JUDGMENT OF THE COURT (Grand Chamber)

5 October 2004 *

In Joined Cases C-397/01 to C-403/01,

REFERENCES for a preliminary ruling under Article 234 EC, from the Arbeitsgericht Lörrach (Germany), made by orders of 26 September 2001, received at the Court on 12 October 2001, in the proceedings

Bernhard Pfeiffer (C-397/01),

Wilhelm Roith (C-398/01),

Albert Süß (C-399/01),

Michael Winter (C-400/01),

Klaus Nestvogel (C-401/01),

Roswitha Zeller (C-402/01),

Matthias Döbele (C-403/01)

* Language of the case: German.

V

Deutsches Rotes Kreuz, Kreisverband Waldshut eV,

THE COURT (Grand Chamber),

composed of: V. Skouris, President, P. Jann, C.W.A. Timmermans, C. Gulmann, J.-P. Puissochet and J.N. Cunha Rodrigues, Presidents of Chambers, R. Schintgen (Rapporteur), F. Macken, N. Colneric, S. von Bahr and K. Lenaerts, Judges,

Advocate General: D. Ruiz-Jarabo Colomer,
Registrar: H. von Holstein, Deputy Registrar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— Mr Pfeiffer, Mr Roith, Mr Süß, Mr Winter, Mr Nestvogel, Ms Zeller and Mr Döbele, by B. Spengler, Rechtsanwalt,

— the Commission of the European Communities, by J. Sack and H. Kreppel, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 6 May 2003, having regard to the order of 13 January 2004 reopening the oral procedure, having regard to the written procedure and further to the hearing on 9 March 2004,

after considering the observations submitted on behalf of:

— Mr Pfeiffer, Mr Roith, Mr Nestvogel, Ms Zeller and Mr Döbele, by B. Spengler,

— Mr Süß and Mr Winter, by K. Lörcher, Gewerkschaftssekretär,

— the German Government, by W.-D. Plessing, acting as Agent,

— the French Government, by R. Abraham, G. de Bergues and C. Bergeot-Nunes, acting as Agents,

— the Italian Government, by I.M. Braguglia, acting as Agent, and A. Cingolo, avvocato del Stato,

— the United Kingdom Government, by C. Jackson, acting as Agent, and A. Dashwood, Barrister,

— the Commission, by J. Sack and H. Kreppel,

after hearing the Opinion of the Advocate General at the sitting on 27 April 2004,

gives the following

Judgment

1 These references for a preliminary ruling concern the interpretation of Article 2 of Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work (OJ 1989 L 183, p. 1) and of Articles 1(3), 6 and 18(1)(b)(i) of Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organisation of working time (OJ 1993 L 307, p. 18).

2 The references were made to the Court in various sets of proceedings between (i) Mr Pfeiffer, Mr Roith, Mr Süß, Mr Winter, Mr Nestvogel, Ms Zeller and Mr Döbele, who work or used to work as emergency workers, and (ii) Deutsches Rotes Kreuz, Kreisverband Waldshut eV (German Red Cross, Waldshut section ('Deutsches Rotes Kreuz')), a body which employs or employed the claimants in the main actions. The proceedings concern German legislation providing for weekly working time in excess of 48 hours.

Legal framework

Community legislation

3 Directives 89/391 and 93/104 were adopted on the basis of Article 118a of the EC Treaty (Articles 117 to 120 of the EC Treaty have been replaced by Articles 136 EC to 143 EC).

4 Directive 89/391 is the framework directive which lays down general principles concerning the health and safety of workers. Those principles were subsequently developed by a series of specific directives, including Directive 93/104.

5 Article 2 of Directive 89/391 defines the scope of the directive as follows:

'1. This Directive shall apply to all sectors of activity, both public and private (industrial, agricultural, commercial, administrative, service, educational, cultural, leisure, etc.).

2. This Directive shall not be applicable where characteristics peculiar to certain specific public service activities, such as the armed forces or the police, or to certain specific activities in the civil protection services inevitably conflict with it.

In that event, the safety and health of workers must be ensured as far as possible in the light of the objectives of this Directive.'

6 Article 1 of Directive 93/104, entitled 'Purpose and scope', provides as follows:

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

2. This Directive applies to:

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

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

3. This Directive shall apply to all sectors of activity, both public and private, within the meaning of Article 2 of Directive 89/391/EEC, without prejudice to Article 17 of

this Directive, with the exception of air, rail, road, sea, inland waterway and lake transport, sea fishing, other work at sea and the activities of doctors in training;

4. The provisions of Directive 89/391/EEC are fully applicable to the matters referred to in paragraph 2, without prejudice to more stringent and/or specific provisions contained in this Directive.'

7 Under the heading 'Definitions', Article 2 of Directive 93/104 provides:

'For the purposes of this Directive, the following definitions shall apply:

1. "working time" shall mean any period during which the worker is working, at the employer's disposal and carrying out his activity or duties, in accordance with national laws and/or practice;

2. "rest period" shall mean any period which is not working time;

...'

8 Section II of the directive lays down the measures which the Member States must take to ensure that all workers are afforded, inter alia, daily minimum rest periods and weekly rest periods and it also regulates maximum weekly working time.

9 So far as maximum weekly working time is concerned, Article 6 of Directive 93/104 provides:

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

...

2. the average working time for each 7-day period, including overtime, does not exceed 48 hours.'

10 Article 15 of Directive 93/104 provides:

'This Directive shall not affect Member States' right to apply or introduce laws, regulations or administrative provisions more favourable to the protection of the safety and health of workers or to facilitate or permit the application of collective agreements or agreements concluded between the two sides of industry which are more favourable to the protection of the safety and health of workers.'

11 Article 16 of the directive provides:

'Member States may lay down:

...

2. for the application of Article 6 (maximum weekly working time), a reference period not exceeding four months.

...'

