SUMMARY

ECJ 4 March 2011, case C-258/10 (Nicusor Grigore – v – Regia Nationala a Padurilor Romsilva), Working time

<p>Article 2(1) of the Directive is to be interpreted as meaning that a period during which a forest warden with a contractual eight-hour working day is responsible for supervising a certain area of forest qualifies as “working time” within the meaning of that provision, if the nature and extent of that supervision, combined with his responsibility, require his physical presence at work and if he is at his employer’s disposal during such presence. It is up to the referring court to determine whether this is the case.</p>
<p>The qualification of a period as “working time” does not depend on the availability of lodgings on site if such availability does not imply a requirement to be physically present at the work location. It is up to the referring court to determine whether this is the case.</p>
<p>Article 6 of the Directive precludes, in principle, a situation in which a forest warden, even though his contract stipulates an 8-hour work day and a 40-hour week, is actually forced to work in excess of those limits. It is for the referring court to examine whether this is the case and, if so, whether Romania has exercised its options to derogate from Article 6.</p>
<p>The employer’s obligation to pay salary for

periods during which a forest warden is responsible for supervising an area of forest depends solely on domestic law. </p>

Facts

Grigore was a forest warden in the employment of "Romsilva", a government agency. His employment contract provided, in line with the relevant collective agreement and with Romanian law, that his weekly working time consisted of 5 x 8 = 40 hours and that he was free to determine his exact working times. Initially he was charged with supervising one area of forest. Later on, a second area was added to his area of responsibility. He had the right to live in a government-owned house in the forest, free of charge, but declined to make use of this facility.

Romanian law provides that forest wardens are personally liable for damage in the forest under their supervision, such as illegally cut trees or illegally hunted wildlife, which they have not reported immediately. This led Mr Grigore to allege that, although his contract obligated him to work no more than 40 hours per week, his liability effectively obligated him to work 24 hours per day, 7 days per week. Accordingly, he claimed payment for overtime, for working on weekends (and for housing costs).

National proceedings

The court of first instance considered that it was necessary, in order to reach a decision, to interpret the Working Time Directive 2003/88 (the "Directive"), in particular Article 2(1), which defines "working time" as "any period during which the worker is working, at the employer's disposal and carrying out his activities or duties, in accordance with national laws and/or practice". Accordingly, the court referred five questions to the ECJ. Question 1 asked whether time during which a forest warden is responsible for damage to the forest, regardless when such damage occurs, qualifies as "working time" within the meaning of the Directive. The second question was whether the answer is different in the situation where the forest warden has a house at his disposal in the forest. The third question was whether making a forest warden responsible in such a way that de facto he must work in excess of 40 hours per week is compatible with the Directive. Question 4 dealt with remuneration and question 5 was asked in the event of a negative answer to the first question.

ECJ's ruling

1. The ECJ starts off by explaining the objectives and the importance of the Directive's working times rules (§ 40-41).

2. The ECJ goes on to analyse the three elements of the definition of "working time" in the Directive: (i) the worker is working and (ii) at the employer's disposal and (iii) carrying out his activities or duties. It follows that time is either working time or not working time; there is no intermediate category and the intensity of the work is not relevant (§ 42-43).

3. "Working time" has an autonomous meaning, depending on objective circumstances and not on the interpretation given in the Member States. Moreover, the Directive does not allow for derogation from Article 2 (§ 44-45).

4. It is not clear from the facts submitted to the ECJ whether all three elements of the definition "working time" are present in the case of Mr Grigore. The Romanian government contends that Mr Grigore could carry out his duties within the contractual 40 hours per week. Mr Grigore denies that this was possible given his personal liability for damage to the area of forest under his supervision (§ 46-48).

5. The referring court will need to examine not only whether Mr Grigore was obligated to work in excess of 40 hours per week pursuant to his contract, the collective agreement and the Romanian laws on working time, but also the rules which in practice may have obligated him to do so, in other words, whether it was in reality possible for Mr Grigore to discharge his obligation to supervise his area of forest continuously within his contractual working time (§ 49-52).

6. The relevant criterion when assessing whether a certain period qualifies as "working time" is whether the employee has an obligation to be physically present at a location determined by the employer and to be available there for the performance of duties. Even though Mr Grigore was free to determine his working hours, the fact that he was responsible for the supervision of his area of forest is relevant. Therefore, the referring court will need to examine whether the need to discharge that responsibility is compatible with the Directive (§ 53-58).

7. The fact that a forest warden lives, or has the right to live, at his place of work is not relevant. Any time during which he is free to leave his place of work is not working time (§ 59-70).

8. Given the foregoing, Article 6 of the Directive precludes a situation in which an employee is

obligated to work in excess of the daily or weekly limits provided in the Directive (§ 71-79).

9. Whether or not Mr Grigore is entitled to compensation depends not on the Directive but on national Romanian law (€ 80-84).

10. There is no need to answer the fifth question (§ 85-86).

Ruling

- Article 2(1) of the Directive is to be interpreted as meaning that a period during which a forest warden with a contractual eight-hour working day is responsible for supervising a certain area of forest qualifies as "working time" within the meaning of that provision, if the nature and extent of that supervision, combined with his responsibility, require his physical presence at work and if he is at his employer's disposal during such presence. It is up to the referring court to determine whether this is the case.

- The qualification of a period as "working time" does not depend on the availability of lodgings on site if such availability does not imply a requirement to be physically present at the work location. It is up to the referring court to determine whether this is the case.

- Article 6 of the Directive precludes, in principle, a situation in which a forest warden, even though his contract stipulates an 8-hour work day and a 40-hour week, is actually forced to work in excess of those limits. It is for the referring court to examine whether this is the case and, if so, whether Romania has exercised its options to derogate from Article 6.

- The employer's obligation to pay salary for periods during which a forest warden is responsible for supervising an area of forest depends solely on domestic law.

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