regarding the amount of the wages, national courts reach a conclusion by conducting a benchmark salary analysis with associations or trade unions in the relevant sector[72]. On the other hand, it is not likely for an association, or especially a trade union that has not entered into a collective agreement, to possess a detailed database regarding wage supplements.

E. Principle of the Pro Rata Temporis

1. In General

Under Article 13/2 of the Labour Code, the wages and divisible monetary benefits of a part-time employee shall be paid in proportion to the duration worked compared

70 Caniklioğlu (n 5) 171; Alpagut (n 5) 32.

71 For example, according to the report prepared by the Turkish Statistical Institution ('TURKSTAT') in response to our request on 04.11.2024 from the TURKSTAT Demand Management Information System, 'the average monthly gross wage for November 2022 of salaried employees within the unit group code 5120 - COOKS of the International Standard Classification of Occupations (ISCO-08), based on the 2022 Earnings Structure Statistics results for the search term 'Cook,' is 9,105.91 TL. When updated to October 2024 according to the Consumer Price Index, the value of 9,105.91 in November 2022 becomes 21,219.66 TL.' As can be seen, a 2024 study relies on data from 2022. Moreover, especially for additional benefits such as bonuses or other incentives, which are based on a specific agreement between a full-time comparable employee and the employer, that is, not a mandatory component of the employment contract, there is also no answer as to how such additional benefits should be determined for comparable workers at other workplaces.

72 See Grand General Assembly of Civil Chambers of the Court of Cassation 397/1163, 29.11.2023 <www.lexpera.com.tr> accessed 8 January 2025.

to a full-time employee. Detailed explanations of this principle, known as the principle of pro rata temporis, are found in the reasoning for Article 13 of the Labour Code. According to the reasoning, 'while the aim is to eliminate discrimination against part-time employees, it cannot be expected that they would be put on equal footing with full-time employees for all working conditions; otherwise, a complete inequality would arise. In this respect, if there are justified reasons for differentiation, differences between the two types of contracts should be considered natural … an employee who starts working in the afternoon cannot benefit from the employer's transportation provided for morning shifts or from lunch, and this does not imply discrimination. The part-time employee shall benefit from divisible benefits, such as an annual fuel allowance, in proportion to their working hours. For example, if a full-time employee working 45 hours per week receives an annual fuel allowance of 60 million, the same allowance shall be paid to a part-time employee working 15 hours per week as 20 million. However, in cases of indivisible benefits, when the conditions for entitlement are met, there shall be no difference between the two types of contracts. For example, the notice period in indefinite and part-time employment contracts cannot differ from that of full-time contracts."

In the Turkish doctrine, explanations parallel to the examples provided in the reasoning are also given. Accordingly, the principle of pro rata temporis does not apply in every case. A distinction should be made between the divisible and indivisible benefits[73]. However, aside from the reasoning, while the Code stipulates that divisible monetary benefits are paid proportionally, there is no statutory provision in the Code as to how indivisible benefits shall be distributed.

2. Principle of Pro Rata Temporis Concerning Indivisible Benefits

It was previously mentioned that there is no provision in the Code on the method to be followed regarding indivisible benefits. Some authors express that the purpose of establishing indivisible benefits should be examined first. According to the view suggesting that the purpose of granting indivisible benefits should be considered, it should be examined whether the purpose of granting the indivisible benefit is independent of the employee's working hours. If the purpose of granting this benefit is independent of the employee's working hours, then the principle of pro rata temporis shall not apply, and the benefit shall be granted to the part-time employee in full, as it is for the full-time employee. For example, if a part-time employee makes a purchase from the workplace, they should be entitled to the same discount as full-time employees[74]. As far as we are concerned, the same interpretation can be applied to the private health insurance provided to employees. Although private health insurance

73 Mollamahmutoğlu, Astarlı and Baysal (n 5) 742.

74 Alpagut (n 5) 38 ff; Caniklioğlu (n 5) 200; Mollamahmutoğlu, Astarlı and Baysal (n 5) 742.

has a financial cost for the employer, this additional benefit should be considered independent of working hours and should thus be provided to part-time employees without applying the principle of pro rata temporis[75].

3. Principle of Pro Rata Temporis Concerning Divisible Monetary Benefits

Regarding divisible monetary benefits, some authors are of the view that part-time employees should benefit proportionally from payments such as bonuses and gratuities, as well as social allowances like marriage and birth allowances, benefits such as wage increases for having a child, holiday and leave allowances, and fuel assistance provided to employees in the workplace[76]. Indeed, both Article 13 of the Labour Code and its reasoning clearly indicate that divisible monetary benefits should be paid in proportion to the number of hours worked. Another view in the doctrine, however, rightfully holds that 'the principle of pro rata temporis provides part-time employees with a right to claim entitlements that are adjusted in proportion to their working hours, specifically concerning wages and other divisible benefits. In this context, benefits such as year-end bonuses, jubilee bonuses, birth and death allowances, vacation payments, and profit-sharing can be given as examples. However, particularly when it comes to social benefits, if it is accepted that the purpose of granting these benefits is independent of the working hours, the principle of proportionality does not apply, and the benefit must be provided in full[77]."

