



Press and Information

Court of Justice of the European Union

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Judgment in Case C-211/19
UO v Készenléti Rendőrség

The Working Time Directive applies to officers of the Hungarian Rapid Intervention Police responsible for surveillance of the external borders of the Schengen Area in the context of the migration crisis

Thus, except in exceptional circumstances, on-call duties carried out in teams by those officers fall within the scope of that directive

UO is a member of the Rapid Intervention Police in Hungary, a special unit of the Hungarian Police carrying out specific missions, including patrols on the border of Hungary with States not in the Schengen Area. Between July 2015 and April 2017, UO was a member of a border patrol squadron on the borders between Hungary and Serbia, Croatia and Romania, on the Balkan migration route. During that period, he was ordered, with his team, to carry out extraordinary alert duties and on-call duties outside normal working hours.

The Hungarian Rapid Intervention Police treated UO's on-call periods as rest time, for which the officer received only an on-call supplement. UO considers, however, that, during that period, he was in fact performing an alert duty, outside his normal daily duty hours, which should be classified as 'working time', falling within the scope of the Working Time Directive ('the directive'),¹ for which he was entitled to receive an extraordinary duties payment.

Hearing the action brought by UO against his employer, the Miskolci Közigazgatási és Munkaügyi Bíróság (Administrative and Labour Court, Miskolc, Hungary) asks the Court of Justice whether the specific features of the activity of officers of the Hungarian Rapid Intervention Police preclude the application of the directive to that activity.²

By today's judgment, the Court finds, first of all, that certain specific public service activities do not, by their nature, lend themselves to planning as regards working time and may, in so far as they must be continuous in order to ensure the effective performance of essential functions of the State, fall outside the scope of the directive.

That requirement for continuity must, nevertheless, be assessed taking into account the specific nature of the activity under consideration.

In that regard, the Court recalls, first, that certain public service activities are so specific, even when carried out under normal conditions, that their nature inevitably precludes any planning of working time which complies with the requirements laid down by the directive.

As regards the present case, the Court notes, however, that **surveillance missions on the external borders of the Schengen Area, when carried out under normal conditions, by the Hungarian Rapid Intervention Police, are not, prima facie, specific to that extent.** It has not been established that the fact that, at regular intervals, an officer of the Rapid Intervention Police must be entitled to rest hours or rest days after having worked for a certain number of hours or days undermines a fundamental aspect of the missions which that worker is called upon to carry

¹ Directive 2003/83/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).

² The directive defines its scope by reference to Article 2(2) 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 (OJ 1989 L 183, p. 1).

out on a regular basis. In particular, it is not apparent from the facts of the case that those missions, as a result of their specific features, can be carried out only on a continuous basis and solely by that particular worker.

The Court recalls, second, that although the requirement for continuity of the activities performed in the areas of public health, public safety and public order can, in principle, be reconciled with the directive when they are performed under normal conditions, **those activities may none the less fall outside the scope of the directive in circumstances of exceptional gravity and scale.**

On that point, the Court states that such exceptional events may, inter alia, include natural or technological disasters, attacks, serious accidents or similar events, the gravity and scale of which require the adoption of measures indispensable for the protection of the life, health and safety of the community at large, the proper performance of which would be compromised if all the rules set out in the directive had to be followed.

The Court then points out that it is for the Hungarian court to ascertain whether, during the period in dispute, the conditions under which UO performed the missions in question were of exceptional gravity and scale justifying the non-application of the directive. It must in particular determine whether an influx of migrants to the external borders of the Schengen Area prevented the surveillance of those borders by the Hungarian Rapid Intervention Police from being carried out, during the entire period at issue, under normal conditions, in accordance with the task given to the Rapid Intervention Police and without it being possible to set up a rotation system for the personnel enabling each worker to be guaranteed a rest period as required under the directive.

Finally, the Court recalls that the directive applies only to the organisation of the working time of workers, such that it does not directly concern their remuneration. Thus, even were the directive to prove to be applicable to the situation of the police officer in question in the present case as regards the organisation of his working time, the questions concerning his remuneration fall to be dealt with under Hungarian law.

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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