12 Directive 93/104 sets out a set of exceptions to a number of its basic rules, in view of the specific features of certain activities and subject to compliance with certain conditions. In that connection, Article 17 provides:

'1. With due regard for the general principles of the protection of the safety and health of workers, Member States may derogate from Article 3, 4, 5, 6, 8 or 16 when, on account of the specific characteristics of the activity concerned, the duration of the working time is not measured and/or predetermined or can be determined by the workers themselves, and particularly in the case of:

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

(b) family workers; or

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

2. Derogations may be adopted by means of laws, regulations or administrative provisions or by means of collective agreements or agreements between the two sides of industry provided that the workers concerned are afforded equivalent periods of compensatory rest or that, in exceptional cases in which it is not possible, for objective reasons, to grant such equivalent periods of compensatory rest, the workers concerned are afforded appropriate protection:

2.1 from Articles 3, 4, 5, 8 and 16:

...

(c) in the case of activities involving the need for continuity of service or production, particularly;

(i) services relating to the reception, treatment and/or care provided by hospitals or similar establishments, residential institutions and prisons;

...

(iii) press, radio, television, cinematographic production, postal and telecommunications services, ambulance, fire and civil protection services;

...

3. Derogations may be made from Articles 3, 4, 5, 8 and 16 by means of collective agreements or agreements concluded between the two sides of industry at national or regional level or, in conformity with the rules laid down by them, by means of collective agreements or agreements concluded between the two sides of industry at a lower level.

...

The derogations provided for in the first and second subparagraphs shall be allowed on condition that equivalent compensating rest periods are granted to the workers concerned or, in exceptional cases where it is not possible for objective reasons to grant such periods, the workers concerned are afforded appropriate protection.

...

4. The option to derogate from point 2 of Article 16, provided in paragraph 2, points 2.1 and 2.2 and in paragraph 3 of this Article, may not result in the establishment of a reference period exceeding six months.

However, Member States shall have the option, subject to compliance with the general principles relating to the protection of the safety and health of workers, of allowing, for objective or technical reasons or reasons concerning the organisation of work, collective agreements or agreements concluded between the two sides of industry to set reference periods in no event exceeding 12 months.

...'

13 Article 18 of Directive 93/104 is worded as follows:

'1. (a) Member States shall adopt the laws, regulations and administrative provisions necessary to comply with this Directive by 23 November 1996, or shall ensure by that date that the two sides of industry establish the necessary measures by agreement, with Member States being obliged to take any necessary steps to enable them to guarantee at all times that the provisions laid down by this Directive are fulfilled.

(b) (i) However, a Member State shall have the option not to apply Article 6, while respecting the general principles of the protection of the safety and health of workers, and provided it takes the necessary measures to ensure that:

— no employer requires a worker to work more than 48 hours over a 7-day period, calculated as an average for the reference period referred to in point 2 of Article 16, unless he has first obtained the worker's agreement to perform such work,

— no worker is subjected to any detriment by his employer because he is not willing to give his agreement to perform such work,

— the employer keeps up-to-date records of all workers who carry out such work,

— the records are placed at the disposal of the competent authorities, which may, for reasons connected with the safety and/or health of workers, prohibit or restrict the possibility of exceeding the maximum weekly working hours,

— the employer provides the competent authorities at their request with information on cases in which agreement has been given by workers to perform work exceeding 48 hours over a period of seven days, calculated as an average for the reference period referred to in point 2 of Article 16.

...'

National legislation

14 German labour law distinguishes between duty time ('Arbeitsbereitschaft'), on-call time ('Bereitschaftsdienst') and stand-by time ('Rufbereitschaft').

15 The three concepts are not defined by national legislation but their features derive from case-law.

16 Duty time ('Arbeitsbereitschaft') covers the situation in which the worker must make himself available to his employer at the place of employment and is, moreover, obliged to remain continuously attentive in order to be able to act immediately should the need arise.

17 While a worker is on call ('Bereitschaftsdienst'), he must be present at a place determined by his employer, either on or outside the latter's premises, and must keep himself available to take up his duties if so requested by his employer but he is authorised to rest or occupy himself as he sees fit as long as his services are not required.

18 Stand-by time ('Rufbereitschaft') is characterised by the fact that the worker is not obliged to remain waiting in a place designated by the employer: it is sufficient for him to be reachable at any time so that he may be called upon at short notice to perform his professional tasks.

19 Under German labour law only duty time ('Arbeitsbereitschaft') is, as a general rule, deemed to constitute full working time. Conversely, both on-call time ('Bereitschaftsdienst') and stand-by time ('Rufbereitschaft') are categorised as rest time, save for the part of the time during which the worker has in fact performed his professional tasks.

20 The German legislation on working time and rest periods is contained in the Arbeitszeitgesetz (Law on Working Time) of 6 June 1994 (BGBl. 1994 I, p. 1170; 'the ArbZG'), which was enacted to transpose Directive 93/104.

21 Paragraph 2(1) of the ArbZG defines working time as the period between the beginning and end of work, with the exception of breaks.

22 Paragraph 3 of the ArbZG provides:

'Employees' daily working time must not exceed eight hours. It may be extended to a maximum of 10 hours but only on condition that an average 8-hour working day is not exceeded over 6 calendar months or 24 weeks.'

23 Paragraph 7 of the ArbZG is worded as follows:

'(1) Under a collective agreement, or a works agreement based on a collective agreement, provision may be made:

1. by way of derogation from Paragraph 3,

(a) to extend working time beyond 10 hours per day, even without offset, where working time regularly includes significant periods of duty time ("Arbeitsbereitschaft"),

(b) to determine a different period of offset,

(c) to extend working time to 10 hours per day, without offset, for a maximum period of 60 days per year,

...'

24 Paragraph 25 of the ArbZG provides:

'Where, at the date of entry into force of this law, an existing collective agreement or one continuing to produce effects after that date contains derogating rules under Paragraph 7(1) and (2) ..., which exceed the maximum limits laid down in the provisions cited, those rules shall not be affected. Works agreements based on collective agreements are deemed equivalent to collective agreements such as those mentioned in the first sentence ...'

25 The Tarifvertrag über die Arbeitsbedingungen für Angestellte, Arbeiter und Auszubildende des Deutschen Roten Kreuzes (Collective agreement on working conditions for German Red Cross employees, workers and apprentices; 'the DRK-TV') includes the following provision:

'Paragraph 14 Normal working time

(1) Normal working time, exclusive of breaks, shall be on average 39 hours (from 1 April 1990 38 and a half hours) per week. As a general rule, the average weekly working time shall be calculated on the basis of a period of 26 weeks.

