

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.

Questions

1. 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?
2. 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

1. 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.
2. 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.

ECJ 15 July 2021, case C-709/20 (The Department for Communities in Northern Ireland), Social Insurance, Other Fundamental Rights

CG – v – The Department for Communities in Northern Ireland, UK Case

Summary

British Universal Credit legislation is compatible with the principle of equal treatment guaranteed by EU law, but cannot expose Union citizens and their children to a risk of violation of their rights enshrined in the Charter of Fundamental Rights of the European Union, in particular the respect for human dignity.

Question

Must Article 18 TFEU be interpreted as meaning that a national provision that excludes from social benefits Union citizens with a temporary right of residence under national law is covered by the prohibition of discrimination on grounds of nationality laid down in that article?

Ruling

Article 24 of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC must be interpreted as not precluding the legislation of a host Member State which excludes from social assistance economically inactive Union citizens who do not have sufficient resources and to whom that State has granted a temporary right of residence, where those benefits are guaranteed to nationals of the Member State concerned who are in the same situation. However, provided that a Union citizen resides legally, on the basis of national law, in the territory of a Member State other than that of which he or she is a national, the national authorities empowered to grant social assistance are required to check that a refusal to grant such benefits based on that legislation does not expose that citizen, and the children for which he or she is responsible, to an actual and current risk of violation of their fundamental rights, as enshrined in Articles 1, 7 and 24 of the Charter of Fundamental Rights of the European Union. Where that citizen does not have any resources to provide for his or her own needs and those of his or her children and is isolated, those authorities must ensure that, in the event of a refusal to grant social assistance, that citizen may nevertheless live with his or her children in dignified conditions. In the context of that examination, those authorities may take into account all means of assistance provided for by national law, from which the citizen concerned and her children are actually entitled to benefit.

ECJ 15 July 2021, case C-851/19 P (DK/EEAS), Miscellaneous

DK – v – European External Action Service (EEAS),
EU Case

Summary

Internal EU Case. Appeal against disciplinary pension deduction dismissed.

Order

The Court (Second Chamber):

1. Dismisses the appeal;
2. Orders DK to pay the costs.

EFTA 15 July 2021, case E-11/20 (Eyjólfur Orri Sverrisson v The Icelandic State), Working Time

Eyjólfur Orri Sverrisson – v – The Icelandic State,
Icelandic Case

Summary

Necessary travel time outside working hours constitutes working time.

Questions

1. Does time spent travelling to a location other than the worker's fixed or habitual place of attendance, in order to carry out his activity or duties in that other location, as required by his employer, constitutes working time within the meaning of Article 2(1) of the Directive, in particular, when such time spent travelling falls outside his standard working hours?
2. Is it material that the worker's journey to a location other than his fixed or habitual place of attendance may require domestic or international travel, including outside the territory of the EEA States?
3. Is the work undertaken by the worker, if any, during the worker's journey is of relevance?

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Ruling

It is appropriate to answer the referring court's questions together.

1. The necessary time spent travelling, outside normal working hours, by a worker, such as the plaintiff in the main proceedings, to a location other than his fixed or habitual place of attendance in order to carry out his activity or duties in that other location, as required by his employer, constitutes "working time" within the meaning of Article 2(1) 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. It is immaterial whether that journey is made entirely