

Joined Cases C-397/01 to C-403/01

Bernhard Pfeiffer and Others

v

Deutsches Rotes Kreuz, Kreisverband Waldshut eV

(Reference for a preliminary ruling
from the Arbeitsgericht Lörrach)

(Social policy — Protection of the health and safety of workers — Directive 93/104/EC — Scope — Emergency workers in attendance in ambulances in the framework of an emergency service run by the German Red Cross — Definition of ‘road transport’ — Maximum weekly working time — Principle — Direct effect — Derogation — Conditions)

Opinion of Advocate General Ruiz-Jarabo Colomer delivered on 6 May 2003 1 - 8839

Opinion of Advocate General Ruiz-Jarabo Colomer delivered on 27 April 2004 1 - 8859

Judgment of the Court (Grand Chamber), 5 October 2004 1 - 8878

Summary of the Judgment

1. *Social policy — Protection of the health and safety of workers — Directive 89/391 on the introduction of measures to encourage improvements in the safety and health of workers at work — Directive 93/104 concerning certain aspects of the organisation of working time — Scope — Activity of emergency workers — Included — Activity not forming part of civil protection services or road transport excluded from such scope*
(Council Directives 89/391, Art. 2, and 93/104, Art. 1(3))
2. *Social policy — Protection of the health and safety of workers — Directive 93/104 concerning certain aspects of the organisation of working time — Maximum weekly working time — Derogation — Worker's consent — Employment contract referring to a collective agreement permitting the extension of that time — Insufficient*
(Council Directive 93/104, Art. 18(1)(b)(i))
3. *Social policy — Protection of the health and safety of workers — Directive 93/104 concerning certain aspects of the organisation of working time — Activity of emergency workers — National legislation permitting the extension of the maximum weekly working time by means of a collective or works agreement — Not permissible*
(Council Directive 93/104, Art. 6(2))
4. *Social policy — Protection of the health and safety of workers — Directive 93/104 concerning certain aspects of the organisation of working time — Article 6(2) — Direct effect — Powers and duties of the national court — Non-application of national provisions permitting the extension of the maximum weekly working time set by that article*
(Council Directive 93/104, Art. 6(2))

1. Article 2 of Directive 89/391 on the introduction of measures to encourage improvements in the safety and health of workers at work and Article 1(3) of Directive 93/104 concerning certain aspects of the organisation of working time must be construed as meaning that the activity of emergency workers, carried out in the framework of an emer-

gency medical service, falls within the scope of those directives.

In that regard, that activity does not come within the exclusion in the first subparagraph of Article 2(2) of Directive

89/391 relating to certain specific activities within the public service. That exclusion was adopted purely for the purpose of ensuring the proper operation of services essential for the protection of public health, safety and order in cases the gravity and scale of which are exceptional and a characteristic of which is the fact that, by their nature, they do not lend themselves to planning as regards the working time of teams of emergency workers.

if the 48-hour maximum period of weekly working time, as laid down in Article 6 of that directive, is to be validly extended. In that connection, it is not sufficient that the relevant worker's employment contract refers to a collective agreement which permits such an extension, since it is by no means certain that, when he entered into such a contract, the worker concerned knew of the restriction of the rights conferred on him by Directive 93/104.

Likewise, the activity of emergency workers, even if it includes, at least in part, using a vehicle and accompanying a patient on his journey to hospital, cannot be regarded as 'road transport' and therefore must be excluded from the scope of Article 1(3) of Directive 93/104.

(see paras 85-86, operative part 2)

(see paras 55, 63, 72, 74,
operative part 1)

2. The first indent of Article 18(1)(b)(i) of Directive 93/104 concerning certain aspects of the organisation of working time, which confers the right not to apply Article 6 of that directive containing the rule as to the maximum weekly working time, is to be construed as requiring consent to be expressly and freely given by each worker individually

3. Article 6(2) of Directive 93/104 concerning certain aspects of the organisation of working time must be interpreted as precluding legislation in a Member State the effect of which, as regards periods of duty time completed by emergency workers in the framework of an emergency medical service, is to permit, including by means of a collective agreement or works agreement based on such an agreement, the 48-hour maximum period of weekly working time laid down by that provision to be exceeded.

First, it follows both from the wording of Article 6(2) of Directive 93/104 and from the purpose and scheme of that

directive, that the 48-hour upper limit on weekly working time constitutes a rule of Community social law of particular importance from which every worker must benefit, since it is a minimum requirement necessary to ensure protection of his safety and health, so that national legislation which authorises weekly working time in excess of 48 hours, including periods of duty time, is not compatible with the requirements of Article 6(2) of the directive. Second, periods of duty time completed by emergency workers must be taken into account in their totality in the calculation of maximum daily and weekly working time, regardless of the fact that they necessarily include periods of inactivity of varying length between calls.

(see paras 94-95, 100-101, 120,
operative part 3)

4. Article 6(2) of Directive 93/104 concerning certain aspects of the organisation of working time fulfils all the conditions necessary for it to have direct effect, since it imposes on Member States in unequivocal terms a precise obligation as to the result to be achieved,

which is not coupled with any condition regarding application of the rule laid down by it, which provides for a 48-hour maximum as regards average weekly working time. The fact that the directive leaves the Member States a degree of latitude to adopt rules in order to implement Article 6, and that it permits them to derogate from it, do not alter the precise and unconditional nature of Article 6(2).

Accordingly, when hearing a case between individuals, a national court, which is required, when applying the provisions of domestic law adopted for the purpose of transposing obligations laid down by a directive, to consider the whole body of rules of national law and to interpret them, so far as possible, in the light of the wording and purpose of the directive in order to achieve an outcome consistent with the objective pursued by it, must do whatever lies within its jurisdiction to ensure that the maximum period of weekly working time, which is set at 48 hours by the said Article 6(2), is not exceeded.

(see paras 104-106, 119-120,
operative part 3)