In the case of workers who work in rotas or on shifts a longer period may be set.

(2) Normal working time may be extended ...

(a) to 10 hours per day (49 hours per week on average) if it regularly includes duty time ("Arbeitsbereitschaft") of at least 2 hours per day on average:

(b) to 11 hours per day (54 hours per week on average) if it regularly includes duty time ("Arbeitsbereitschaft") of at least 3 hours per day on average,

(c) to 12 hours per day (60 hours per week on average) if the employee must merely be present at the work-place in order to carry out his duties should the need arise.

...

(5) The employee shall be required, if so directed by his employer, to remain outside normal working hours in a particular place selected by the employer, from where he may be called to work if the need arises (on-call time, "Bereitschaftsdienst"). The employer may require such on-call service only when some work is expected but, on the basis of experience, work-free time will predominate.

...'

26 An observation in the following terms is made in respect of Paragraph 14(2) of the DRK-TV:

'Where Annex 2 concerning staff in the emergency and ambulance services applies, regard is to be had to the notice concerning Paragraph 14(2) of the [DRK-TV].'

27 Annex 2 includes special provisions under the collective agreement for staff in the emergency and ambulance services. The relevant notice provides that the maximum weekly working time of 54 hours provided for in Paragraph 14(2)(b) of the DRK-TV is to be progressively reduced. As a consequence, with effect from 1 January 1993, provision is made for the maximum period to fall from 54 to 49 hours.

The main proceedings and the questions referred for a preliminary ruling

28 Seven cases have given rise to these references for a preliminary ruling.

29 According to the documents available to the Court, the Deutsches Rotes Kreuz operates inter alia the land-based emergency service in a part of the Landkreis of Waldshut. The Deutsches Rotes Kreuz maintains the stations at Waldshut (Germany), Dettighoffen (Germany) and Bettmaringen (Germany), which are manned round the clock, and a station at Lauchringen (Germany), which is manned for 12 hours per day. Land-based emergency rescue is carried out by means of ambulances and emergency medical vehicles. An ambulance crew consists of two paramedics, whilst an emergency medical vehicle consists of an emergency worker and a doctor. When they are alerted of an emergency, these vehicles go to the relevant place in order to provide medical assistance to the patients. Subsequently, the patients are usually taken to hospital.

30 Mr Pfeiffer and Mr Nestvogel were formally employed by the Deutsches Rotes Kreuz as emergency workers, whilst the other claimants in the main proceedings were still employed by that body at the time when their actions before the national court were commenced.

31 The parties to the main proceedings are at odds in essence over whether, in calculating the period of maximum weekly working time, account should be taken of periods of duty time ('Arbeitsbereitschaft') which the workers concerned have been required to do in the course of their employment in the service of the Deutsches Rotes Kreuz.

32 The actions brought by Mr Pfeiffer and Mr Nestvogel before the Arbeitsgericht Lörrach claim payment for hours they worked in excess of 48 hours per week. They claim that they were wrongly required to work more than 48 hours per week on average from June 2000 to March 2001. As a consequence, they asked the national court to order the Deutsches Rotes Kreuz to pay them DEM 4 335.45 gross (for 156.85 hours at the overtime rate of DEM 29.91 gross) and DEM 1 841.88 gross (for 66.35 hours at the overtime rate of DEM 27.76), together with interest for late payment.

33 As regards the actions brought by the other claimants in the proceedings before the national court, they seek to determine the maximum period which they must work per week for the Deutsches Rotes Kreuz.

34 The parties to the main proceedings agreed in their various contracts of employment that the DRK-TV should apply.

35 The Arbeitsgericht Lörrach found that, on the basis of the rules of the collective agreement, weekly working time in the emergency service operated by the Deutsches Rotes Kreuz was, on average, 49 hours. Normal working time was extended pursuant to Paragraph 14(2)(b) of the DRK-TV, given the obligation of those concerned to be available for duty ('Arbeitsbereitschaft') for at least 3 hours per day on average.

36 The claimants in the main proceedings submit that the provision made by the Deutsches Rotes Kreuz to set weekly working time at 49 hours is unlawful. They rely in that connection on Directive 93/104 and on the judgment in Case C-303/98

Simap [2000] ECR I-7963. In their submission, Paragraph 14(2)(b) of the DRK-TV infringes Community law by providing for working time in excess of 48 hours per week. Furthermore, the rules of the collective agreement are not permissible under the derogation provided for in Paragraph 7(1)(i)(a) of the ArbZG. Indeed, the claimants in the main proceedings argue that the ArbZG does not correctly implement the provisions of Directive 93/104 in that respect. Accordingly, they submit that the derogation in the ArbZG must be interpreted in conformity with Community law and that if it is not, it does not apply at all.

37 Conversely, the Deutsches Rotes Kreuz contends that the actions should be dismissed. It maintains inter alia that its rules on the extension of working time comply with national legislation and the collective agreements.

38 With these cases before it, the Arbeitsgericht Lörrach is in doubt, first, as to whether the activity of the claimants in the main proceedings falls within the scope of Directive 93/104.

39 In the first place, Article 1(3) of Directive 93/104, which refers, as regards the directive's scope, to Article 2 of Directive 89/391, excludes from that scope a number of areas to the extent to which characteristics peculiar to certain specific activities inevitably conflict with it. However, in the referring court's view, that exclusion is intended to cover only those activities which aim to secure public safety and order, which are indispensable to the common good or which, owing to their nature, do not lend themselves to planning. It mentions, by way of example, major catastrophies. By contrast, emergency services should not be excluded from the scope of the two directives, even though emergency workers must be ready to respond round the clock, since the duties and working time of each of them remain amenable to planning.

