SUMMARY

<p>ECJ 9 July 2015, case C-87/14 (European Commission -v - Ireland), Working time</p>

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Directive 2003/88

Article 2 of Working Time Directive 2003/88 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. Article 3 requires Member States to ensure that every worker is entitled to a minimum daily rest period of 11 consecutive hours per 24-hour period. Article 5 requires Member States to ensure that, per each seven-day period, every worker is entitled to a minimum uninterrupted rest period of 24 hours plus the 11 hours’ daily rest period. Article 6 requires Member States to ensure that the average working time for each seven-day period, including overtime, does not exceed 48 hours. Article 16 allows the Member State, within limits, to lay down reference periods. Article 17(5) allows certain derogations by means of, *inter alia,* collective agreements. Ireland transposed the Directive with respect to junior doctors (“nonconsultant hospital doctors”, “NCHDs”) fully and correctly through “The European Communities (Organisation of Working Time) (Activities of Doctors in Training) Regulations 2004 (the “2004 Regulation”).

The action

On 23 November 2009, the Commission sent Ireland a letter of formal notice that it had failed to fulfil its obligations under the Directive by not allowing certain provisions in (i) a collective agreement between the Health Service Executive (the public body representing the health authorities) and the Irish Medical Association and (ii) a Standard Contract of Employment for NCHDs. These provisions:

treat certain training time as not being "working time";
allow a reference period of 12 months for calculating the maximum weekly working time;
suggest that hospitals need not respect the 2004 Regulation.

Moreover, the Commission criticized Ireland for its slow progress in ensuring compliance with the Directive. Ireland disputed the Commission's view, and on 18 February 2014, the Commission brought infraction proceedings against Ireland under Article 258 TFEU.

ECJ's findings

Training time

The collective agreement identifies three categories of training time as follows:

A. scheduled and protected time off-site attendance at training, as required by the training programme;
B. on site regular weekly/fortnightly scheduled educational and training activities including conferences, 'grand rounds', morbidity and mortality conferences;
C. research, study and so on.

The Commission took the view that categories A and B are to be regarded as "working time". Ireland noted that, first, the training hours concerned represent a 'protected' training period during which NCHDs are not available to pursue their professional activities and, secondly, the relationship between NCHDs and their training organisation is separate from that which exists between NCHDs and their employer. The training requirements for NCHDs do not form an integral part of their employment. The employer does not direct the conduct of such training, does not determine the activities NCHDs must undertake under that training, nor the progression of NCHDs within that training, and it does not determine the place (§ 16-18).

The classification of 'working time' within the meaning of Directive 2003/88 as a period when the worker is present results from his obligation to be at the disposal of his employer. The determining factor is that he 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 appropriate services immediately in case of need (§ 20-21).
The fact that training times A and B are required 'by the training programme' and take place in a place determined 'by that programme', does not justify the conclusion that NCHDs are required to be physically present at the place determined by the employer and to remain there

at the disposal of that employer so as immediately to be able to provide appropriate services as the need arises. It follows from the foregoing that the Commission has not demonstrated that training times A and B constitute 'working time' within the meaning of Directive 2003/88. Consequently, in relation to the Collective Agreement, it has not established the existence of a practice that contravenes that Directive (§ 24-26).
The Commission has not established a practice which infringes the Directive's provisions regarding reference periods (§ 32-35).
The Commission argues as follows. There is nothing in the Standard Contract of Employment to show that doctors are entitled to the minimum daily and weekly rest periods prescribed in the Directive and it does not limit the total length of the working week. Moreover, the Standard Contract states, "Work outside the confine of this contract is not permissible if the combined working time [...] exceeds the maximum weekly hours as set out in (the 2004 Regulation)". This suggests that the limits provided by the 2004 Regulation do not apply to the Standard Contract. Ireland counters that, although it is not set out in the wording of the Standard Contract, the protection provided by the 2004 Regulation is an integral part of it. Moreover, by referring to certain provisions in the Standard Contract in isolation, the Commission fails to take into account the clear legal context of the Contract (§ 36-40).
The Commission does not dispute the transposition of Directive 2003/88 by the 2004 Regulation. It merely argues, referring in particular, to certain provisions of Clause 5 of the Standard Contract of Employment, that the 2004 Regulation is not applied in practice. Further, it is not disputed by the parties that the legal framework resulting from the legislation transposing Directive 2003/88, namely the 2004 Regulation, is clear and applicable in any event. In those circumstances, by referring to certain provisions of the Standard Contract of Employment in isolation, the scope of which is, moreover, subject to discussion between the parties, the Commission has not succeeded in establishing the existence of a practice contrary to Directive 2003/88 (§ 42- 44).
Ireland admits that it has not been possible in practice to achieve a situation of complete compliance with Directive 2003/88 in every instance, but it disputes that that is because of a failure on its part in its obligation to take the necessary measures to achieve such a situation. It maintains that it has made constant and concerted efforts to achieve total conformity in practice and that it continues to deal with all instances of non-compliance, including through the use of financial penalties. According to Ireland, the Commission's argument is, in essence, tantamount to saying that the simple fact that the regulation transposing Directive 2003/88 is not respected in all instances is sufficient to justify a finding of failure to fulfil obligations by the Member State concerned under EU law (§ 46- 47).
It does not suffice for the Commission to refer to progress reports compiled during 2013 and 2014 by the Irish authorities and to the declaration of the Irish Medical Organisation which

concludes that, even if progress has been made in the application of Directive 2003/88, Ireland still does not fully comply with its obligations resulting under that Directive, to establish that Ireland has not applied Directive 2003/88. It is incumbent on the Commission to show, without being able to rely on any presumption, that the practice alleged to be contrary to the Directive can be attributed, in one way or another, to Ireland (§ 49).

Ruling

The ECJ dismisses the action.

Creator: European Court of Justice (ECJ)
Verdict at: 2015-07-09
Case number: C-87/14