



Bundesverwaltungsgericht

Press release

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Compensatory time off for extended working time in the Leipzig fire service

The Higher Administrative Court (*Oberverwaltungsgericht*) in Bautzen must reconsider actions brought by civil servants in the Leipzig fire service who claimed compensatory time off for work in excess of 48 hours per week. That was decided today by the Federal Administrative Court (BVerwG, *Bundesverwaltungsgericht*) in Leipzig.

The regular working time for civil servants in the fire service, including on-call duty, is 48 hours per week. From 2008 onwards, numerous civil servants in the fire service, including the claimants, issued declarations that they would perform up to 52 hours of service per week. The City of Leipzig then found itself in a position of dividing service into 24-hour shifts. Those civil servants who did not make such a declaration were assigned to 12-hour shift service.

In November 2013, the claimants objected to their working time, as well as its manner of calculation and compensation, for the working time in excess of 48 hours per week. Neither the objection nor the subsequent court action was successful in the respective cases. On appeal on points of fact and law by the claimants, the Higher Administrative Court ordered the defendant to provide compensatory time off for working time in excess of 48 hours per week. However, the court found that the claim for compensation arose only as from the month after the objection was lodged in November 2013, and not retroactively. Both the claimants and the defendant lodged an appeal on points of law against this decision.

The Federal Administrative Court has reversed the appeal judgements in part, and referred the proceedings back to the Higher Administrative Court for a new decision. It found that the Higher Administrative Court had correctly decided that the civil servants are not entitled to compensation for "overtime", as overtime pertains only to additional work that is ordered or approved by way of exception beyond regular working time; however, the matter actually at issue is an expansion of regular working time.

The Higher Administrative Court must re-examine whether the constituent elements for a liability claim under EU law have been met. Under the European Working Time Directive (Directive 88/2003/EC), voluntary overtime (beyond 48 hours) may be permissible if those civil servants who do not declare their consent are not threatened with detriment because of their refusal. Such detriment exists if the employer penalises the refusal of extended working time, or if the alternative - i.e., in this case, the organisation of the shift pattern - proves to be negative when viewed objectively in an overall consideration of all factual and legal consequences of such a refusal. Adverse circumstances for which the employer has already provided compensation - for example, with monetary compensation or compensatory time off - must be left out of such an overall consideration.

The factual findings by the court hearing the appeal on points of fact and law did not suffice for such an overall consideration. They will have to be determined in new appeal proceedings on points of fact and law.

The proceedings were also to be referred back to the Higher Administrative Court because the scope of the claim for compensation cannot be set as a lump sum - as the Higher Administrative Court had done - but rather must result from a specific calculation of the individual working hours that exceeded the required limit of 48 hours per week.

BVerwG 2 C 36.17 - Judgment of 19 April 2018

Previous instances:

OVG Bautzen, 2 A 336/15 - Judgment of 25 April 2017 -

VG Leipzig, 3 K 1408/14 - Judgment of 26 March 2015 -

BVerwG 2 C 40.17 - Judgment of 19 April 2018

Previous instances:

OVG Bautzen, 2 A 294/15 - Judgment of 25 April 2017 -

VG Leipzig, 3 K 1374/14 - Judgment of 26 March 2015 -