Provisional text

JUDGMENT OF THE COURT (Grand Chamber)

9 March 2021 (*)

(Reference for a preliminary ruling – Protection of the safety and health of workers – Organisation of working time – Directive 2003/88/EC – Article 2 – Concept of 'working time' – Period of stand-by time according to a stand-by system – Professional firefighters – Directive 89/391/EEC – Articles 5 and 6 – Psychosocial risks – Obligation to prevent)

In Case C−580/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Verwaltungsgericht Darmstadt (Administrative Court of Darmstadt, Germany), made by decision of 21 February 2019, received at the Court on 30 July 2019, in the proceedings

RJ

v

Stadt Offenbach am Main,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, R. Silva de Lapuerta, Vice-President, A. Arabadjiev, A. Prechal, M. Vilaras and N. Piçarra, Presidents of Chambers, T. von Danwitz, C. Toader, M. Safjan, D. Šváby, S. Rodin, F. Biltgen, K. Jürimäe, C. Lycourgos (Rapporteur) and L. S. Rossi, Judges,

Advocate General: G. Pitruzzella,

Registrar: M. Longar, Administrator,

having regard to the written procedure and further to the hearing on 22 June 2020,

after considering the observations submitted on behalf of:

– the Belgian Government, by S. Baeyens and by L. Van den Broeck, M. Jacobs and C. Pochet, acting as Agents,

– the Spanish Government, by S. Jiménez García, acting as Agent,

– the French Government, by A. Ferrand, R. Coesme and E. Toutain and by A.-L. Desjonquères, acting as Agents,

– the Netherlands Government, by M. K. Bulterman and C. S. Schillemans, acting as Agents,

– the Finnish Government, initially by H. Leppo and J. Heliskoski, then by H. Leppo, acting as Agent,

– the European Commission, initially by B.-R. Killmann and M. van Beek, then by B.-R. Killmann, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 6 October 2020,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 2 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 (OJ 2003 L 299, p. 9).

2 The request has been made in proceedings between RJ and Stadt Offenbach am Main (town of Offenbach am Main, Germany) concerning the salary claimed by RJ for services consisting in stand-by time according to a stand-by system that he had provided. It should be noted at the outset that, in the context of the present judgment, the term 'stand-by' covers, generically, all of the periods during which the worker remains available for his or her employer, in order to ensure that work is provided, at the employer's request; whereas the expression 'stand-by time according to a stand-by system' covers those periods of stand-by time during which the employee is not required to remain at his or her workplace.

Legal context

EU law

Directive 89/391/EEC

3 Article 5(1) of Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work (OJ 1989 L 183, p. 1) states:

'The employer shall have a duty to ensure the safety and health of workers in every aspect related to the work.'

4 Article 6 of that directive provides:

'1. Within the context of his responsibilities, the employer shall take the measures necessary for the safety and health protection of workers, including prevention of occupational risks and provision of information and training, as well as provision of the necessary organisation and means.

The employer shall be alert to the need to adjust these measures to take account of changing circumstances and aim to improve existing situations.

2. The employer shall implement the measures referred to in the first subparagraph of paragraph 1 on the basis of the following general principles of prevention:

(a) avoiding risks;

(b) evaluating the risks which cannot be avoided:

(c) combating the risks at source;

…

3. Without prejudice to the other provisions of this Directive, the employer shall, taking into account the nature of the activities of the enterprise and/or establishment:

(a) evaluate the risks to the safety and health of workers, inter alia in the choice of work equipment, the chemical substances or preparations used, and the fitting-out of work places.

Subsequent to this evaluation and as necessary, the preventive measures and the working and production methods implemented by the employer must:

– assure an improvement in the level of protection afforded to workers with regard to safety and health,

– be integrated into all the activities of the undertaking and/or establishment and at all hierarchical levels;

…’

Directive 2003/88

5 Article 1 of Directive 2003/88 provides:

‘1. This Directive lays down minimum safety and health requirements for the organisation of working time.

2. This Directive applies to:

(a) minimum periods of daily rest, weekly rest and annual leave, to breaks and maximum weekly working time; and

(b) certain aspects of night work, shift work and patterns of work.

…’

6 Article 2 of that directive provides:

‘For the purposes of this Directive, the following definitions shall apply:

1. “working time” means any period during which the worker is working, at the employer’s disposal and carrying out his activity or duties, in accordance with national laws and/or practice;

2. “rest period” means any period which is not working time;

…’

7 Under Article 7(1) of that directive:

‘Member States shall take the measures necessary to ensure that every worker is entitled to paid annual leave of at least four weeks in accordance with the conditions for entitlement to, and granting of, such leave laid down by national legislation and/or practice.’

