Court of Justice of the European Union
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Press and Information

Judgments in Cases C-344/19,
D.J. v Radiotelevizija Slovenija, and
C-580/19, RJ v Stadt Offenbach am Main

A period of stand-by time according to a stand-by system is not, in its entirety, working time unless the constraints imposed on the worker very significantly affect his or her ability to manage, during that period, his or her free time

The organisational difficulties that a period of stand-by time may entail for the worker and which are the result of natural factors or the free choice of that worker are not relevant

In Case C-344/19, a specialist technician was responsible for ensuring the operation, for several consecutive days, of television transmission centres situated in the mountains in Slovenia. He provided, in addition to his twelve hours of normal work, services consisting in stand-by time, of six hours per day, according to a stand-by system. During those periods, he was not obliged to remain at the transmission centre in question, but was required to be contactable by telephone and to be able to return there within a time limit of one hour, if necessary. On the facts, due to the geographical location of the transmission centres, to which access was difficult, he was obliged to stay there while carrying out his stand-by time services, in service accommodation placed at his disposal by his employer, without many opportunities for leisure pursuits.

In Case C-580/19, a public official carried out activities as a firefighter in the town of Offenbach am Main (Germany). To that end, in addition to his regular service hours, he regularly had to carry out periods of stand-by time according to a stand-by system. During those periods, he was not required to be present at a place determined by his employer, but had to be reachable and able to reach, if alerted, the city boundaries within a 20-minute period, with his uniform and the service vehicle made available to him.

The two claimants considered that, owing to the restrictions involved, their periods of stand-by time according to a stand-by system had to be recognised, in their entirety, as ‘working time’ and remunerated accordingly, irrespective of whether or not they had carried out any specific work during those periods. After his claim was rejected at first and second instance, the first claimant brought an appeal on a point of law before the Vrhovno sodišče (Supreme Court, Slovenia). For his part, the second claimant brought an action before the Verwaltungsgericht Darmstadt (Administrative Court, Darmstadt, Germany) following the refusal of his employer to grant his request.

Ruling on requests for preliminary rulings from those respective courts, in two judgments the Court, sitting as the Grand Chamber, specifies in particular the extent to which periods of stand-by time according to a stand-by system may be classified as ‘working time’ or, on the contrary, ‘rest periods’ with regard to Directive 2003/88. [1]

Findings of the Court

As a preliminary matter, the Court recalls that a period of stand-by time must be classified as either ‘working time’ or a ‘rest period’ within the meaning of Directive 2003/88, as those two concepts are mutually exclusive. In addition, a period during which no actual activity is carried out by the worker on behalf of his or her employer does not necessarily constitute a ‘rest period’. Thus, it is clear

[1] 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).

from the Court's case-law that a period of stand-by time must automatically be classified as 'working time' when the worker is obliged, during that period, to remain at his or her workplace, distinct from his or her home, and at the disposal of his or her employer there.

Having made those observations, the Court held, in the first place, that periods of stand-by time, including stand-by time according to a stand-by system, also, in their entirety, fall within the concept of 'working time' where the constraints imposed on the worker during those periods objectively and very significantly affect his or her ability freely to manage the time during which his or her professional services are not required and to pursue his or her own interests. Conversely, in the absence of such constraints, only the time linked to the provision of work actually carried out during that period constitutes 'working time'

In that regard, the Court states that, in order to determine whether a period of stand-by time is 'working time', only the constraints that are imposed on the worker, whether by the law of the Member State concerned, by a collective agreement or by the employer, may be taken into consideration. By contrast, organisational difficulties that a period of stand-by time may entail for the worker and which are the result of natural factors or the free choice of that worker are not relevant. That is the case, for example, where there are limited opportunities for leisure pursuits within the area that the worker is unable in practice to leave during a period of stand-by time according to a stand-by system.

Furthermore, the Court underlines that it is for the national courts to carry out an overall assessment of all the facts of the case in order to determine whether a period of stand-by time according to a stand-by system must be classified as 'working time', as that classification is not automatic in the absence of a requirement to remain at the workplace. For that purpose, first, it is necessary to take into account the reasonableness of the time limit within which the worker is required to resume his or her professional activities starting from the moment at which his or her employer requires his or her services, which, as a general rule, means that he or she must return to his or her workplace. However, the Court emphasises that the consequences of such a time limit must be specifically assessed, taking into account not only the other constraints imposed on the worker, such as the obligation to have specific equipment with him or her when returning to the workplace, but also the facilities that are made available to him or her. Such facilities may, for example, consist of the provision of a service vehicle that permits use of traffic regulations privileges. Second, the national courts must also have regard to the average frequency of the activities that the worker is actually called upon to undertake over the course of that period, where it is possible objectively to estimate it.

In the second place, the Court emphasises that the way in which workers are remunerated for periods of stand-by time is not covered by Directive 2003/88. Accordingly, that directive does not preclude a national law, collective labour agreement or a decision of an employer that, for the purpose of their remuneration, takes into account differently the periods during which work is in reality carried out and those periods during which no actual work is accomplished, even where those periods must be regarded, in their entirety, as 'working time'. As regards remuneration of periods of stand-by time which, conversely, cannot be classified as 'working time', Directive 2003/88 does not preclude payment of a sum intended to compensate workers for the inconvenience caused them.

In the third place, the Court observes that the fact that a period of stand-by time which cannot be classified as 'working time' must be regarded as a 'rest period' does not affect the specific obligations that are laid down by Directive 89/391 [2] and are binding on employers. In particular, employers may not establish periods of stand-by time which, due to their duration or frequency, constitute a risk to the safety or health of workers, irrespective of those periods being classified as 'rest periods' within the meaning of Directive 2003/88.

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[2] 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).

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.

The full text of the judgments (C-344/19 and C-580/19) is published on the CURIA website on the day of delivery.

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