Case C-110/24

Request for a preliminary ruling

Date lodged:

9 February 2024

Referring court:

Tribunal Superior de Justicia de la Comunidad Valenciana (Spain)

Date of the decision to refer:

24 January 2024

Applicant:

Sindicat de Treballadores i Treballadors de les Administracions i els Serveis Publics (STAS-IV)

Defendant:

Valenciana d'Estrategies i Recursos per a la Sostenibilitat Ambiental, S. A. (VAERSA)

…

[Referring court, parties and proceedings]

BACKGROUND

FIRST.– On 13 October 2023, the Social Division of the Tribunal Superior de Justicia de la Comunidad Valenciana (High Court of Justice of the Community of Valencia, Spain) received an application for a group action filed by the Sindicat de Treballadores i Treballadors de les Administracions i el Serveis Publics STAS-IV ('the applicant' or 'STAS-IV') against the company Valenciana d'Estrategies i Recursos per a la Sostenibilitat Ambiental, S. A. ('VAERSA' or 'the defendant') in which, after stating the facts, the applicant requested that the court: 'declare that the biodiversity personnel are entitled to have the journeys made in the company vehicle from the base to the work site and from the work site where they carry out their daily duties to the base counted as actual working time, with the working day ending at 15.00 when the vehicle is delivered to the base, and order VAERSA to comply with that declaration, with all the associated consequences.'

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In accordance with the action requested in the application, the following trade unions were summoned as interested parties: the Comisiones Obreras del País Valenciano (CCOO PV), the Confederació General del Treball del País Valencià i Múrcia (CGT-PV), the Unión General de Trabajadores del País Valenciano (UGT PV), the Intercomarcal de Trabajadores de Castellón (SIT), the Unión Sindical Obrera de la Comunidad Valenciana (USO) and the Colectivo de Personal Administrativo y Técnico de VAERSA (CPAT).

SECOND.– …

THIRD.– … [National proceedings]

FOURTH.– 1. By order of 5 December 2023, the parties were granted a period of ten days in which to submit their observations on the possible referral of a question to the Court of Justice of the European Union for a preliminary ruling.

2. Counsel for the applicant trade union STAS-IV submitted a written statement expressing its opposition to the request for a preliminary ruling, on the grounds that a judgment upholding the application should be issued, in accordance with the provisions of Directive 2003/88/EC and the interpretation given by the CJEU.

Counsel for the Abogacía General de la Generalitat Valenciana (the Legal Service of the Government of the Valencian Community) also submitted arguments opposing the request for a preliminary ruling and requesting that a judgment dismissing the application be issued, also relying on the interpretation of Directive 2003/88/EC and on the case-law of the CJEU.

THE FACTS AND SUBJECT MATTER OF THE DISPUTE

FIRST.– Summary of the relevant facts

The defendant VAERSA is a company forming part of the business and foundational public sector of the Generalitat Valenciana, with the legal status of a commercial company as provided for in the Seventh Additional Provision read in conjunction with Article 2.3.b of Ley 1/2015, de 6 de febrero, de la Generalitat, de Hacienda Pública, del Sector Público Instrumental y de Subvenciones (Law No 1/2015 of 6 February 2015 of the Generalitat on the public treasury, the official public service and subsidies). It is majority-owned by the Generalitat Valenciana and is attached to the Consellería de Agricultura, Desarrollo Rural, Emergencia Climática y Transición Ecológica (Department of Agriculture, Rural Development, Climate Emergency and Ecological Transition).

VAERSA is considered to be an in-house procurement entity and technical service of the Generalitat's Administration, the various entities that make up the local administration and the public sector entities subject to any of those institutions that have the status of contracting authorities, and is required to carry out

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management assignments in accordance with the relevant projects, reports or other technical documents.

With effect from 1 January 2018, VAERSA signed up to the 2nd collective bargaining agreement for personnel employed by the administration of the autonomous region.

By a decision of the Dirección General de Medio Natural y de Evaluación Ambiental (Department for the Natural Environment and Environmental Assessment), investments were approved for the improvement of the European Natura 2000 protected areas network sites in the Community of Valencia for 2022-2025, and VAERSA was entrusted with the performance of these works in accordance with the corresponding technical specifications.