In addition, it has been observed in the doctrine that a relationship is established between the length of the working period and the payment. According to a view, 'when it comes to wage supplements, if it is envisaged that the significance of a job will be felt after working for a certain period and that the employee will earn a premium by working for that period, then a part-time employee who has not worked for the stipulated period cannot benefit from the premium according to the principle of pro rata temporis[78].' In our opinion, the issue of whether the length of the working hours can be used as a justification for non-payment was resolved in EU law by the Court of Justice of the European Union's MK v Lufthansa CityLine GmbH decision. Indeed, the CJEU is of the view that the impact of workload on individuals and the

75 For a similar example, see Sarıbay (n 53) 296; Yorulmaz (n 53) 85. The authors rightly state that a part-time employee who arrives at the workplace, for instance, in the afternoon, may not be entitled to transportation assistance. However, if a public transportation card is provided, the employee should fully benefit from this assistance. Cf. Sevimli (n 5) 69. The author points out that, even when they have a monetary value, indivisible benefits such as a suit, shoe, health insurance or a vehicle should be proportionally provided to the part-time employees in terms of their monetary equivalent to the extent that the provision of the full amount of these benefits constitutes a violation of the equality claims of the full-time employees.

76 Çelik, Caniklioğlu, Canbolat and Özkaraca (n 4) 212; Caniklioğlu (n 5) 199; Zeytinoğlu (n 43) 457; Yorulmaz (n 53) 85; Balkan (n 62) 174.

77 Alpagut (n 5) 40. For a supporting view, see Odaman (n 53) 155. The author states that 'part-time employees shall also benefit from employer-provided additional payments (such as bonuses, premiums, child allowances, maternity and marriage benefits, heating allowances, clothing allowances, etc.) to the extent that their characteristics are compatible, just like full-time employees.'

78 Mollamahmutoğlu, Astarlı and Baysal (n 5) 742.

specific pressures exerted by the job should not be overlooked[79]. In other words, the workload may vary for each employee. Consequently, in the CJEU's case law, it is decided that part-time employees should also be paid in accordance with the principle of pro rata temporis.

4. Application of the Principle of Pro Rata Temporis to Divisible Monetary Benefits in the Court of Cassation's Case Law

It is safe to say that the established case law of the Turkish Court of Cassation aligns with the principle of pro rata temporis indicated in Article 13 of the Labour Code and the general acceptance in Turkish doctrine. Accordingly, for example, 'the minimum wage is the minimum wage to be paid to employees in return for normal working hours. Although the employer cannot be required to pay the full minimum wage to a part-time employee, the wage to be paid to the employee for a certain period should not fall below the minimum wage calculated for the same period[80].'

According to another ruling of the high court, 'the wage and divisible monetary benefits of a part-time employee should be paid in proportion to the duration worked compared to a full-time equivalent employee. Given the content of the file and the final ruling in the service determination case, it is accepted that the claimant worked nine hours per week, and thus the monthly wage amount to be paid to the claimant is one-fifth of the minimum wage (9/45 = 1/5)[81].'

Similarly, 'in the specific dispute, the claimant worked part-time for a wage corresponding to 8 days per month. Although the Local Court accepted in its reasoning that the claimant worked 8 days per month, it was incorrect to rule on the wage entitlement based on half the minimum wage rather than the amount corresponding to 8 days[82].'

Again, 'the court should have accepted that the claimant worked part-time for 15 hours per week and calculated the wage entitlements based on the wage for this duration; however, it was incorrect to calculate the entitlements based on a part-time schedule of 30 hours per week[83].'

In the Court of Cassation's case law, the need to calculate the basic wage proportionally based on the duration worked by a part-time employee also applies to wage supplements. Accordingly, 'it has been concluded that the claimant is also

79 Case C-660/20 *MK v Lufthansa CityLine GmbH* [2023] ECLI:EU:C:2023:789, para. 63.

80 Grand General Assembly of Civil Chambers of the Court of Cassation 21-143/159, 12.03.2003 <www.legalbank.net> accessed October 23, 2024. See also Şahin Çil, 'Yargıtay Kararlarına Göre İşçinin Ücreti' (2009) 3(15) Sicil İş Hukuku Dergisi 70, 72.

81 22nd CC of the Court of Cassation 838/25532, 27.11.2018 <www.legalbank.net> accessed October 23, 2024.

82 9th CC of the Court of Cassation 342/8812, 11.04.2016 <www.legalbank.net> accessed October 23, 2024.