40 Second, it is necessary to ascertain whether work in a land-based emergency service must be regarded as 'road transport' for the purposes of Article 1(3) of Directive 93/104. If that term were to be construed as including any activity in a vehicle travelling on the public highways, a service operated by means of ambulances and emergency medical vehicles would also have to be subsumed thereunder, since a significant part of that activity entails going to places where emergencies have occurred and conveying patients to hospital. However, the emergency service normally operates within a limited geographical area, in general within a Landkreis (provincial district), so the distances are not great and the operations are of limited duration. The work of a land-based emergency service is thus to be distinguished from the typical line of work in the road transport sector. Doubts none the less subsist on this point on account of the judgment in Case C-76/97 *Tögel* [1998] ECR I-5357, paragraph 40).

41 The referring court then asks whether the non-application of the 48-hour limit for the average working week as provided for under Article 18(1)(b)(i) of Directive 93/104 requires the express and unambiguous consent of the employee concerned or whether the employee's general consent to the application of a collective agreement as a whole is sufficient, since the latter provides inter alia for the possibility of weekly working time being extended beyond the 48-hour limit.

42 Finally, the Arbeitsgericht Lörrach asks whether Article 6 of Directive 93/104 is unconditional and sufficiently precise to be capable of being relied on by an individual before a national court in the event of a Member State having failed to implement the directive correctly. Under German law, if the provision at Paragraph 14(2)(b) of the DRK-TV, which is applicable to the employment contracts concluded by the parties to the main proceedings, were covered by the provision made by the legislature in Paragraph 7(1)(i)(a) of the ArbZG, the latter would permit the employer to extend daily working time without compensation, with the result that the restriction of weekly working time to 48 hours on average which derives from Paragraph 3 of the ArbZG and from Article 6(2) of Directive 93/104 would be negated.

43 Taking the view that in those circumstances an interpretation of Community law was necessary to enable it to reach a decision in the cases before it, the Arbeitsgericht Lörrach decided to stay the proceedings and to refer to the Court for a preliminary ruling the following questions, which are cast in identical terms in Cases C-397/01 to C-403/01:

'1. (a) Is the reference in Article 1(3) of Directive 93/104 ... to Article 2(2) of Directive 89/391 ..., under which [those] directives are not applicable where characteristics peculiar to certain specific activities in the civil protection services inevitably conflict with their application, to be construed as meaning that the claimants' activity as emergency workers is caught by this exclusion?

(b) Is the concept of road transport in Article 1(3) of Directive 93/104 to be construed as meaning that only driving activity which is inherently long-distance and for which, consequently, working times cannot be fixed owing to the unforeseeability of problems are excluded from the scope of the directive, or is road transport within the meaning of this provision to be taken to include the activity of land-based emergency services, which comprises at least in part the driving of emergency vehicles and attendance on patients during the journey?

2. In view of the judgment of the Court in ... *Simap* (paragraphs 73 and 74), is Article 18(1)(b)(i) of Directive 93/104 to be construed as meaning that consent given individually by a worker must expressly refer to the extension of working time to more than 48 hours per week, or may such consent also reside in the worker's agreeing with the employer, in the contract of employment, that working conditions are to be governed by a collective agreement which itself allows working time to be extended to more than 48 hours on average?

3. Is Article 6 of Directive 93/104 in itself unconditional and sufficiently precise to be capable of being relied on by individuals before national courts where the State has not properly transposed the directive into national law?'

44 By order of the President of the Court of 7 November 2001, Cases C-397/01 to C-403/01 were joined for the purposes of the written and oral procedure and the judgment.

45 By decision of 14 January 2003, the Court stayed proceedings in those cases until the hearing in Case C-151/02 *Jaeger* [2003] ECR I-8389, in which judgment was delivered on 9 September 2003. That hearing took place on 25 February 2003.

46 By order of the Court of 13 January 2004, the oral procedure in Cases C-397/01 to C-403/01 was re-opened.

The questions referred for a preliminary ruling

Question 1(a)

47 By Question 1(a), the national court is essentially asking whether Article 2 of Directive 89/391 and Article 1(3) of Directive 93/104 must be interpreted as meaning that the activity of emergency workers, performed within an emergency medical service such as the service at issue in the main proceedings, falls within the scope of the directives.

48 In order to reply to that question, it must be borne in mind at the outset that Article 1(3) of Directive 93/104 defines the scope of the directive by referring expressly to Article 2 of Directive 89/391. Therefore, before determining whether an activity such as that of emergency workers in attendance in an ambulance or emergency medical vehicle in the framework of a service run by the Deutsches Rotes Kreuz falls within the scope of Directive 93/104, it is first necessary to examine whether that activity is within the scope of Directive 89/391 (see the judgment in *Simap*, paragraphs 30 and 31).

49 By virtue of Article 2(1) of Directive 89/391, the latter applies to 'all sectors of activity, both public and private', which include service activities as a whole.

50 However, as is clear from the first subparagraph of Article 2(2), the directive is not applicable where characteristics peculiar to certain specific activities, particularly in the civil protection services, inevitably conflict with it.

51 It must none the less be held that the activity of emergency workers in attendance in an ambulance or emergency medical vehicle in the framework of an emergency service for the injured or sick, run by a body such as the Deutsches Rotes Kreuz, is not covered by the exclusion referred to in the preceding paragraph.

52 It is clear both from the purpose of Directive 89/391 (encouraging the improvement of the health and safety of workers at work) and from the wording of Article 2(1) thereof that the directive must be taken to be broad in scope. It follows that the exclusions from its scope provided for in the first subparagraph of Article 2(2) must

be interpreted restrictively (see the judgment in *Simap*, paragraphs 34 and 35, and the order of 3 July 2001 in Case C-241/99 *CIG* [2001] ECR I-5139, paragraph 29).

53 Furthermore, the first subparagraph of Article 2(2) of Directive 89/391 excludes from the directive's scope not the civil protection services as such but solely 'certain specific activities' of those services, whose characteristics are such as inevitably to conflict with the rules laid down by the directive.

54 This exclusion from the broadly-defined field of application of Directive 89/391 must therefore be interpreted in such a way that its scope is restricted to what is strictly necessary in order to safeguard the interests which it allows the Member States to protect.

55 In that regard, the exclusion in the first subparagraph of Article 2(2) of Directive 89/391 was adopted purely for the purpose of ensuring the proper operation of services essential for the protection of public health, safety and order in cases, such as a catastrophe, the gravity and scale of which are exceptional and a characteristic of which is the fact that, by their nature, they do not lend themselves to planning as regards the working time of teams of emergency workers.