The scope of the structural assignment involves the performance of activities in the natural environment throughout the entire Community of Valencia.

The personnel involved in the group action are those who appear in VAERSA's job list as biodiversity workers, previously referred to as micro-reserve personnel and now called Natura 2000 personnel.

To perform these activities, VAERSA has put together 15 provincial teams: six of these are in Valencia, four are in Alicante and five are in Castellón. They have the following composition, provincial distribution and departure points:

– Alicante Norte Team, with its departure point at Alcoy, composed of one team leader and three micro-reserve specialists.

– Alicante Sur Team, with its departure point at Santa Faz, composed of one team leader and three micro-reserve specialists.

– Alicante Jávea Team, with its departure point at Jávea, composed of one team leader and three micro-reserve specialists.

– Alicante Orihuela Team, with its departure point at Orihuela, composed of one team leader and three micro-reserve specialists.

– Castellón Norte Team, with its departure point at Vistabella, composed of one team leader and three micro-reserve specialists.

– Castellón Forcall Team, with its departure point at Forcall, composed of one team leader and two micro-reserve specialists.

– Castellón Peñíscola Team, with its departure point at Peñíscola, composed of one team leader and two micro-reserve specialists.

– Castellón Sur Team, with its departure point at VAERSA Castellón, composed of one team leader and three micro-reserve specialists.

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– Castellón Altura Team, with its departure point at Altura, composed of one team leader and three micro-reserve specialists.

– Valencia Norte Team, with its departure point at the Centro para la Investigación y Experimentación Forestal (Centre for Forestry Research and Experimentation, CIEF) in Quart de Poblet, composed of one team leader and three micro-reserve specialists.

– Valencia Sur Team, with its departure point at Gandía, composed of one team leader and three micro-reserve specialists.

– Valencia Ontinyent Team, with its departure point at Ontinyent, composed of one team leader and three micro-reserve specialists.

– Valencia Requena Team, with its departure point at Requena, composed of one team leader and three micro-reserve specialists.

– Valencia Ayora Team, with its departure point at Ayora, composed of one team leader and three micro-reserve specialists.

– Valencia Aras de los Olmos Team, with its departure point at Aras de los Olmos, composed of one team leader and three micro-reserve specialists.

VAERSA also has a provincial coordinating team leader and a manager responsible for the entire Autonomous Community.

Each month, the team leaders are informed by whatsapp message of the monthly schedules, broken down by province, team and specific working day, indicating the exact location of the work sites, the work to be carried out by each team and other technical aspects.

Workers travel by their own means from their homes to a predetermined VAERSA departure point, known as ‘the base’, where they must be at 08.00. Once there, they travel to the work site in a vehicle provided by VAERSA, which is driven by a VAERSA worker and loaded with the equipment required to carry out the work. At 15.00 the work at the site is finished and the employees are transported by company vehicle to the base, from where they return to their homes.

The following clause is included in the employment contracts VAERSA has been signing with the workers who provide services in the micro-reserves: ‘The working day will begin when the worker arrives at the micro-reserve site. It will end when that individual leaves the company vehicle. Travel will be by company vehicle. Time spent travelling to and from work sites will not count as actual working time. This circumstance has been included in the specific salary supplement allocated to the worker.’

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The minutes of the VAERSA negotiating committee from 15 June 2018 state the following: ‘Management is introducing the concept of counting 50% of travel time for personnel without a fixed workplace as actual working time (as is already the case for some groups).’

From the start of the biodiversity management assignment, VAERSA has been counting the daily journey to the work site from the departure point or base as actual working time for the biodiversity team, but not the daily journey from the work site to the departure point or base at the end of the working day.

SECOND.– Subject matter of the dispute

The applicant trade union seeks a declaration that biodiversity personnel are entitled to have the time spent travelling by company vehicle from the base to the work site (at the start of the working day) and from the work site to the base (at the end of the working day) counted as actual working time, with the working day ending at 15.00 at the base.