83 9th CC of the Court of Cassation 5712/20031, 02.06.2015 <www.legalbank.net> accessed October 23, 2024.

entitled to a premium. However, as the claimant worked part-time, this divisible payment should be awarded proportionally according to the working hours, as required by the legal provision mentioned[84].'

According to another ruling by the Court of Cassation, 'Article 13 of the Labour Code stipulates that there should be no discrimination between part-time and full-time employees, and based on this finding, it should be accepted that the claimant employee is entitled to child and family allowances, limited to the duration of their actual work[85].'

5. Considerations Regarding the Legal Regime for Divisible Monetary Benefits

The lack of any connection in the law or its reasoning between divisible monetary benefits, such as childbirth or marriage allowances and the question whether these benefits are independent from the working hours has a negative impact on part-time employees. In this regard, as far as we are concerned, the way in which the principle of pro rate temporis is regulated in the Labour Code is inappropriate. What should have been done was to assess whether the divisible monetary benefits are independent of working hours, and to examine whether these benefits are indexed to the employee's wage (e.g., 'New Year's bonus equal to one month's salary,' 'marriage allowance equal to three months' salary,' etc.) or are set as a fixed amount. Indeed, according to a doctrine, 'if a bonus is calculated and applied based on the employee's wage, different treatment may be justified; however, if a fixed-amount bonus is given as a one-time loyalty reward on the employee's 20th anniversary, it would be appropriate to grant the same amount to both full-time and part-time employees[86].'

In our opinion, the same acceptance in doctrine that requires consideration of the purpose of granting indivisible benefits should have been accepted in the law for divisible monetary benefits as well. Above, we mentioned that the reasoning behind the prohibition of discrimination is to eliminate any disadvantages caused by the fact that a part-time employee may be less integrated into the workplace. For example, taking the child benefits into account, it is entirely contrary to the prohibition of discrimination for a part-time employee to receive less child benefit than a full-time employee. A child benefit paid as a fixed amount, not based on a multiple of the monthly wage, is unrelated to the days or hours the employee is physically present at the workplace. Moreover, in doctrine, although child benefits and marriage allowances have not been individualised, some authors emphasise that 'this principle

84 9th CC of the Court of Cassation 5351/6538, 25.05.2022 <www.legalbank.net> accessed October 23, 2024.

85 9th CC of the Court of Cassation 3523/6364, 12.02.2015 <www.legalbank.net> accessed October 23, 2024.

86 Balkan (n 62) 174.

should not apply in cases of fixed payments not based on working hours[87],' indicating that such payments should be made uniformly.

It may be helpful to clarify the matter with an example. According to an example given by some authors, who express that part-time employees should benefit proportionally from social allowances like marriage and childbirth allowances etc., 'if transportation expenses are provided in the workplace, then a part-time employee who works every day would receive full payment, while an employee working on some days would receive a payment proportional to the days worked[88].' In this example, contrary to what is generally observed with indivisible monetary benefits, if the purpose of granting a divisible monetary benefit had not been taken into account, the part-time employee would only receive a proportionate transportation payment based on working hours, even if they came to the workplace every day. However, it is clear that not receiving full transportation expenses would be an unjust solution, even if the employee comes to work every day for a few hours, and the authors agree that this payment should be made in full.

On the one hand, the necessity of providing the full amount to part-time employees, considering the purpose of the divisible monetary benefits, as in the transportation expenses example and on the other hand, for example in terms of child benefits, where a direct proportional relationship is established in the reasoning of the Labour Code and in some scholarly views without considering the purpose of granting that particular benefit, creates a situation that is difficult to reconcile. For this reason, either the letter of the law and the example of "fuel assistance" mentioned in the reasoning should be strictly adhered to, and a proportionate relationship must be established for divisible monetary benefits (which clearly does not lead to a fair result in the case of transportation expenses), or, as in the case of transportation expenses, the regulation related to the proportional relationship for divisible monetary benefits introduced by Article 13 of the Labour Code should be limited in a manner consistent with its purpose through interpretation methods. We argue that the second solution is more accurate. Taking the purpose of granting divisible monetary benefits into account in favour of the employee, and thus adopting the method of teleological reduction, necessitating the limitation of the legal regulation related to pro rata temporis for divisible monetary benefits in relation to the working hours, it emerges that payments such as child benefits, year-end bonuses, and marriage assistance should, contrary to what is stated in the reasoning, be fully paid to employees working under part-time

87 Mollamahmutoğlu, Astarlı and Baysal (n 5) 742.

88 Çelik, Caniklioğlu, Canbolat and Özkaraca (n 4) 213. Also see and cf. Öner Eyrenci, *Uygulama ve İş Hukuku Açısından Kısmi Süreli Çalışmalar* (Mozaik 1989) 49. According to the author, who gives the same example and expresses his view prior to the enactment of the rule in Article 13 of the Labour Code, which regulates that divisible monetary benefits are to be paid proportionally: 'part-time employees in the workplace can, as a rule, benefit from these wage supplements just like full-time employees. This is because simply working shorter hours at the workplace does not constitute a reason for differential treatment."

contracts. On the other hand, in the face of the explicit regulation of the Code, it would be the most accurate solution to adopt an amendment in the law without the need of engaging in implicit gap-filling through interpretation.

