



Press and Information

Court of Justice of the European Union

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Judgment in Case C-254/18

Syndicat des cadres de la sécurité intérieure v Premier ministre, ministre de l'Intérieur and ministre de l'Action et des Comptes publics

## **National legislation may lay down, for the purpose of calculating the average weekly working time, reference periods which start and end on fixed calendar dates**

*Such legislation must, however, contain mechanisms which make it possible to ensure that the maximum average weekly working time of 48 hours is respected during each six-month period straddling two consecutive fixed reference periods*

A dispute has arisen between the Syndicat des cadres de la sécurité intérieure (Union of higher-ranking security forces personnel) and the French authorities with regard to the reference period used to calculate the average weekly working time of active officials of the national police force.

The French decree applicable to those officials<sup>1</sup> provides that the weekly working time for each seven-day period, including overtime, may not exceed, on average, 48 hours in the course of a six-month period in a calendar year.

On 28 March 2017, the Syndicat des cadres de la sécurité intérieure brought proceedings before the Conseil d'État (Council of State, France) seeking the annulment of that provision. It argues that by using, for the calculation of the average weekly working time, a reference period expressed in six-month periods in the calendar year (fixed reference period), and not a six-month reference period the start and end of which change with the passage of time (rolling reference period), the aforementioned provision fails to comply with the rules set out in the directive concerning certain aspects of the organisation of working time,<sup>2</sup> in particular the derogation under which Member States can extend the reference period up to six months.

The Conseil d'État asks the Court of Justice whether the provisions of the directive preclude the French legislation which lays down, for the purpose of calculating the average weekly working time, reference periods which start and end on fixed calendar dates, and not reference periods which are determined on a rolling basis.

In today's judgment, the Court holds, particularly in view of the fact that the directive is silent on this point, that **the Member States are free to determine reference periods in accordance with their chosen method, subject to respect for the objectives of that directive.**

The Court notes that the objective pursued by the directive is to ensure better protection of the safety and health of workers, by providing in particular a maximum limit to weekly working time. That maximum limit constitutes a particularly important rule of EU social law from which every worker must benefit as a minimum requirement intended to ensure protection of his safety and health. The Court points out that fixed and rolling reference periods comply, in themselves, with that objective, in that they make it possible to verify that a worker does not work more than 48 hours on average per week over the entire duration of the period in question and that the requirements relating to his health and safety are thus respected. For that purpose, it is irrelevant

<sup>1</sup> Decree No 2002-1279 of 23 October 2002 derogating from the minimum guaranteed working hours and periods of rest applicable to staff of the national police (*JORF* of 25 October 2002, p. 17681), as amended by Decree No 2017-109 of 30 January 2017) (*JORF* of 31 January 2017).

<sup>2</sup> Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time (OJ 2003 L 299, p. 9).

whether the start and end of the reference period are determined according to fixed calendar dates or according to the passage of time.

Nevertheless, the Court states that the effect of fixed reference periods on the safety and health of workers depends on all the relevant circumstances, such as the nature of the work and its conditions, as well as, in particular, the maximum duration of weekly working time and the duration of the reference period adopted by a Member State. In that regard, the Court notes that fixed reference periods may, in contrast to rolling reference periods, create situations in which the objective of protecting the health and safety of workers may not be met. The fixed reference period method may lead an employer to require a worker to undertake, over two consecutive fixed reference periods, an extremely long period of work and consequently make that worker exceed, on average, the maximum weekly working time over a period which, since it straddles those two fixed periods, corresponds to a rolling reference period of the same duration.

Consequently, while fixed and rolling reference periods, taken separately, comply, in themselves, with the objective of protecting the health and safety of workers, the combination of two consecutive fixed reference periods may, depending on the maximum weekly working time and the duration of the reference period adopted by a Member State, lead to situations in which that objective may be jeopardised, even though the rest periods laid down in the directive have been respected.

The Court concludes that the use of fixed reference periods must be accompanied by mechanisms which make it possible to ensure that the maximum average weekly working time of 48 hours is respected during each six-month period straddling two consecutive fixed reference periods. It adds that it is for the national court to verify whether national legislation has provided for mechanisms which ensure such compliance.

The Court concludes by taking the view **that national legislation may lay down, for the purpose of calculating the average weekly working time, reference periods which start and end on fixed calendar dates, provided that that legislation contains mechanisms which make it possible to ensure that the maximum average weekly working time of 48 hours is respected during each six-month period straddling two consecutive fixed reference periods.**

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**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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