56 However, the civil protection service in the strict sense thus defined, at which the provision is aimed, can be clearly distinguished from the activities of emergency workers tending the injured and sick which are at issue in the main proceedings.

57 Even if a service such as the one with which the national court is concerned must deal with events which, by definition, are unforeseeable, the activities which it entails in normal conditions and which correspond moreover to the duties specifically assigned to a service of that kind are none the less capable of being organised in advance, including, in so far as they are concerned, the working hours of its staff.

58 The service thus exhibits no characteristic which inevitably conflicts with the application of the Community rules on the protection of the health and safety of workers and therefore is not covered by the exclusion in the first subparagraph of Article 2(2) of Directive 89/391, the directive instead applying to such a service.

59 It is apparent from the wording of Article 1(3) of Directive 93/104 that it applies to all sectors of activity, both public and private, within the meaning of Article 2 of Directive 89/391, with the exception of certain specific activities which are exhaustively listed.

60 None of those activities is relevant in relation to a service such as the one at issue in the main proceedings. In particular, it is clear that the activity of workers who, in the framework of an emergency medical service, attend on patients in an ambulance or emergency medical vehicle is not comparable to the activity of trainee doctors, to which Directive 93/104 does not apply by virtue of Article 1(3) thereof.

61 Consequently, an activity such as that with which the national court is concerned also falls within the scope of Directive 93/104.

62 As the Commission rightly pointed out, further support is lent to that finding by the fact that Article 17(2), point 2.1(c)(iii), of Directive 93/104 expressly refers to, inter alia, ambulance services. Such a reference would be redundant if the activity referred to was already excluded from the scope of Directive 93/104 in its entirety by virtue of Article 1(3). Instead, that reference shows that the Community legislature laid down the principle that the directive is applicable to activities of such a kind, whilst providing for the option, in given circumstances, to derogate from certain specific provisions of the directive.

63 In those circumstances, the answer to be given to Question 1(a) is that Article 2 of Directive 89/391 and Article 1(3) of Directive 93/104 must be construed as meaning that the activity of emergency workers, carried out in the framework of an emergency medical service such as that at issue before the national court, falls within the scope of the directives.

Question 1(b)

64 By Question 1(b), the national court is essentially asking whether, on a proper construction, the concept of 'road transport' in Article 1(3) of Directive 93/104 encompasses the activity of an emergency medical service, on account of the fact that the activity consists, at least in part, of using a vehicle and attending the patient during the journey to hospital.

65 In that regard, it must be observed that under Article 1(3) of Directive 93/104, the latter '[applies] to all sectors of activity ... with the exception of air, rail, road, sea, inland waterway and lake transport ...'.

66 In its judgment in Case C-133/00 *Bowden and Others* [2001] ECR I-7031, the Court ruled that on a proper construction of Article 1(3) all workers employed in the road transport sector, including office staff, are excluded from the scope of that directive.

67 Since they are exceptions to the Community system for the organisation of working time put in place by Directive 93/104, the exclusions from the scope of the directive provided for in Article 1(3) must be interpreted in such a way that their scope is limited to what is strictly necessary in order to safeguard the interests which the exclusions are intended to protect (see, by analogy, the judgment in *Jaeger*, paragraph 89).

68 The transport sector was excluded from the scope of Directive 93/104 on the grounds that a Community regulatory framework already existed in that sector, which laid down specific rules for, inter alia, the organisation of working time on account of the special nature of the activity in question. That legislation does not apply, however, to transport for emergencies or assistance.

69 Furthermore, the judgment in *Bowden* is based on the fact that the employer belonged to one of the transport sectors specifically listed in Article 1(3) of Directive 93/104 (see paragraphs 39 to 41 of the judgment). However, it can hardly be argued that when the Deutsches Rotes Kreuz operates an emergency medical service such as that at issue in the main proceedings its activity pertains to the road transport sector.

70 The fact that that activity includes using an emergency vehicle and accompanying the patient on his journey to hospital is not decisive, since the main purpose of the

activity concerned is to provide initial medical treatment to a person who is ill or injured and not to carry out an operation relating to the road transport sector.

71 Furthermore, it is necessary to bear in mind that ambulance services are specifically included in Article 17(2), point 2.1(c)(iii), of Directive 93/104. Their inclusion, which is intended to enable there to be a derogation from certain specific provisions of the directive, would be redundant if such services were already excluded from the field of application of the directive in its entirety pursuant to Article 1(3) thereof.

72 In those circumstances, the concept of 'road transport' in Article 1(3) of Directive 93/104 does not encompass an emergency medical service such as that at issue in the main proceedings.

73 That interpretation is not undermined by the judgment in *Tögel*, to which the national court refers, since the subject-matter of the judgment was not the interpretation of Directive 93/104 but rather that of Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts (JO 1992 L 209, p. 1), the contents and purpose of which are wholly irrelevant for the purpose of determining the scope of Directive 93/104.

74 In the light of all of the foregoing considerations, the answer to Question 1(b) must be that, on a proper construction, the concept of 'road transport' in Article 1(3) of Directive 93/104 does not encompass the activity of an emergency medical service, even though the latter includes using a vehicle and accompanying a patient on his journey to hospital.

The second question

75 By its second question, the national court is asking in substance whether the first indent of Article 18(1)(b)(i) of Directive 93/104 is to be construed as requiring consent to be expressly and freely given by each worker individually if the 48-hour maximum period of weekly working time, as laid down in Article 6 of the directive, is to be validly extended or whether it is sufficient in that regard that the relevant person's employment contract refers to a collective agreement which permits such an extension.

76 In order to reply to the question formulated in this manner, it must be borne in mind, first, that it is apparent from Article 118a of the Treaty, the legal basis for Directive 93/104, from the first, fourth, seventh and eighth recitals in the preamble to the directive and from the actual wording of Article 1(1) of the directive that its objective is to guarantee the better protection of the safety and health of workers by affording them minimum rest periods — especially on a daily and weekly basis –and adequate breaks and by providing for an upper limit on weekly working time.