Finally, it should be noted that the provision in the final paragraph of Article 13 of the Labour Code should also be considered. According to this provision, a parent may request part-time work until a period that cannot be considered short expires. In this case, after ensuring that the parent employee receives the full payment of child benefits, child allowances, year-end bonuses, etc. during their full-time working period or in the winter, they will be able to exercise their right to transition to a part-time employment contract. In summary, we believe it would have been appropriate for the legislator to make a separate regulation regarding fixed payments that are divisible monetary benefits and independent of working hours, without leading the employee into such 'roundabout' ways, or at least to include such a statement in the reasoning.

F. Extra Working Hours of Part-Time Employees

1. Scholarly Opinions and the Court of Cassation's Case Law

As mentioned above, the law regarding the labour entitlements of a part-time employee employed under a part-time employment contract does not contain detailed regulations. An issue lacking in the law is the possibility of this employee working beyond the hours agreed in the contract. According to Article 8 of the Regulation on Overtime and Work in Excess Hours Related to the Labour Code, a worker employed under a part-time employment contract cannot be required to work overtime or in additional hours. Despite this prohibition, it is highly likely in practice for such workers to be subjected to extra working hours[89].

If an employee employed under a part-time employment contract must work beyond the hours agreed upon in the contract, they may demand compensation for this work[90]. According to Article 41/3 of the Labour Code, in cases where the parties agreed on a decreased weekly working hours, work performed up to 45 hours per week constitutes work in additional hours, and an employee working under these conditions shall be paid an hourly wage with a 25% premium. It should be noted that while Article 41/2 of the Labour Code regulates that work exceeding 45 hours per

89 Murat Özveri, *Türkiye İşçi Hukuku Cilt I* (Emine Ceren Özveri Eğitim ve Dayanışma Vakfı 2023) 932; Sarıbay (n 53) 305.

90 Eyrenci (n 88) 52; Öner Eyrenci, Savaş Taşkent, Devrim Ulucan and Esra Baskan, *İş Hukuku* (Beta 2020) 292; Polat Soyer, 'Yeni Düzenlemeler Karşısında Fazla Saatlerle Çalışmaya İlişkin Bazı Düşünceler' (2004) 1(3) Legal İş Hukuku ve Sosyal Güvenlik Hukuku Dergisi 797, 808; Ercan Akyiğit, 'Maden İşyerlerinde Çalışma Süreleri ve Fazla Çalışma', (2014) 25(3-4-5-6) TÜHİS İş Hukuku ve İktisat Dergisi 21, 26; Muhittin Astarlı, *İş Hukukunda Çalışma Süreleri* (Turhan 2008) 179-180; Odaman (n 53) 159; Seçkin Nazlı, 'Part-Time Employment in European Union Countries and Turkey' (Master's thesis, Marmara University 2003) 71; Efe Yamakoğlu, *Türk İş Hukukunda Fazla Saatlerle Çalışma* (Kazancı 2011) 89; Yorulmaz (n 53) 93.

week shall be paid at a 50% increased premium rate, the third paragraph, setting this rate at 25%, was brought before the Turkish Constitutional Court for annulment. The Constitutional Court ruled against the claims, stating that 'an employee who works the normal weekly duration of 45 hours is subjected to more wear and tear compared to an employee whose working hours are contractually determined to be less than this duration. Therefore, paying an additional 25% for additional work performed by employees with a weekly working duration of less than 45 hours, and paying an additional 50% for overtime work performed by employees exceeding 45 hours per week, ensures that principles of labour harmony, justice, and equity are upheld for employees in different circumstances[91].'

Accordingly, the doctrine[92] and the Court of Cassation's case law align with the wording of Article 41/3 of Labour Code in terms of the part-time employees' entitlements. For example, 'in order to resolve the doubt about whether the tasks requested from the defendant on a daily and weekly basis according to the content of the employment contract can be completed in the 1.5 hours per day set out in the contract for 6 days a week, an expert examination should be conducted, and if there is work exceeding 9 hours per week but under 45 hours, it should be calculated as additional hours and granted[93].'

