

Bundesverwaltungsgericht, Urteile vom 29. April 2004
- Az. 2 C 9.03 und 2 C 10.03 -

The appellants worked as civil servants in a detention centre. Their work included hours of on-call-duty for which they received a reduced salary of 50 percent of their regular hourly pay.

After the ECJ had held that on-call-duty must be regarded as constituting in its totality working time (Case C-303/98 "Simap", Case C-151/02 "Jaeger") the appellants brought proceedings submitting that - against this background - different remunerations for on-call-duty and regular working time were no longer in accordance with European law. They particularly claimed an infringement of council directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work and council directive 93/104/EC of 23 November 1993 concerning certain aspects of the organization of working time.

The case was dismissed by the administrative courts of first and second instance on the grounds that on-call-duty was not as demanding as regular working time and, thus, the reduction of the regular salary was justified.

The decision was upheld by the Federal Administrative Court without referring the matter to the ECJ for a preliminary ruling. The Court argued that the German salary scheme did obviously not infringe Community law. It was clear from the wording of the above-mentioned directives as well as from the wording of Art. 137 EC Treaty (formerly Art. 118) on which those directives were based that on-call-duty was to be regarded as working time only for the purpose of improving safety and health at work. Art. 137 (5) EC Treaty explicitly excluded the Community from adopting measures concerning pay and the directives did not mention aspects of salary either.