LAW

FIRST.– Jurisdiction of the Court of Justice of the European Union

Under Article 19(3)(b) of the Treaty on European Union (OJ 2008 C 115, p. 13), Article 267 of the Treaty on the Functioning of the European Union (OJ 2008 C 115, p. 47), and Article 4-bis of the Ley Orgánica del Poder Judicial (Basic Law on the Judiciary), the Court of Justice of the European Union has jurisdiction to give preliminary rulings on the interpretation of EU law or the validity of acts adopted by the institutions, bodies, offices or agencies of the European Union.

SECOND.– Text of the applicable national and EU provisions

a) Spanish law

Working hours are regulated under Spanish legislation in Articles 34 to 38 of the Estatuto de los Trabajadores (Workers’ Statute), approved by Real Decreto Legislativo 2/2015, de 23 de octubre (Royal Legislative Decree No 2/2015 of 23 October 2015) (BOE No 255 of 24 October 2015).

… [National law not applicable to the case]

The provision that refers to the subject matter of the present dispute is Article 34(1), (3) and (5) of the Workers’ Statute, which states as follows: ‘1. Working time shall be as specified in collective agreements or individual employment contracts.

Normal working time shall average no more than 40 hours per week of actual work, calculated on an annual basis.

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3. There must be at least 12 hours between the end of one period of work and the beginning of the following period of work.

The number of normal hours of actual work shall not exceed nine hours per day unless a different pattern of daily working time applies by virtue of a collective agreement or, failing that, by agreement between the employer and the representatives of the workers, subject in all cases to compliance with the rest period between two periods of work.

…

5. Working time shall be calculated in such a way that a worker is present at his or her place of work both at the beginning and at the end of the working day.'

b) EU Law:

The basic legislation is 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 of 18 November 2003). The following provisions of that directive may be highlighted with regard to the subject matter of these proceedings:

Article 1(1), which reads as follows: 'This Directive lays down minimum safety and health requirements for the organisation of working time.'

Article 1(2), which states that the Directive will apply to: 'a) minimum periods of daily rest, weekly rest and annual leave, to breaks and maximum weekly working time, […] all sectors of activity, both public and private, within the meaning of Article 2 of Directive 89/391/EEC, without prejudice to Articles 14, 17, 18 and 19 of this Directive'.

Article 2 contains the definitions. In particular:

Paragraph (1), which defines working time as: 'any period during which the worker is working, at the employer's disposal and carrying out his activity or duties, in accordance with national laws and/or practice'.

Paragraph 2 defines a rest period as: 'any period which is not working time'.

THIRD.– Relevant case-law of the Fourth Chamber of the Tribunal Supremo de España (Supreme Court of Spain)

Judgment of the Supreme Court No 605/2020 of 7 July 2020, CASE NO 208/2018 (ECLI:ES:TS:2020:23309), invoking the doctrine contained in the judgment of the Court of Justice of the European Union of 10 September 2015 (C-266/14), states that working time constitutes 'any period during which the worker is at work, at the employer's disposal and carrying out his activity or duties, in accordance with national laws and/or practices, and that that concept is placed in opposition to rest

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periods, the two being mutually exclusive', and considers that in the case in question, in which the activity of the company consists of the installation, maintenance and repair of lifts, which can only be carried out at the homes of its customers, the journey which the workers have to make from their homes to the towns of Eibar and San Sebastián is working time. The Supreme Court argues that: 'if travelling to the customer's home is essential for the business of the company, which could not install, maintain or repair lifts if it did not send its workers, with the necessary equipment and tools, to the customer's home, with the consequent impact on the invoicing of those services, it is clear that those journeys must be regarded as working time'.

In the same sense, the judgment of the Supreme Court of Spain No 617/2021 of 9 June 2021 in Case No 27/2020 (ECLI:ES:TS:2021:2419) held, in a case in which the company decided at a given moment that, instead of starting and finishing their working day at the work centre as they had done until then, the field technicians or outdoor fitters should start at 08.00 at the home of the first client and finish at 17.00 at the home of the last client.

