

Case C-14/04

Abdelkader Dellas and Others

v

**Premier ministre and Ministre des Affaires sociales,
du Travail et de la Solidarité**

(Reference for a preliminary ruling from the Conseil d'État (France))

(Social policy — Protection of the safety and health of workers — Directive 93/104/EC — Concept of 'working time' — Scope — National legislation providing for a ceiling more favourable to workers, in particular as regards maximum weekly working time — Determination of working time in certain social establishments — On-call duty where the worker is required to be present at the workplace — Periods of inactivity on the part of the worker in the context of such duty — National system of calculation of hours of presence differentiated according to the intensity of the activity)

Opinion of Advocate General Ruiz-Jarabo Colomer delivered on 12 July 2005 I - 10256
Judgment of the Court (Second Chamber), 1 December 2005 I - 10279

Summary of the Judgment

1. *Social policy — Protection of the health and safety of workers — Directive 93/104 concerning certain aspects of the organisation of working time — Working time — Definition — Workers in certain social and medico-social establishments — National legislation providing for a system of equivalence with a weighting mechanism for periods of inactivity — Not permissible*
(Council Directive 93/104)
2. *Social policy — Protection of the health and safety of workers — Directive 93/104 concerning certain aspects of the organisation of working time — More favourable national provisions — Thresholds or ceilings to be applied for ascertaining whether the directive is complied with*
(Council Directive 93/104, Art. 15)

1. Directive 93/104 concerning certain aspects of the organisation of working time must be interpreted as precluding legislation of a Member State which, with respect to on-call duty performed by workers in certain social and medico-social establishments during which they are required to be physically present at their workplace, lays down, for the purpose of calculating the actual working time, a system of equivalence in which a weighting mechanism is applied with flat-rate coefficients to take account of periods of inactivity during on-call duty, where compliance with all the minimum requirements laid down by that directive in order to protect effectively the safety and health of workers is not ensured.

The classification as working time within the meaning of Directive 93/104 of a period during which the employee is present at his workplace cannot depend on the intensity of his work but follows solely from his obligation to be at his employer's disposal.

(see paras 58, 63, operative part)

2. Article 15 of Directive 93/104 concerning certain aspects of the organisation of working time expressly allows the application or introduction of national provisions more favourable to the protection of the safety and health of workers. Where national law fixes a ceiling more favourable to workers, in particular for maximum weekly working time, the relevant thresholds or ceilings for ascer-

taining whether the protective rules laid down by that directive are complied with are exclusively those set out in the directive.

(see paras 51, 63, operative part)