77 Second, under the system established by Directive 93/104, only some of its provisions, which are exhaustively listed, may form the subject-matter of derogations by the Member States or the two sides of industry. Furthermore, the implementation of such derogations is subject to strict conditions intended to secure effective protection for the safety and health of workers.

78 Thus, Article 18(1)(b)(i) of Directive 93/104 provides that Member States have the right not to apply Article 6 provided that they observe the general principles of the protection of the safety and health of workers and that they satisfy a certain number of conditions set out cumulatively in Article 18(1)(b)(i).

79 In particular, the first indent of Article 18(1)(b)(i) requires that working time should not exceed 48 hours over a 7-day period, calculated as an average for the reference period referred to in point 2 of Article 16 of Directive 93/104, the worker none the less being able to agree to work more than 48 hours per week.

80 In that regard, the Court has already held, in paragraph 73 of the judgment in *Simap*, that, as is apparent from its actual wording, the first indent of Article 18(1)(b)(i) of Directive 93/104 requires the consent of the individual worker.

81 In paragraph 74 of *Simap*, the Court concluded that the consent given by trade-union representatives in the context of a collective or other agreement is not equivalent to that given by the worker himself, as provided for in the first indent of Article 18(1)(b)(i) of Directive 93/104.

82 That interpretation derives from the objective of Directive 93/104, which seeks to guarantee the effective protection of the safety and health of workers by ensuring that they actually have the benefit of, inter alia, an upper limit on weekly working time and minimum rest periods. Any derogation from those minimum requirements must therefore be accompanied by all the safeguards necessary to ensure that, if the worker concerned is encouraged to relinquish a social right which has been directly conferred on him by the directive, he must do so freely and with full knowledge of all the facts. Those requirements are all the more important given that the worker must be regarded as the weaker party to the employment contract and it is therefore necessary to prevent the employer being in a position to disregard the intentions of the other party to the contract or to impose on that party a restriction of his rights without him having expressly given his consent in that regard.

83 Those considerations are equally relevant so far as the situation described in the second question is concerned.

84 It follows that, for a derogation from the maximum period of weekly working time laid down in Article 6 of Directive 93/104 (48 hours) to be valid, the worker's consent must be given not only individually but also expressly and freely.

85 Those conditions are not met where the worker's employment contract merely refers to a collective agreement authorising an extension of maximum weekly working time. It is by no means certain that, when he entered into such a contract, the worker concerned knew of the restriction of the rights conferred on him by Directive 93/104.

86 The answer to the second question must therefore be that the first indent of Article 18(1)(b)(i) of Directive 93/104 is to be construed as requiring consent to be expressly and freely given by each worker individually if the 48-hour maximum period of weekly working time, as laid down in Article 6 of the directive, is to be validly extended. In that connection, it is not sufficient that the relevant worker's employment contract refers to a collective agreement which permits such an extension.

The third question

87 By its third question, the national court is essentially asking whether, if Directive 93/104 has been implemented incorrectly, Article 6(2) thereof may be taken to have direct effect.

88 As is clear both from its wording and from the context in which it occurs, there are two aspects to that question: the first concerns the interpretation of Article 6(2) of

Directive 93/104 for the purpose of enabling the national court to decide whether the relevant rules of national law are compatible with the requirements of Community law, whilst the second concerns whether, if the Member State concerned has transposed Article 6(2) into national law incorrectly, that provision satisfies the conditions which would enable an individual to rely on it before the national courts in circumstances such as those in the main proceedings.

89 Those two issues must be examined in turn.

The import of Article 6(2) of Directive 93/104

90 As a preliminary point, it must be observed that Article 6(2) of Directive 93/104 requires the Member States to take the measures necessary to ensure, as a function of the requirement for the protection of workers' safety and health, that the average working time for each 7-day period, including overtime, does not exceed 48 hours.

91 It is apparent from Article 118a of the Treaty, which is the legal basis for Directive 93/104, from the first, fourth, seventh and eighth recitals in the preamble to the directive, from the Community Charter of the Fundamental Social Rights of Workers, adopted at the meeting of the European Council held at Strasbourg on 9 December 1989, points 8 and 19, first subparagraph, thereof, which are referred to in the fourth recital to the directive, and from the actual wording of Article 1(1) of the directive that the latter's purpose is to lay down minimum requirements intended to improve the living and working conditions of workers through approximation of national provisions concerning, in particular, the duration of working time. This

Community-level harmonisation of the organisation of working time seeks to guarantee a better level of protection of the safety and health of workers by ensuring that they are entitled to minimum rest periods — particularly daily and weekly — and adequate breaks (see *Jaeger*, paragraphs 45 to 47).

92 Thus, Directive 93/104 imposes more specifically (in Article 6(2)) a 48-hour limit for the average working week, a maximum which is expressly stated to include overtime.

93 In that context, the Court has already held that on-call time ('Bereitschaftsdienst'), where the worker is required to be physically present at a place specified by his employer, must be regarded as wholly working time for the purposes of Directive 93/104, irrespective of the fact that, during periods of on-call time, the person concerned is not continuously carrying on any professional activity (see *Jaeger*, paragraphs 71, 75 and 103).

94 The same must be true of periods of duty time ('Arbeitsbereitschaft') completed by emergency workers in the framework of an emergency service, which necessarily entails periods of inactivity of varying length in between calls.

95 Such periods of duty time must accordingly be taken into account in their totality in the calculation of maximum daily and weekly working time.

96 Furthermore, it is evident that under the system established by Directive 93/104, although Article 15 allows generally for the application or introduction of national provisions more favourable to the protection of the safety and health of employees, only certain specifically mentioned provisions of the directive may form the subject-matter of derogations by the Member States or social partners (see *Jaeger*, paragraph 80).

97 However, in the first place, Article 6 of Directive 93/104 is referred to only in Article 17(1) and it is undisputed that the latter provision covers activities which bear no relation at all to those carried out by emergency workers such as the claimants in the main proceedings. By contrast, Article 17(2), point 2.1(c)(iii), refers to 'activities involving the need for continuity of service', including in particular 'ambulance services', but this provision gives scope for derogating from only Articles 3, 4, 5, 8 and 16 of the directive.

