SUMMARY

ECJ 26 July 2017, case C-175/16 (Hälvä), Working time

<p>Relief workers who look after children in a family environment for SOS-Lapsikyläry, so relieving the children's foster carers, do not fall within the scope of the exception provided for in Article 17(1) of the Working Time Directive.</p>

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Facts

SOS-Lapsikyläry is a Finnish child protection association, related to the international organisation, SOS Children's Villages. The association aims to enhance the wellbeing of children by, for example, providing accommodation for the children to live in. The staff at the children's villages consist of a director, foster carers, relief carers and other professionals. Each house is supervised by one or two foster carers (or relief carers, when the foster carers are absent).

The employees were employed by SOS-Lapsikylä ry as relief carers until 2009 or, in some cases, until 2010. The relief carers relieved the foster carers while the latter were absent (e.g. on annual leave or sick leave). The relief carers lived with the children and looked after the children and the accommodation on their own. They also did the shopping and accompanied the children on trips outside.

National proceedings

The relief carers brought an action before the District Court South Savo, Finland (Etelä-Savon

käräjäoikeus) seeking a declaration that their work for SOS-Lapsikylä ry constituted 'work' within the meaning of paragraph 1 of the Law on Working Time, and an order for payment for overtime and for work in the evenings, at night and at weekends between 2006 and 2009, in accordance with that law and the collective agreement for the sector concerned.

Questions put to the ECJ

Must Article 17(1) of Directive 2003/88 be interpreted as including within its scope, an activity performed in a children's home in which the worker acts as the replacement for foster carers of children in care on the foster carers' days off; lives during this period with the children in a family-like setting; and during this time independently attends to all the children's needs, as parents generally do?

ECJ's findings

Whether the activities performed by the relief carers fell within the scope of Article 17(1) of the Working Time Directive, needed to be assessed. This Article allows the Member States to derogate, under certain circumstances, from Articles 3 to 6, 8 and 16 of the Directive, where the length of the working time is not measured or predetermined or may be determined by the workers themselves. In the Article, three categories of workers are cited as possible examples of this, the second being 'family workers'.

In the case at hand, the relief carers were responsible for the daily running of a children's home and the care and upbringing of the children who are in care, for continuous 24 hour periods, sometimes lasting several days, with the right to one day off per week and, on average, two weekends off per month.

According to settled case-law, the derogation in Article 17(1) must be interpreted in such a way as to limit its scope to what is strictly necessary (Jaeger, C-151/02 and Union syndicale Solidaires Isère, C-428/09). Article 17(1) also applies to workers whose working time, as a whole, is not measured or predetermined, or can be determined by the workers themselves because of the specific characteristics of the activity carried out (Commission – v – United Kingdom, C-484/04 and Union syndicale Solidaires Isère, C-428/09). In that connection, the ECJ noted that the referring court must take account of the fact that the working time of a relief carer is largely predetermined by the contract of employment and the employer, since the number of 24 hour periods he or she must work every year is fixed by contract. Further, the court must take account of the fact that the employer regularly draws up advance lists setting out the 24-hour periods when the relief carers will be on duty.

Based on these factors, the Court felt that it could not be argued that the working time of relief

carers as a whole was not measured or predetermined or that it could be determined by the workers themselves, though this was a matter for the referring court to verify on the facts.

The Court also noted that the relief carers had a certain degree of autonomy in the organisation of their time and their daily duties, movements and periods of inactivity, without any supervision by the employer. Nor did the employer try to monitor the way in which the carers carried out their activities in the 24-hour periods. The employer did, however, prepare a list setting out when the relief carers were required to work and the relief carers would agree with the foster carers on when the substitution would begin. The daily schedules were also organised so that each worker had, on average, two weekends free per month. Thus, there seemed to be no indication that the employer was unable to monitor whether the relief carer would be responsible for the children's home when he or she agreed to replace the foster carer or whether the relief carer worked until the end of the 24-hour period assigned to him or her.

Finally, the relief carer was required to write a report on how he or she implemented the care programme prepared for each child. That report appears to have been a way for the employer to monitor how its employees carried out their activities and, therefore, to measure their working time.

The relief carers' rest periods during the time when they were responsible for the children's home, did not allow them to choose the number of hours they worked during those periods. Therefore, they could not set their hours of work themselves. The Court noted that any time when a worker is at work, at the employer's disposal and carrying out his or her duties must be considered to be 'working time' within the meaning of Article 2(1) of the Working Time Directive (Federación de Servicios Privados del sindicato Comisiones obreras, C-266/14).

Thus, the periods of inactivity within the 24-hour periods during which the relief carers worked formed part of the performance of their duties and were working hours in which they were required to be physically present and available to the employer immediately in case of need (see, to that effect, Dellas and Others, C-14/04 and Vorel, C-437/05). Since such periods of inactivity are part of the working time of relief carers, the option they have to determine when those periods begin and end is not the same as the choice for them to determine when their working time begins and ends.

Thus, it appeared to the Court that the work of relief carers did not fall within the scope of application of Article 17(1) of the Working Time Directive and it was therefore not necessary to ascertain whether their activities should be treated as one of the three activities cited as examples in that Article (i.e. where the length of working time is not measured or predetermined, or may be determined by the workers themselves) and, more specifically, to

'family work', as referred to in Article 17(1)(b). The fact that the activity concerned was similar to the care provided and personal relationships that parents have with their children is not enough to bring that activity within the exception laid down by Article 17(1)(b).

Ruling

Article 17(1) of the Working Time Directive must be interpreted as meaning that it cannot apply to paid work, such as that at issue in the main proceedings, which consists in caring for children in a family-like environment, relieving the person principally responsible for that task, where it is not established that the working time as a whole is not measured or predetermined or that it may be determined by the worker himself, which is for the national court to ascertain.

Creator: European Court of Justice (ECJ)
Verdict at: 2017-07-26
Case number: C-175/16 (Hälvä)