

Press and Information Division

PRESS RELEASE No 68/03

9 September 2003

Judgment of the Court of Justice on the reference for a preliminary ruling in Case C-151/02

Landeshauptstadt Kiel v Norbert Jaeger

ON-CALL DUTY PERFORMED IN A PLACE DETERMINED BY THE EMPLOYER CONSTITUTES IN ITS TOTALITY WORKING TIME EVEN WHERE THE DOCTOR IS PERMITTED TO REST AT HIS PLACE OF WORK WHEN HIS SERVICES ARE NOT REQUIRED

A Community directive precludes national legislation which categorises on-call duty as rest time save for periods of actual activity

Mr Jaeger, a doctor at a hospital in Kiel (Germany), regularly performs on-call duty which requires him to be present in the hospital and to work when called upon and is offset in part by the grant of free time and in part by the payment of supplementary remuneration. He is allocated a room with a bed in the hospital, where he may sleep when his services are not required. Mr Jaeger is of the view that the on-call duty performed by him in the emergency department must in its entirety be deemed to constitute working time.

German law distinguishes between readiness for work ('Arbeitsbereitschaft'), on-call service ('Bereitschaftsdienst') and stand-by ('Rufbereitschaft'). Only readiness for work is deemed to constitute full working time. Conversely, on-call service and stand-by are categorised as rest time, save for the part of the service during which professional tasks are actually performed.

The Community directive concerning certain aspects of the organisation of working time seeks to secure the safety and health of workers by ensuring that they are entitled to minimum rest periods and adequate breaks.¹ That directive defines the characteristic features of the concept of 'working time' as 'any period during which the worker is working, at the employer's disposal and carrying out his activity or duties ...'.

The Landesarbeitsgericht Schleswig-Holstein seeks a preliminary ruling from the Court of Justice of the European Communities on whether the German law is in conformity with the Community Directive.

Referring to its case-law,² the Court considers that **the decisive factor** in considering that the characteristic features of the concept of 'working time' within the meaning of Directive 93/104 are present in the case of time spent on call by doctors in the hospital itself **is that they are required to be present at the place determined by the employer and to be available to the employer in order to be able to provide their services immediately in case of need.** According to the Court, those obligations, which make it impossible for the doctors concerned to choose the place where they stay during waiting periods, must be regarded as coming within the ambit of the performance of their duties.

That interpretation is not altered by the fact that the employer makes available to the doctor a rest room in which he can stay for as long as his professional services are not required.

The Court adds that a doctor who is required to keep himself available to his employer at the place determined by him for the whole duration of periods of on-call duty is subject to appreciably greater constraints than a doctor on stand-by since he has to remain apart from his family and social environment and has less freedom to manage the time during which his professional services are not required. **Under those conditions, a doctor required to be available at the place determined by his employer cannot be regarded as being at rest during the periods of his on-call duty when he is not actually carrying on any professional activity.**

The Court therefore concludes that national legislation such as German law, which treats as periods of rest periods of on-call duty, save for the period during which the person concerned has actually performed his professional tasks and which provides for compensatory arrangements only in respect of periods of actual activity is contrary to the Community Directive.

Unofficial document for media use; not binding on the Court of Justice.

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at approximately midday today.

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