EELA EUROPEAN EMPLOYMENT LAWYERS ASSOCIATION

SUMMARY

ECJ 11 April 2019, case C-254/18 (SCSI), working time

Syndicat des cadres de la sécurité intérieure – v – Premier ministre, Ministre de l'Intérieur, Ministre de l'Action et des Comptes publics, French case

Legal background

Directive 2003/88 inter alia concerns minimum periods of rest. Article 6 stipulates that the average working time per seven-day period, including overtime, does not exceed 48 hours. Pursuant to article 16, the reference period for the application of article 6 shall not exceed four months. However, this period can be extended to six months by means of laws, regulations, administrative provisions or collective agreements.

A French decree on working time for police staff made use of this possibility. It reads: "The measured weekly working time for each seven-day period, including overtime, may not exceed, on average, 48 hours in the course of a six-month period in a calendar year."

Facts

Syndicat des cadres de la sécurité intérieure (SCSI) brought proceedings seeking annulment of the French provision at issue. It asserted that, by using a reference period expressed in six-months periods in the calendar year, and not a six-month reference period the start and end of which change with the passage of time, that provision does not comply with Directive 2003/88. The referring court was unsure about the interpretation and asked preliminary questions to the ECJ.

Question

Must Article 6(b), Article 16(b) and the first paragraph of Article 19 of Directive 2003/88 be interpreted as precluding national legislation which lays down, for the purpose of the

calculation of the average weekly working time, reference periods which start and end on fixed calendar dates, and not reference periods determined on a rolling basis?

Consideration

The calculation of the average weekly working time over reference periods seeks to provide for flexibility, so that busy times may be compensated at other times in the reference period. An equal distribution of working hours is not required over the entire duration of the reference period (*Maio Marques da Rosa*, C-306/16, para. 43). The concept of 'reference period' is a single notion which has the same meaning under the standard regime and the derogating regime. It also does not contain any reference to national law of Member States and must therefore be interpreted as an autonomous concept of EU law.

Fixed or rolling reference periods?

Articles 16 and 19 of the Directive, nor their context, provide an answer to that question. Any interpretations of *Maio Marques da Rosa* (C-306/16), that a reference period is a 'set period' and hence fixed, are wrong, as it must not be interpreted as a 'period necessarily coinciding with the calendar year', but as meaning a 'unit of measurement of time', namely, in that judgment, a seven-day period.

As there is no indication from the wording and context of Articles 16 and 19, Member States are in principle free to determine reference periods in accordance with their chosen method, subject to respect for the objectives of that directive.

Regarding these objective, the limitation to working time is a particularly important rule of EU social law to ensure protection of every workers' safety and health. This means that the directive and, hence, these limitations, must be observed. The maximum working hours limit may not be exceeded. The objective of the directive implies that each worker must enjoy adequate rest periods to recover from fatigue but also to prevent and reduce any health and safety risks. Recital 15 of the Directive makes it apparent that any flexibility provided by Articles 16 and 19 is not without prejudice to these principles of protection of workers' health and safety. Also case law has shown that the derogations provided for in Article 17 must be interpreted in a way their scope is limited to what is strictly necessary in order to safeguard the interests which those derogations enable to be protected (*Hälva and Others*, C-175/16, para. 31 and *Matzak*, C-518/15, para. 38). It is in light of these considerations that the use of fixed and rolling reference periods must be considered.

Both fixed and rolling reference periods enable the verification of working hours. However, all relevant circumstances must be taken into account. Fixed reference periods may, in contrast

to rolling reference periods, create situations in which the objective of protecting the health and safety of workers may not be met. It may be possible that a worker works, over two consecutive fixed reference periods, for an extremely long period. He may then not exceed the average working hours in these two fixed reference periods, but this may have been the case if a rolling reference period had been used, as the starting point would be recalculated. The use of fixed reference periods may therefore not meet the objectives of the directive in certain situations. Without it being possible to 'repair' the flaws of the fixed reference period, it would go against the Directive's objective and therefore undermine it. The referring court must verify if the national legislation at issue provide for such mechanisms. In terms of remedies, the principles of equivalence and effectiveness must be observed.

Ruling

Article 6(b), Article 16(b) and the first paragraph of Article 19 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 must be interpreted as not precluding national legislation which lays down, for the purpose of calculating the average weekly working time, reference periods which start and end on fixed calendar dates, provided that that legislation contains mechanisms which make it possible to ensure that the maximum average weekly working time of 48 hours is respected during each six-month period straddling two consecutive fixed reference periods.

Creator: European Court of Justice (ECJ)
Verdict at: 2019-04-11
Case number: C-254/18