98 In the second place, Article 18(1)(b)(i) of Directive 93/104 provides that the Member States have the right not to apply Article 6 provided that they observe the general principles of protection of the safety and health of workers and that they satisfy a number of conditions set out cumulatively in Article 18(1)(b)(i), but it is not disputed that the Federal Republic of Germany has not availed itself of that option to derogate (see *Jaeger*, paragraph 85).

99 Moreover, by virtue of the Court's case-law the Member States cannot unilaterally determine the scope of the provisions of Directive 93/104 by attaching conditions or restrictions to the implementation of the workers' right under Article 6(2) of the directive not to work more than 48 hours per week (see, to that effect, *Jaeger*, paragraphs 58 and 59). Any other interpretation would misconstrue the purpose of

the directive, which is intended to secure effective protection of the safety and health of workers by allowing them to enjoy minimum periods of rest (see *Jaeger*, paragraphs 70 and 92).

100 In those circumstances, it must be concluded that, in view of both the wording of Article 6(2) of Directive 93/104 and the purpose and scheme of the directive, the 48-hour upper limit on average weekly working time, including overtime, constitutes a rule of Community social law of particular importance from which every worker must benefit, since it is a minimum requirement necessary to ensure protection of his safety and health (see, by analogy, Case C-173/99 *BECTU* [2001] ECR I-4881, paragraphs 43 and 47), and therefore national legislation, such as that at issue in the main proceedings, which authorises weekly working time in excess of 48 hours, including periods of duty time ('Arbeitsbereitschaft'), is not compatible with the requirements of Article 6(2) of the directive.

101 Accordingly, the answer to the third question, as regards the first aspect, is that Article 6(2) of Directive 93/104 must be interpreted, in circumstances such as those in the main proceedings, as precluding legislation in a Member State the effect of which, as regards periods of duty time ('Arbeitsbereitschaft') completed by emergency workers in the framework of the emergency medical service of a body such as the Deutsches Rotes Kreuz, is to permit, including by means of a collective agreement or works agreement based on such an agreement, the 48-hour maximum period of weekly working time laid down by that provision to be exceeded.

The direct effect of Article 6(2) Directive 93/104 and the ensuing consequences in the cases before the national court

102 Since, in circumstances such as those in the main proceedings, the relevant national legislation is not compatible with the requirements of Directive 93/104 as regards

maximum weekly working time, it remains to be considered whether Article 6(2) of the directive fulfils the conditions for it to have direct effect.

103 In that regard, it is clear from the settled case-law of the Court that, whenever the provisions of a directive appear, so far as their subject-matter is concerned, to be unconditional and sufficiently precise, they may be relied upon before the national courts by individuals against the State where the latter has failed to implement the directive in domestic law by the end of the period prescribed or where it has failed to implement the directive correctly (see, inter alia, Joined Cases C-6/90 and C-9/90 *Francovich and Others* [1991] ECR I-5357, paragraph 11, and Case C-62/00 *Marks & Spencer* [2002] ECR I-6325, paragraph 25).

104 Article 6(2) of Directive 93/104 satisfies those criteria, since it imposes on Member States in unequivocal terms a precise obligation as to the result to be achieved, which is not coupled with any condition regarding application of the rule laid down by it, which provides for a 48-hour maximum, including overtime, as regards average weekly working time.

105 Even though Directive 93/104 leaves the Member States a degree of latitude when they adopt rules in order to implement it, particularly as regards the reference period to be fixed for the purposes of applying Article 6 of that directive, and even though it also permits them to derogate from Article 6, those factors do not alter the precise and unconditional nature of Article 6(2). First, it is clear from the wording of Article 17(4) of the directive that the reference period can never exceed 12 months and, second, the Member States' right not to apply Article 6 is subject to compliance with all the conditions set out in Article 18(1)(b)(i) of the directive. It is therefore possible to determine the minimum protection which must be provided in any event (see, to that effect, *Simap*, paragraphs 68 and 69).

106 As a consequence, Article 6(2) of Directive 93/104 fulfils all the conditions necessary for it to produce direct effect.

107 It still remains to determine the legal consequences which a national court must derive from that interpretation in circumstances such as those in the main proceedings, which involve individuals.

108 In that regard, the Court has consistently held that a directive cannot of itself impose obligations on an individual and cannot therefore be relied upon as such against an individual (see, inter alia, Case 152/84 *Marshall* [1986] ECR 723, paragraph 48; Case C-91/92 *Faccini Dori* [1994] ECR I-3325, paragraph 20; and Case C-201/02 *Wells* [2004] ECR I-723, paragraph 56).

109 It follows that even a clear, precise and unconditional provision of a directive seeking to confer rights or impose obligations on individuals cannot of itself apply in proceedings exclusively between private parties.

110 However, it is apparent from case-law which has also been settled since the judgment of 10 April 1984 in Case 14/83 *Von Colson and Kamann* [1984] ECR 1891, paragraph 26, that the Member States' obligation arising from a directive to achieve the result envisaged by the directive and their duty under Article 10 EC to take all appropriate measures, whether general or particular, to ensure the fulfilment of that

obligation is binding on all the authorities of Member States including, for matters within their jurisdiction, the courts (see, inter alia, Case C-106/89 *Marleasing* [1990] ECR I-4135, paragraph 8; *Faccini Dori*, paragraph 26; Case C-129/96 *Inter-Environnement Wallonie* [1997] ECR I-7411, paragraph 40; and Case C-131/97 *Carbonari and Others* [1999] ECR I-1103, paragraph 48).

111 It is the responsibility of the national courts in particular to provide the legal protection which individuals derive from the rules of Community law and to ensure that those rules are fully effective.

112 That is *a fortiori* the case when the national court is seised of a dispute concerning the application of domestic provisions which, as here, have been specifically enacted for the purpose of transposing a directive intended to confer rights on individuals. The national court must, in the light of the third paragraph of Article 249 EC, presume that the Member State, following its exercise of the discretion afforded it under that provision, had the intention of fulfilling entirely the obligations arising from the directive concerned (see Case C-334/92 *Wagner Miret* [1993] ECR I-6911, paragraph 20).