There are also cases where part-time employees are made to work additional hours as if they were full-time employees under the guise of a part-time employment contract. In such cases, the Court of Cassation rules that the legal regime related to the part-time employment contract should not be exploited by the employer, and the relevant employee should be considered as a full-time employee. Although some decisions do not include detailed explanations on the regularity and continuity of extra work, it should be stated that if the employee is 'continuously' employed for over 30 hours per week, they should be granted the same wages and benefits as a full-time comparable employee[94]. Thus, for example, 'in the expert report on which the judgement is based, it was calculated that the claimant worked 18 hours of overtime

91 Turkish Const. Court, 66/72, 19.10.2005 (OG 24.11.2007/26710). It is necessary to state that we do not agree with the reasoning of the Constitutional Court in this matter. This is because it appears that the high court has failed to consider the non-work-related burdens of part-time employees. Moreover, an employee who works 45 hours a week receives full compensation for their 45 hours of work. In other words, a full-time employee already receives greater compensation in proportion to their greater working hours compared to a part-time employee. In summary, there is equality among employees in terms of receiving remuneration for their regular working hours. Furthermore, if the Constitutional Court's reasoning is accepted, it is likely to result in unfavourable outcomes for part-time employees in the practice of collective labour law. Indeed, some collective agreements in practice stipulate that the overtime pay for full-time employees shall be paid at a higher rate than the legally mandated rate (e.g., 70%, 80%, etc.). If the Constitutional Court's reasoning is adopted, it will not be possible for a part-time employee to demand similarly increased pay for additional hours, based on the argument that they are not equal to a full-time employee.

92 Çelik, Caniklioğlu, Canbolat and Özkaraca (n 4) 214; Caniklioğlu (n 5) 188; Zeytinoğlu (n 43) 459; Sevimli (n 5) 165; Sarıbay (n 53) 305; and Balkan (n 62) 275.

93 22nd CC of the Court of Cassation 17841/24950, 20.11.2018; 22nd CC of the Court of Cassation 19028/25305, 17.09.2015 <www.legalbank.net> accessed October 23, 2024 <www.legalbank.net> accessed October 23, 2024.

94 Caniklioğlu (n 5) 184; Akyiğit (n 90) 26; Sevimli (n 5) 172-173; Astarlı (n 90) 198; Çil (n 54) 175-176; Balkan (n 62) 115, 278.

by subtracting the 30 contracted hours from the 48 hours they worked weekly from 08:30 to 17:30 with a one-hour break, 6 days a week. Although a part-time employment contract was signed between the parties, it was incorrect to calculate overtime based on a weekly working time of 30 hours rather than acknowledging a full-time employment contract with a weekly working time of 45 hours[95].'

According to the Court of Cassation, in the event that an employee alleged to work under a part-time employment contract is continuously required to work additional hours, their entitlements should be calculated not based on an actual work time exceeding 30 hours per week but should be aligned directly with the working hours of a comparable full-time employee. On the other hand, it should be noted that the 9th Civil Chamber of the Court of Cassation reached the opposite conclusion in a decision made in 2014, which it later acknowledged was based on a 'material error.' According to this decision, 'in the specific case, although the defendant argued that the claimant was employed part-time, it is established that they were actually employed for over 30 hours per week, so it is reasonable to conclude that they worked under a full-time employment contract. However, in terms of wage claims, the claimant could not provide concrete evidence that they worked at least 45 hours each week. Since wages are in exchange for work performed, accepting the claimant as working under a full-time employment contract does not mean assuming they necessarily worked a minimum of 45 hours each week. Therefore, the claimant's monthly salary should be determined based on the actual hours worked each month[96].' Conversely, on a subsequent date, the same Chamber ruled in the same case that 'the legal sanction for employing an employee who should be employed part-time for over 30 hours per week requires accepting that they work full-time and are entitled to a weekly wage equivalent to 45 hours, regardless of whether they work the full 45 hours or not. "It is incorrect to comply with the appellate ruling based on a material error, rejecting the difference in wage claims[97]." The General Assembly of the Court of Cassation shares this opinion as well[98].

Since the employee shall be deemed full-time under the Court of Cassation's case law, regarding weekly hours exceeding 30 but below 45, there will be no entitlement to additional pay for additional hours, in cases where the employee alleged to work under a part-time employment contract is continuously required to work additional hours. In this case, it will generally be assumed that this employee works according to the weekly 45-hour schedule. If the worker actually exceeds 45 hours in a week,

95 22nd CC of the Court of Cassation 29133/2131, 10.02.2020; 7th CC of the Court of Cassation 3905/22525, 17.11.2015 <www.legalbank.net> accessed October 23, 2024 <www.legalbank.net> accessed October 23, 2024.

96 9th CC of the Court of Cassation 6719/38499, 16.12.2014 <www.legalbank.net> accessed October 23, 2024.

97 9th CC of the Court of Cassation 6944/8814, 11.04.2016 <www.legalbank.net> accessed October 23, 2024.