Conversely, the judgment of the Supreme Court of Spain No 784/2019 of 19 November 2019, Case No 1249/2017 (ECLI:ES:TS:2019:3880), rejects the group action claim asserting that the time spent by the airport firefighters in moving from the service building (technical block) to the site where their colleagues were being relieved should be considered as working time. The Supreme Court held as follows: '… during the time spent moving from the so-called technical block to the fire and rescue services area, you are not really at the employer's disposal, but are carrying out a preparatory task similar to that of travelling from the company's changing room to the place of work. The fact that for security reasons the technical block has to be accessed first and a magnetic access card has to be used does not mean that the working time has started to run. In the meantime, workers must not carry out any personal tasks, nor may they be assigned to any task, as this is outside the circle of their productive activity'.

FOURTH.– The position of the parties to the dispute

a) Position of the applicant trade union, which is supported by the other trade unions appearing in the proceedings:

The applicant contends that the journeys that the workers must make from the base to the work site (at the start of the working day) and from the work site to the base (at the end of the working day) should be counted as working time, since they are inherent to the activity of the company and to the performance of the work activity, bearing in mind that they are carried out using a company vehicle and that during those periods the workers are at the disposal of the company.

They add that it is incomprehensible for the company to consider the journey from the base to the work site to be working time, but not to give the same

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consideration to the reverse journey from the work site to the base at the end of the working day.

b) Position of the company:

The company contests the application by pointing out that Article 2 of Directive 2003/88/EC establishes a strict concept of working time consisting of three concurrent elements: physical presence at the workplace, availability vis-à-vis the employer's managerial authority and active performance of one's duties. It considers that these circumstances are not present in this case because the workers are not 'potentially' tied to work during the travel period as their services are not required.

FIFTH.– The reasons for the reference for a preliminary ruling and the position of this Social Division of the High Court of Justice of the Community of Valencia

a) The reasons for the reference for a preliminary ruling

The issue in the dispute is essentially a legal one as the parties do not dispute the factual situation from which the dispute arises.

As explained above, the issue is whether the time spent by workers travelling in a company vehicle from the micro-reserve – or work site – where they carry out their work to the base established by the company should be counted as working time for the purposes of Article 34(5) of the Workers' Statute and in accordance with the concept of working time laid down in Article 2(1) of Directive 2003/88/EC, bearing in mind that the company does consider the same journey made at the start of the working day to be working time.

The reasons why we have decided to refer a question to the Court of Justice of the European Union for a preliminary ruling are as follows:

1) Because we are not aware that the Spanish Supreme Court or the Court of Justice of the European Union has so far ruled on a situation such as the one at issue in the present dispute.

2) Because the answer to this question – which can be reproduced in other sectors – dictates whether the group action filed by the Sindicat de Treballadores i Treballadors de les Administraciones i el Serveis Publics STAS-IV against VAERSA is upheld.

3) Because the answer given by this Social Division in two actions in which it has been asked this question in ordinary proceedings brought by VAERSA employees has been contradictory despite being based on the same EU case-law, as stated in the judgments of 10 September 2015 (C-266/14) *Tyco* (ECLI:EU:C:2015:578) and 21 February 2018 (C-518/15)

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(ECLI:EU:C:2018:82), which laid down the following criteria for determining the concept of 'working time':

a) Working time is 'any period during which the worker is at work, at the employer's disposal and carrying out his activity or duties, in accordance with national laws and/or practices, and that that concept is placed in opposition to rest periods, the two being mutually exclusive (judgments in *Jaeger*, C-151/02, EU:C:2003:437, paragraph 48; *Dellas and Others*, C-14/04, EU:C:2005:728, paragraph 42, and orders in *Vorel*, C-437/05, EU:C:2007:23, paragraph 24, and *Grigore*, C-258/10, EU:C:2011:122, paragraph 42)'.

b) Directive 2003/88/EC 'does not provide for any intermediate category between working time and rest periods (see, to that effect, judgment in *Dellas and Others*, C-14/04, EU:C:2005:728, paragraph 43, and orders in *Vorel*, C-437/05, EU:C:2007:23, paragraph 25, and *Grigore*, C-258/10, EU:C:2011:122, paragraph 43)'.

