

SUMMARY

ECJ 15 July 2021, case C-742/19 (Ministrstvo za obrambo), Working Time

BK – v – Republika Slovenija (Ministrstvo za obrambo), Slovenian case

Summary

In a limited number of security activities, military personnel are excluded from the scope of the Working Time Directive. The Directive does not prohibit stand-by periods and actual work to be remunerated differently.

Question

Must Article 1(3) of Directive 2003/88, read in the light of Article 4(2) TEU, be interpreted as meaning that the security activity carried out by a member of military personnel in peacetime is excluded from the scope of that directive?

Must Article 2 of Directive 2003/88 be interpreted as requiring that a stand-by period during which the member of military personnel is required to remain at the barracks to which he or she is posted, but does not perform actual work there, is to be regarded as working time, for the purposes of determining the remuneration payable to him or her in respect of that period?

Ruling

Article 1(3) 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, read in the light of Article 4(2) TEU, must be interpreted as meaning that a security activity performed by a member of military personnel is excluded from the scope of that directive:

where that activity takes place in the course of initial or operational training or an actual military operation; or
where it is an activity which is so particular that it is not suitable for a staff rotation system which would ensure compliance with the requirements of that directive; or
where it appears, in the light of all the relevant circumstances, that that activity is carried out in the context of exceptional events, the gravity and scale of which require the adoption of measures indispensable for the protection of the life, health and safety of the community at large, measures whose proper implementation would be jeopardised if all the rules laid down in that directive had to be observed; or
where the application of that directive to such an activity, by requiring the authorities concerned to set up a rotation system or a system for planning working time, would inevitably be detrimental to the proper performance of actual military operations.

Article 2 of Directive 2003/88 must be interpreted as not precluding a stand-by period during which a member of military personnel is required to remain at the barracks to which he or she is posted, but does not perform actual work there, from being remunerated differently than a stand-by period during which he or she performs actual work.

Creator: European Court of Justice (ECJ)

Verdict at: 2021-07-15

Case number: C-742/19