98 Grand General Assembly of Civil Chambers of the Court of Cassation 847/200, 06.02.2013 <www.legalbank.net> accessed October 23, 2024.

they shall be entitled to a 50% premium for each excessive hour as stipulated under Article 41/2 of the Labour Code. For instance, according to the Court of Cassation, 'considering the claimant's weekly working hours, it is clear that they do not follow the part-time working system regulated by law; rather, it is understood that the claimant works for over 30 hours per week. Therefore, there is no legal basis for the calculation made by accepting that work performed between 42 and 44 hours but below 45 hours constitutes additional hours[99].''

Another decision rendered by the 9th Civil Chamber of the Court of Cassation in 2023 aligned with the above-mentioned case-law. In the case at hand, the Regional Court of Appeal ruled that work exceeding 30 hours per week should be considered full-time work. On the other hand, the employee's claim for overtime pay was rejected, as the normal weekly working hours of 45 hours had not been exceeded. Similarly, considering the fact that the employee was deemed to be working under a full-time employment contract, rather than a part-time employment contract, it was stated that work exceeding 30 hours but remaining below 45 hours should not be considered as work performed in additional hours, since work in additional hours is limited to employment relationships where the standard weekly working hours are set below 45 hours. The Court of Cassation upheld the decision of the Regional Court of Appeal[100].

2. Considerations Regarding the Additional Pay of Part-Time Employees

The Court of Cassation's approach of deeming an employee employed under an (apparent) part-time employment contract as a full-time employee because they are continuously required to work over the 30-hour weekly limit is essentially a valid approach aimed at preventing the exploitation of part-time employees. However, this approach does not change the fact that the legal regulations subject part-time and full-time employees to different treatment. Indeed, especially in cases of 'occasional' work in additional hours, a part-time worker is only entitled to a 25% premium for each excess hour and can only access the 50% premium, like a full-time employee,

99 7th CC of the Court of Cassation 2013/12810, 26.03.2014 <www.legalbank.net> accessed October 23, 2024. See also Akyiğit (n 90) 26; Sevimli (n 5) 173. Cf. Özveri (n 89) 934. The author states that the employment contract of a seemingly part-time employee should retain its part-time status, but the pay for additional hours should be calculated based on the wage of a comparable full-time employee. This costly approach for the employer, the author argues, would serve as a deterrent against requiring a part-time employee to work beyond normal hours.

100 9th CC of the Court of Cassation 2882/7150, 15.05.2023 <www.hukukturk.com> accessed 8 January 2025. Additionally, for an example of the Regional Court of Appeal's consistent practice in this regard, see 6th CC of Ankara Regional Court of Appeal 3038/1744, 16.09.2020 <www.lexpera.net> accessed 8 January 2025. Also see and cf. 10th CC of the Court of Cassation 10344/13033, 25.10.2022 <www.hukukturk.com> accessed 8 January 2025. In the specific case at hand, the Regional Court of Appeal concluded that the employee was working under a full-time employment contract due to a weekly working schedule of approximately 35 hours. However, contrary to the decisions of the 9th Civil Chamber, the 10th Civil Chamber of the Court of Cassation reached the conclusion that the relationship was based on a part-time employment contract. For an example of the 10th Civil Chamber's reasoning and its dissenting opinion, see 10th CC of the Court of Cassation 6195/11404, 30.09.2021; 10th CC of the Court of Cassation 10344/13033, 25.10.2022 <www.hukukturk.com> accessed 8 January 2025.

if they exceed the 45-hour threshold. On the other hand, a full-time employee can access the 50% premium from the very first hour of additional work beyond the normal working (45) hours. Based on the Court of Justice of the European Union's decisions mentioned above, it seems that this distinction created by the Labour Code between employees should be reconsidered and the difference in the premium rates (25% vs. 50%) for work exceeding normal hours between part-time and full-time employees should be seen as having no legitimate basis[101].

In the Court of Justice of the European Union's case law, the differentiation between these employees can be justified based on the state's legitimate social policy objective. In this context, the idea that a statutory regulation (Article 41 of the Labour Code) alone can justify this distinction could be primarily based on the state's social policy objective. Indeed, shaping working life in line with the goal of flexibility in a way that also meets the needs of employers could be seen as a legitimate aim. Nevertheless, according to the CJEU's decisions, it must be ensured that this distinction serves a real need, is suitable for the intended purpose, and is necessary for that purpose, relying on objective and transparent criteria. However, neither in the legislative reasoning nor in the preparatory work is there statistical or commercial evidence supporting the entitlement of part-time employees to a lower premium rate for additional hours than full-time workers. Therefore, it is unclear whether the 25% premium or, in other words, the 25% difference between workers, results from an objective and transparent evaluation, free from arbitrariness.

Furthermore, a legal amendment to provide part-time employees with an additional 50% premium from the first hour of work beyond normal hours would not contradict the idea of 'unfairness for full-time employees' noted in the reasoning of Article 13 of the Labour Code. The overtime premium paid to a part-time worker for occasional additional hours would already be based on their relatively lower agreed-upon wage, which is inherently lower than that of a full-time employee. In other words, whether for base wages or excess hours work pay, the wages of a part-time employee would still be lower in proportion to working hours than the entitlements of a full-time employee. Moreover, the principle of pro rata temporis implies that compensation hourly should be equal[102]. It does not entail a gradual increase in rates for work exceeding normal hours.

