

Press and Information Division

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Opinion of Advocate General Ruiz-Jarabo in Case C-151/02

Landeshauptstadt Kiel v Norbert Jaeger

**THE ADVOCATE GENERAL CONSIDERS THAT ALL TIME SPENT BY A
DOCTOR ON CALL IN A HOSPITAL CONSTITUTES WORKING TIME FOR
THE PURPOSES OF COMMUNITY LAW.**

Advocate General Ruiz-Jarabo considers that the fact that a bed is provided to the doctor when he is on duty to enable him to rest from time to time contributes to protecting his health and to ensuring that he is able to attend properly to patients.

Mr Jaeger works as a doctor in a hospital in Kiel where he is on call six times each month, for periods of 16 hours, 25 hours or 22 hours and 45 minutes, depending on the day of the week. He is compensated for this by means of free time and extra pay. During these periods when he is on call, he is obliged to stay at the hospital, where he is provided with a bed to enable him to rest when his services are not required.

Under German legislation, the times when he is not working are deemed to be rest periods. Mr Jaeger, however, takes the view that they constitute working time for which he should receive remuneration or be compensated.

The German court has asked the Court of Justice to interpret a number of provisions of the Community directive concerning certain aspects of the organisation of working time. The question is whether periods during which doctors are on call in hospitals constitute working time in their entirety, where the doctors are permitted to sleep at the hospital during the time where their services are not required.

Advocate General Ruiz-Jarabo has delivered his Opinion in this case today.

The view of the Advocate General is not binding on the Court of Justice. The task of the Advocate General is to propose to the Court, in complete independence, a legal solution to the case concerned.

Advocate General Ruiz-Jarabo points out that the Directive sets out three conditions in order for time to be classified as working time. These are:

- that the employee must remain at his place of work,
- at the employer's disposal, and
- carrying out his activities.

According to the Advocate General, the first two conditions are met in this case, which is necessary as well as, in the majority of cases, being sufficient in order for time to be regarded as working time.

Those three conditions for time to be classified as working time are to apply in accordance with national laws and practice. However, in Mr Ruiz-Jarabo's view, that does not entitle a Member State to consider that a doctor who is on call in a hospital is not at the employer's disposal during periods of inactivity when he is waiting to be summoned.

In addition, Mr Ruiz-Jarabo states that the fact that the intensity and extent of activities carried out when on call are not the same as during normal working hours does not mean that periods spent on call constitute rest time for the employee. Furthermore, **the fact that the doctor is provided with a bed when on call so as to be able to rest from time to time contributes to protecting the doctor's health and to ensuring that he is able to attend properly to patients.**

Consequently, **the Advocate General considers that periods of on-call duty carried out by a doctor in a hospital constitute in their entirety working time, within the meaning of the Working Time Directive, even if the doctor is able to sleep during periods of inactivity.**

The periods of inactivity cannot, therefore, count as rest periods, especially where the worker is not guaranteed the minimum number of hours of continuous rest.

Note: the judges of the Court of Justice will now begin their deliberation on the case. The judgment will be delivered at a later date.

Unofficial document for media use; not binding on the Court of Justice.

This press release is available in Danish, Dutch, English, French German, Greek, Italian and Spanish.

For the full text of the Opinion, please consult our internet page

www.curia.eu.int

at approximately 3 pm today.

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