c) 'The journeys of the workers, who are employed in a job such as that at issue in the main proceedings, to go to the customers designated by their employer, is a necessary means of providing those workers' technical services to those customers. Not taking those journeys into account would enable an employer such as Tyco to claim that only the time spent carrying out the activity of installing and maintaining the security systems falls within the concept of "working time", within the meaning of point (1) of Article 2 of Directive 2003/88, which would distort that concept and jeopardise the objective of protecting the safety and health of workers.'

d) The decisive factor for the second element of the concept of 'working time' 'is that the worker is required to be physically present at the place determined by the employer and to be available to the employer in order to be able to provide the appropriate services immediately in case of need (see, to that effect, judgment in *Dellas and Others*, C-14/04, EU:C:2005:728, paragraph 48, and orders in *Vorel*, C-437/05, EU:C:2007:23, paragraph 28, and *Grigore*, C-258/10, EU:C:2011:122, paragraph 63)'.

e) The characteristic features of the concept of 'working time' within the meaning of Article 2 of Directive 2003/88/EC do not include the intensity of the work performed by the employee or that employee's output (judgment of 1 December 2005, *Dellas and Others*, C-14/04, EU:C:2005:728, paragraph 43).

f) Only time linked to the actual provision of services should be regarded as 'working time', within the meaning of Directive 2003/88/EC (see,

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to that effect, judgment of 9 September 2003, *Jaeger*, C-151/02, EU:C:2003:437, paragraph 65 and the case-law cited).

On the basis of those criteria, this Social Division of the court believes it necessary to ask for a preliminary ruling because the action being brought in these proceedings is a group action, regulated by Chapter VIII of Title II of Book Two of the Ley Reguladora de la Jurisdicción Social (the Law governing employment courts), which means that the ruling will affect all biodiversity personnel – previously called micro-reserve personnel and later Natura 2000 personnel – and all personnel within the Natura 2000 network.

And, finally, it is necessary to raise the question in view of the arguments made by the applicant trade union and by the Generalitat Valenciana in response to the request made by this court after the trial, since both parties have reached contrary conclusions by invoking the same directive (Directive 2003/88/EC) and the same case-law of the CJEU.

b) The point of view of the Social Division of the High Court of Justice of the Community of Valencia

As has already been stated, this Social Division of the High Court of Justice of the Community of Valencia does not have a common position on the question that is the subject of this dispute, since, when interpreting the same EU case-law, it has reached contradictory conclusions when deciding on the two cases brought by VAERSA workers who provided services in the micro-reserves within the framework of the NATURA 2000 assignment.

In judgment No 2696/2021 of 21 September 2021 (Case No 2966/2020), the claim submitted by two workers was dismissed on the grounds that ‘during the time they remain in the company vehicle on their way to the base from the work site, they are not at the employer’s disposal and in a position to perform their duties. A travel task is being carried out’.

Whereas in Judgment No 3555/2021 of 3 December 2021 (Case No 581/2021), the opposite conclusion was reached, based on the following argument: ‘These are therefore journeys inherent to the company’s activity and inherent to the performance of the work, which are carried out using a company vehicle, with the point of departure and arrival being the company facilities of the Generalitat Valenciana’s forestry nursery located in Santa Faz. If at the beginning of each working day the worker must go to the base, take a vehicle and go to the work site, and at the end of the day must leave the work site and deposit the vehicle at the base, we must conclude that the journeys from the base to the work site and vice versa are working time, because during those periods the worker is at the disposal of the company and should be considered to be “at work” within the meaning of Article 2(1) of Directive 2003/88/EC.’

The doubt arises because, although it is true that during the journey from the work site to the base the workers are not carrying out their duties, neither can they

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freely dispose of their time, as the journey must take place in a company vehicle, at a predetermined time and according to a timetable determined by the company.

SIXTH.– Question referred to the Court of Justice of the European Union for a preliminary ruling

…

Orders that the following question be referred to the Court of Justice of the European Union for a preliminary ruling: ‘Must Article 2 of 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 be interpreted as meaning that the time spent by workers travelling in the company’s vehicle at the beginning and end of the working day from the base to the micro-reserve or work site at which they carry out their duties and from there to the base constitutes ‘working time’ within the meaning of Article 2 of the Directive?

… [Closing procedural formulae]

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