Again, the creation of a disparity in the premium earned from the very first hour beyond normal hours for the said employees demonstrates, in the CJEU's view,

101 For a critique of the legal regulation stipulating that payment for additional hours must be made at an increased rate of 25% based on another justification see Müjdat Şakar, *İş Hukuku ve Sosyal Güvenlik Hukuku* (Beta 2024) 77. According to the author, despite the fact that there is no difference in the nature of work exceeding regular hours, it is as if a weekly working time below 45 hours, to be determined by contracts, is being imposed by enabling a remuneration of only an increased rate of %25. This imposition violates the principle of freedom of contract.

102 Balkan (n 62) 175.

that potential non-work-related burdens are not taken into account for part-time employees. For example, according to Article 13 of the Labour Code, the time spent by an employee who has transitioned to part-time work due to parenthood and spends their non-working hours caring for their child cannot be considered less valuable than the non-working time of a full-time employee[103].

In our view, the differentiation created between employees cannot be explained on the grounds of occupational health and safety as well. The argument that this distinction stems from concerns regarding occupational health and safety cannot explain why extra working hours pay for radiation officers and for office workers, for example, is calculated at the same rate of 50%. In fact, both radiation officers and office workers are entitled to a 50% premium starting from the first hour of work exceeding normal working hours[104]. Indeed, in terms of occupational health and safety, what should have been done was to reduce working hours for hazardous jobs, rather than setting a specific rate to the disadvantage of one group.

According to a supporting doctrinal view that does not agree with the opinion that it is natural for there to be a difference in the remuneration of overtime work between part-time and full-time employees, and that higher remuneration for full-time employees results from occupational health and safety considerations while no such risk exists for part-time employees, 'first and foremost, such a justification is outcome-oriented, which is methodologically incorrect … When someone engages in part-time employment instead of full-time work due to health, family, or personal reasons, any work performed beyond the contractually agreed hours can represent a significant burden for a part-time employee as well[105]."

103 At this point, while it can be argued that issues arising from an employee's private life should not affect the employment relationship, it must be noted that the aforementioned arguments are equally valid when considering the working conditions of a part-time employee. Indeed, under Article 8 of the Regulation on Overtime and Work in Excess Hours Related to the Labour Code, requiring a part-time employee to work beyond the agreed hours is prohibited. This prohibition was introduced in recognition of the possibility that a part-time employee may enter employment contracts with multiple employers. Consequently, if a part-time employee works beyond the hours stipulated in their contract, the risk of losing income from another job or being unable to fulfil obligations to another employer is a significant burden that cannot be overlooked. For the aim of the mentioned prohibition, see Ali Cengiz Köseoğlu and Sibel Kabul, '4857 Sayılı İş Kanunu Bağlamında Çalışma Süresinin Aşılması: Fazla Çalışma' (2014) 72(2) İstanbul Üniversitesi Hukuk Fakültesi Mecmuası 233, 255; Cevdet İlhan Günay, 'Fazla Saatlerle Çalışmanın Hukukî Sonuçları' (2007) 2(6) Sicil İş Hukuku Dergisi 5, 19; Yamakoğlu (n 90) 87. Indeed, a part-time employee who is required to work beyond the agreed hours despite the prohibition shall be entitled to claim compensation for such work as payment for additional hours.

104 See the Code on Radiology, Radium, and Electrical Treatment and Other Physiotherapy Institutions (OG 19.04.1937/3153). Also see the Regulation on Healthcare Services Provided Using Ionising Radiation and Radionuclides (OG 13.04.2023/32162). According to Additional Article 1 of the Code on Radiology, Radium, and Electrical Treatment and Other Physiotherapy Institutions, and Article 7 of the Regulation on Healthcare Services Provided Using Ionising Radiation and Radionuclides, the working hours of radiation officers are regulated as 35 hours per week. However, there is no provision in the legislation regarding premium pay in cases where the 35-hour working time limit is exceeded. In the doctrine and the Court of Cassation's case law, it is accepted that a radiation officer is entitled to a 50% premium pay for overtime work exceeding the 'statutory' 35-hour limit. For further and detailed information on the legal regime of working hours of radiation officers, see İrem Yayvak Namlı, 'Radyasyonla Çalışan İşçilerin Çalışma Süreleri ve Fazla Çalışma' (2024) 174 Türkiye Barolar Birliği Dergisi 445, 463 ff.

