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Press and Information

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Judgment of the Court of Justice in Case C-14/04

*Abdelkader Dellas and Others v Premier ministre and Others*

**THE COURT OF JUSTICE CONFIRMS THAT ON-CALL DUTY IS CLASSIFIED AS WORKING TIME**

*Night duty carried out by a teacher in an establishment for handicapped persons must be taken into account in its entirety for ascertaining whether the rules of Community law laid down to protect workers – in particular the maximum permitted weekly working time – have been complied with.*

The working time directive<sup>1</sup> lays down minimum safety and health requirements in this field. Under the directive, workers are entitled to minimum rest periods – particularly daily and weekly – and adequate breaks. It also fixes the maximum weekly working time at 48 hours, including overtime.

For those purposes, the directive distinguishes between ‘working time’ and ‘rest periods’. It does not provide for any intermediate category, and classification as ‘working time’ does not depend on the intensity of the work done. Thus the Court of Justice of the European Communities has already held that, for the purposes of the directive, on-call duty performed by doctors, nursing staff of emergency services, emergency workers and firefighters<sup>2</sup> at their workplace must be regarded in its entirety as working time, regardless of the work actually done.

In France, a decree lays down, for periods of night duty by workers in certain social and medico-social establishments<sup>3</sup>, a weighting mechanism for the purpose of calculating pay and overtime which is intended to take account of the fact that there are periods of inactivity

<sup>1</sup> Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organisation of working time (OJ 1993 L 307, p. 18). It applies to all sectors of activity, both public and private, with the exception of air, rail, road, sea, inland waterway and lake transport, sea fishing, other work at sea and the activities of doctors in training.

<sup>2</sup> Case C-303/98 *Simap*, Case C-241/99 *CIG*, Case C-151/02 *Jaeger*, Joined Cases C-397/01 to C-403/01 *Pfeiffer and Others* and Case C-52/04 *Personalrat der Feuerwehr Hamburg*.

<sup>3</sup> Including teaching staff, nurses and nursing auxiliaries working full-time in residential establishments run by private persons on a non-profit-making basis.

during on-call duty. The decree establishes a 3 to 1 ratio for the first nine hours followed by a 2 to 1 ratio for subsequent hours between the hours of presence and the working hours actually counted. Mr Dellas, a special needs teacher in residential establishments for handicapped young persons, was dismissed by his employer as a result of disagreements relating in particular to the definition of actual work and the remuneration due for hours of night work on call in a room on the premises. Mr Dellas and a number of trade unions brought proceedings before the Conseil d'État (Council of State) for the annulment of the decree in question. The Conseil d'État essentially asks the Court of Justice whether such a system is compatible with the directive.

The Court of Justice finds, first, that the directive does not apply to the remuneration of workers.

On the other hand, the hours of presence in question must be **counted in their entirety as working time** for ascertaining whether all the minimum requirements laid down by Directive 93/104 in order to provide effective protection of the safety and health of workers have been complied with. The flat-rate weighting mechanism in question takes the hours of presence of the workers concerned into account only in part. The total working time of a worker may thus amount to, or even exceed, 60 hours a week. Consequently, such a national system of calculating on-call time exceeds the maximum weekly working time fixed by the directive at 48 hours.

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

*Languages available: DE EN ES FR HU IT NL PL SL*

*The full text of the judgment may be found on the Court's internet site*

*<http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=en>*

*It can usually be consulted after midday (CET) on the day judgment is delivered.*

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