113 Thus, when it applies domestic law, and in particular legislative provisions specifically adopted for the purpose of implementing the requirements of a directive, the national court is bound to interpret national law, so far as possible, in the light of the wording and the purpose of the directive concerned in order to achieve the result sought by the directive and consequently comply with the third paragraph of Article 249 EC (see to that effect, inter alia, the judgments cited above in *Von Colson and Kamann*, paragraph 26; *Marleasing*, paragraph 8, and *Faccini Dori*, paragraph 26; see also Case C-63/97 *BMW* [1999] ECR I-905, paragraph 22; Joined Cases C-240/98 to C-244/98 *Océano Grupo Editorial and Salvat Editores*

[2000] ECR I-4941, paragraph 30; and Case C-408/01 *Adidas-Salomon and Adidas Benelux* [2003] ECR I-12537, paragraph 21).

114 The requirement for national law to be interpreted in conformity with Community law is inherent in the system of the Treaty, since it permits the national court, for the matters within its jurisdiction, to ensure the full effectiveness of Community law when it determines the dispute before it (see, to that effect, Case C-160/01 *Mau* [2003] ECR I-4791, paragraph 34).

115 Although the principle that national law must be interpreted in conformity with Community law concerns chiefly domestic provisions enacted in order to implement the directive in question, it does not entail an interpretation merely of those provisions but requires the national court to consider national law as a whole in order to assess to what extent it may be applied so as not to produce a result contrary to that sought by the directive (see, to that effect, *Carbonari*, paragraphs 49 and 50).

116 In that context, if the application of interpretative methods recognised by national law enables, in certain circumstances, a provision of domestic law to be construed in such a way as to avoid conflict with another rule of domestic law or the scope of that provision to be restricted to that end by applying it only in so far as it is compatible with the rule concerned, the national court is bound to use those methods in order to achieve the result sought by the directive.

117 In such circumstances, the national court, when hearing cases which, like the present proceedings, fall within the scope of Directive 93/104 and derive from facts postdating expiry of the period for implementing the directive, must, when applying

the provisions of national law specifically intended to implement the directive, interpret those provisions so far as possible in such a way that they are applied in conformity with the objectives of the directive (see, to that effect, the judgment in Case C-456/98 *Centrosteel* [2000] ECR I-6007, paragraphs 16 and 17).

118 In this instance, the principle of interpretation in conformity with Community law thus requires the referring court to do whatever lies within its jurisdiction, having regard to the whole body of rules of national law, to ensure that Directive 93/104 is fully effective, in order to prevent the maximum weekly working time laid down in Article 6(2) of the directive from being exceeded (see, to that effect, *Marleasing*, paragraphs 7 and 13).

119 Accordingly, it must be concluded that, when hearing a case between individuals, a national court is required, when applying the provisions of domestic law adopted for the purpose of transposing obligations laid down by a directive, to consider the whole body of rules of national law and to interpret them, so far as possible, in the light of the wording and purpose of the directive in order to achieve an outcome consistent with the objective pursued by the directive. In the main proceedings, the national court must thus do whatever lies within its jurisdiction to ensure that the maximum period of weekly working time, which is set at 48 hours by Article 6(2) of Directive 93/104, is not exceeded.

120 In view of all the foregoing reasoning, the answer to the third question must be that:

— Article 6(2) of Directive 93/104 must be interpreted, in circumstances such as those in the main proceedings, as precluding legislation in a Member State the

effect of which, as regards periods of duty time ('Arbeitsbereitschaft') completed by emergency workers in the framework of the emergency medical service of a body such as the Deutsches Rotes Kreuz, is to permit, including by means of a collective agreement or works agreement based on such an agreement, the 48-hour maximum period of weekly working time laid down by that provision to be exceeded;

— the provision fulfils all the conditions necessary for it to have direct effect;

— when hearing a case between individuals, the national court is required, when applying the provisions of domestic law adopted for the purpose of transposing obligations laid down by a directive, to consider the whole body of rules of national law and to interpret them, so far as possible, in the light of the wording and purpose of the directive in order to achieve an outcome consistent with the objective pursued by the directive. In the main proceedings, the national court must thus do whatever lies within its jurisdiction to ensure that the maximum period of weekly working time, which is set at 48 hours by Article 6(2) of Directive 93/104, is not exceeded.

Costs

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

On those grounds, the Court (Grand Chamber) rules:

1. (a) **Article 2 of Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work and Article 1(3) of Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organisation of working time must be construed as meaning that the activity of emergency workers, carried out in the framework of an emergency medical service, such as that at issue before the national court, falls within the scope of the directives.**

   (b) **On a proper construction, the concept of 'road transport' in Article 1(3) of Directive 93/104 does not encompass the activity of an emergency medical service, even though the latter includes using a vehicle and accompanying a patient on the journey to hospital.**

2. — **The first indent of Article 18(1)(b)(i) of Directive 93/104 is to be construed as requiring consent to be expressly and freely given by each worker individually if the 48-hour maximum period of weekly working time, as laid down in Article 6 of the directive, is to be validly extended. In that connection, it is not sufficient that the relevant worker's employment contract refers to a collective agreement which permits such an extension.**

3. — **Article 6, point 2, of Directive 93/104 must be interpreted, in circumstances such as those in the main proceedings, as precluding**

legislation in a Member State the effect of which, as regards periods of duty time ('Arbeitsbereitschaft') completed by emergency workers in the framework of the emergency medical service of a body such as the Deutsches Rotes Kreuz, is to permit, including by means of a collective agreement or works agreement based on such an agreement, the 48-hour maximum period of weekly working time laid down by that provision to be exceeded;

— **Article 6(2) of Directive 93/104 fulfils all the conditions necessary for it to have direct effect;**

— **when hearing a case between individuals the national court is required, when applying the provisions of domestic law adopted for the purpose of transposing obligations laid down by a directive, to consider the whole body of rules of national law and to interpret them, so far as possible, in the light of the wording and purpose of the directive in order to achieve an outcome consistent with the objective pursued by the directive. In the main proceedings, the national court must thus do whatever lies within its jurisdiction to ensure that the maximum period of weekly working time, which is set at 48 hours by Article 6(2) of Directive 93/104, is not exceeded.**

Signatures.