105 Eyrenci (n 88) 54. For a supporting view and the opposing case law of the Court of Cassation during the period of Labour Code No. 1475, see Savaş Taşkent, 'İşin Düzenlenmesi Açısından Yargıtayın 1984 Yılı Kararlarının Değerlendirilmesi' Yargıtayın İş Hukuku Kararlarının Değerlendirilmesi 1984, (İş Hukuku ve Sosyal Güvenlik Hukuku Türk Milli Komitesi 1986) 132 ff; Kadir Arıcı, *Çalışma Sürelerinin Hukukî Gelişimi ve Yeterliliği Açısından 1475 Sayılı İş Kanunu'nda*

Furthermore, the 25% rate introduced by the labour law regime concerning occasional extra hours for part-time employees is numerically challenging to reconcile with the legal system. Since a part-time employment contract does not necessarily mean 'half-time' in the literal sense. The ratio between an employee with a weekly normal working time of 45 hours and an employee with a weekly working time of 30 hours is not exactly 'half and half,' so the compensation for work in additional hours should not be arranged as exactly half of the compensation for overtime work. Moreover, considering that this issue is not a matter of goods exchange but rather that the employment contract establishes a personal relationship, such a mathematical ratio does not align with the character of labour law.

IV. Conclusion

It appears that EU member states have adopted different solutions regarding work performed beyond normal hours, each according to their own dynamics. In this context, the sources of law regarding the benefits provided for work beyond normal hours and the necessity of providing these benefits may vary. Additionally, some member states differentiate between part-time and full-time employees regarding compensation for hours exceeding the normal working time.

In Turkish law, similar to Austrian and Finnish law, the concepts of additional hours and overtime work are regulated separately. The compensation for work in additional hours is determined to be lower than that for overtime work. While it is theoretically possible for a part-time employee to work overtime, this scenario rarely occurs. Therefore, if an employee employed under a part-time employment contract works beyond normal hours, they will not be entitled to a 50% premium starting from the first hour of such work. Moreover, even if they reach the 45-hour weekly limit, they would still bear a heavier workload than a full-time employee. In this respect, a different treatment is applied between full-time employees and employees employed under a part-time employment contract. This situation is contrary to both Article 5 of the Labour Code and the prohibition of discrimination regulated under Article 13 of the Labour Code.

Çalışma Süreleri (Kamu-İş 1992) 80; Günay (n 103) 12. For an explanation of the case law of the Court of Cassation adopting the rule that exceeding only the working hours specified in the contract, without surpassing the legal working hours, does not entitle the employee to overtime pay unless otherwise agreed upon by the parties, see also Yamakoğlu (n 90) 30. In contrast, the following statement from the decision of the Grand General Assembly of Civil Chambers of the Court of Cassation regarding a dispute under the period governed by Labour Code No. 1475 is noteworthy: 'The normative regulations concerning overtime work in full-time employment (Labour Code Articles 35 and 61) are also applicable to part-time work.' It should be noted that, pursuant to Article 35 of Labour Code No. 1475, 'the wage for each hour of overtime work shall be paid by increasing the hourly rate of the normal wage by fifty percent.' For the decision, see Grand General Assembly of Civil Chambers of the Court of Cassation 21-143/159, 12.03.2003 <www.legalbank.net> accessed 9 January 2025. For the legal developments during Labour Code No. 1475, also see Hatice Karacan Çetin, *4857 Sayılı İş Kanununa Göre Fazla Çalışma* (6th edn, Seçkin 2019) 256.

The idea that a part-time employee should also be entitled to a 50% premium for work in additional hours would not constitute an unfairness towards full-time employees, as in this case, the part-time employee would still be entitled to compensation based on their reduced working hours. Indeed, the Court of Justice of the European Union's rulings in 2023 and 2024, it was emphasised that the difference in compensation for work beyond normal hours between full-time and part-time employees could not be justified. In these decisions, it was rightly pointed out that possible non-work-related burdens were not considered for the part-time employees. Considering that working hours serve to protect not only occupational health and safety but also the worker's social and family life, it cannot be said that these values carry different weight for full-time and part-time employees. The specific cases and reasons addressed in the latest CJEU rulings indicate a need to reconsider the accepted principles regarding the compensation for additional hour work of part-time employees.

Another issue that should be evaluated in terms of the prohibition of discrimination is the fact that part-time employees are entitled to divisible monetary benefits proportional to their working hours. On the other hand, this situation, as in the example of work in additional hours, causes an unfair distinction between full-time and part-time employees. The overly broad wording of Article 13 of the Labour Code, which stipulates that divisible monetary benefits shall be calculated proportionally, or in other words, the lack of a limitation on whether these benefits are provided independently of working hours, is inappropriate. Although the wording of the Code is clear, in our opinion, it would be meaningful to claim that this unsatisfactory regulation should lead legal actors to a need of filling an implicit gap in the law.

Peer-review: Externally peer-reviewed.
Conflict of Interest: The author has no conflict of interest to declare.
Financial Disclosure: The author declared that this study has received no financial support.

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