

Case C-303/98

Sindicato de Médicos de Asistencia Pública (Simap)

v

Conselleria de Sanidad y Consumo de la Generalidad Valenciana

(Reference for a preliminary ruling
from the Tribunal Superior de Justicia de la Comunidad Valenciana)

(Social policy — Protection of the safety and health of workers —
Directives 89/391/EEC and 93/104/EC — Scope —
Doctors in primary health care teams — Average period of work —
Inclusion of time on call — Night workers and shift workers)

Opinion of Advocate General Saggio delivered on 16 December 1999 . . . I-7968
Judgment of the Court, 3 October 2000 I-7997

Summary of the Judgment

1. *Social policy — Protection of workers' safety and health — Directive 89/391 on the introduction of measures to encourage improvements in the safety and health of workers at work — Directive 93/104 concerning certain aspects of the organisation of working time — Scope — Doctors in primary health care teams — Included (Council Directive 89/391, Art. 2(1) and (2); Council Directive 93/104, Art. 1(3))*

2. *Social policy — Protection of workers' safety and health — Directive 93/104 concerning certain aspects of the organisation of working time — No express implementing measures — Derogations provided for in Article 17 — Applicability (Council Directive 93/104, Art. 17)*
3. *Social policy — Protection of workers' safety and health — Directive 93/104 concerning certain aspects of the organisation of working time — Working time — Definition — Doctors in primary health care teams — Time on call — Included (Council Directive 93/104, Art. 2(1))*
4. *Social policy — Protection of workers' safety and health — Directive 93/104 concerning certain aspects of the organisation of working time — Night work — Definition — Application to doctors in public hospitals whose employment relationship is governed by public law of legislation on night work applicable to workers whose employment relationship is governed by private law (Council Directive 93/104, Art. 2(4))*
5. *Social policy — Protection of workers' safety and health — Directive 93/104 concerning certain aspects of the organisation of working time — Shift work — Definition (Council Directive 93/104, Art. 2(5) and (6))*
6. *Social policy — Protection of workers' safety and health — Directive 93/104 concerning certain aspects of the organisation of working time — Maximum weekly working time — Derogation — Unconditional and precise nature (Council Directive 93/104, Art. 16(2) and 17(2) and (4))*
7. *Social policy — Protection of workers' safety and health — Directive 93/104 concerning certain aspects of the organisation of working time — Maximum weekly working time — Derogation — Worker's consent (Council Directive 93/104, Art. 18(1)(b)(i))*

1. It is clear both from the object of Directive 89/391 on the introduction of measures to encourage improvements in the safety and health of workers at work, and from the wording of Article 2(1) thereof, that it must necessarily

be broad in scope and that the exceptions thereto, including that provided for in Article 2(2) concerning certain specific public service activities intended to uphold public order and security, which are essential for the proper

functioning of society, must be interpreted restrictively.

An activity such as that of doctors in primary health care teams, performing their activities in a context which links them to the public sector, which cannot, under normal circumstances, be assimilated to the activities referred to in Article 2(2) of Directive 89/391 and does not come within the scope of one of the exclusions provided for in Article 1(3) of Directive 93/104 concerning certain aspects of the organisation of working time, falls within the scope of those directives.

(see paras 33–41, and operative part 1)

2. Even in the absence of express measures transposing Directive 93/104 concerning certain aspects of the organisation of working time, provided that the national law applicable to a given activity observes the conditions laid down in Article 17 thereof, which permits derogations from Articles 3, 4, 5, 6, 8 and 16 by means of laws, regulations or administrative provisions or by means of collective agreements or agreements between the two sides of industry, that law conforms to the directive. Consequently the national court may apply its domestic law to the extent to which, having regard to the characteristics of the activity of doctors in primary health

care teams, that law meets the conditions laid down in Article 17 of Directive 93/104.

(see paras 43–45, and operative part 2)

3. Time spent on call by doctors in primary health care teams must be regarded in its entirety as working time, and where appropriate as overtime, within the meaning of Directive 93/104 concerning certain aspects of the organisation of working time, if they are required to be at the health centre. If they must merely be contactable at all times when on call, only time linked to the actual provision of primary health care services must be regarded as working time.

(see para. 52, and operative part 3)

4. Doctors in primary health care teams who are regularly on call at night may not be regarded as night workers within the meaning of Article 2(4)(a) of Directive 93/104 concerning certain aspects of the organisation of working time by virtue of Article 2(4)(b) alone where the Member State has adopted no measure in accordance with that provision. Whether national legislation

on night work by workers whose employment is governed by private law may be applied to doctors in primary health care teams whose employment is governed by public law is a question to be resolved by the national court in accordance with domestic law.

(see paras 55–58, and operative part 4)

5. Work performed by doctors in primary health care teams whilst on call which is organised in such a way that workers are assigned successively to the same work posts on a rotational basis, which makes it necessary for them to perform work at different hours over a given period of days or weeks, constitutes shift work and such doctors are shift workers within the meaning of Article 2(5) and (6) of Directive 93/104 concerning certain aspects of the organisation of working time.

(see paras 62, 64, and operative part 5)

6. Even though Article 16(2) of Directive 93/104 concerning certain aspects of

the organisation of working time, allowing the Member States to lay down, for the application of Article 6, which is concerned with maximum weekly working time, a reference period not exceeding four months, and Article 17(2), point 2.1(c)(i), of that directive, which provides that the Member States may derogate from Article 16(2) thereof in the case of activities involving the need for continuity of service or production, leave the Member States a degree of latitude regarding the reference period to be fixed for the purposes of applying Article 6 of that directive, that does not alter the precise and unconditional nature of those provisions. It is clear from the terms of Article 17(4) of Directive 93/104 that the reference period may in no circumstances exceed 12 months. It follows that the latitude allowed does not make it impossible to determine the minimum protection which must be provided in any event.

Consequently, in the absence of national provisions transposing Article 16(2) of Directive 93/104 or, as the case may be, expressly adopting one of the derogations provided for in Article 17(2), (3) and (4) thereof, those provisions may be interpreted as having direct effect, and therefore they confer on individuals a right whereby the reference period for the implementation of the maximum duration of

their weekly working time must not exceed 12 months.

(see paras 66–70, and operative part 6)

which allows the Member States not to apply Article 6 of that directive, relating to maximum weekly working time, that that provision requires the consent of the individual worker. Consequently, 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.

7. It is clear from the wording of the first indent of Article 18(1)(b)(i) of Directive 93/104 concerning certain aspects of the organisation of working time,

(see paras 72–74, and operative part 7)