German law

8 The annex of the Verordnung über die Organisation, Mindeststärke und Ausrüstung der öffentlichen Feuerwehren (Regulation on the organisation, minimum strength and equipment of public fire services) of 17 December 2003 (GVBl., p. 693) provides inter alia:

‘The equipment of level 2 including the necessary personnel is generally to be deployed at the incident site within 20 minutes of the alert …’

9 Under the Einsatzdienstverfügung der Feuerwehr Offenbach (Operational Service Order of the Offenbach fire brigade), in the version of 18 June 2018, when called, the public official who carries out the incident command service *‘Beamter vom Einsatzleitdienst’* (officer of the Operations Control Service, the ‘BvE

service') must be available to go immediately to the incident scene using his or her traffic regulations privileges and rights of priority.

10 That detailed Operational Service Order set out, on page 6, the obligations of a public official who carries out 'incident command' duty:

'While carrying out BvE service, a public official shall remain available and at such place as will permit him or her to comply with the response time of 20 minutes. This rule shall be deemed to be complied with if the journey time, using traffic regulations privileges and rights of priority, from where he or she is to the Offenbach am Main city boundary is twenty minutes or less. That journey time shall apply in the case of average traffic density and normal road and weather conditions.'

The dispute in the main proceedings and the questions referred for a preliminary ruling

11 RJ is a public official and carries out his activities as a firefighter, as a division commander, with the Offenbach am Main fire service. In addition to his regular service hours, according to the legislation applicable to the fire service of that town, he regularly has to carry out what is known as 'BvE' service.

12 During the 'BvE' service, RJ must be reachable at any time and have his service uniform with him, as well as a service vehicle, made available to him by his employer. He must respond to calls received by which he is informed of events which occur and which require decisions on his part. In certain cases, he must attend the scene of the incident or go to his workplace. During BvE service, RJ has to choose his whereabouts in such a way that, if he is alerted, he can reach the Offenbach am Main town boundary with his uniform and that vehicle, using his traffic regulations privileges and rights of priority, within 20 minutes.

13 During the week, the 'BvE' service is carried out between 5 pm and 7 am the following day. At weekends, it runs from Friday from 5 pm until Monday at 7 am. A 42-hour working week may be followed by carrying out that service at the weekend. On average, RJ spends 10 to 15 weekends per year carrying out 'BvE' service. Between 1 January 2013 and 31 December 2015, he carried out a total of 126 'BvE' service periods, and he had to respond to alerts or attend incident sites twenty times. Thus, over three years, the number of alerts which occurred while RJ was carrying out 'BvE' service amounted on average to 6.67 per year.

14 RJ has requested that the 'BvE' service be recognised as working time and that he be remunerated accordingly. By decision of 6 August 2014, his employer rejected that request.

15 On 31 July 2015, RJ brought an action before the referring court in which he claimed that, even when they take place according to a stand-by system and the worker is not therefore required to be physically present in a place determined by the employer, periods of stand-by time can be considered to be working time when the worker is required, by his employer, to return to work within a very short period of time. RJ claims, in particular, that 'BvE' service constitutes a significant restriction on his free time in so far as, in the event of an alert, he must immediately leave his home to go to Offenbach am Main, in order to comply with the 20-minute response time to which he is subject.

16 According to the referring court, activities carried out by the operational crews of a public fire service fall within the scope of Directive 2003/88. That court takes the view that, although the issues relating to remuneration for services consisting in stand-by time are not covered by the scope of Directive 2003/88, the categorisation of 'BvE' service as 'working time' within the meaning of Article 2(1) of Directive 2003/88, is however decisive for settling the dispute before it.

17 Ordering RJ's employer to remunerate 'BvE' service, in the way requested by the applicant requires, under German law, that the applicant has worked in excess of the maximum weekly working time admissible under Directive 2003/88. Moreover, the applicant's head of claim for a specific finding that 'BvE' service constitutes working time does not concern the possible remuneration of his service, but is

aimed at ensuring that RJ no longer has to work in excess of the maximum admissible working time under EU law in the future.

18 The referring court notes that, to date, the Court has held that periods of stand-by time can be treated as working time only if the employee has to be physically present at the place determined by the employer and to be available to the employer in order to be able to provide the appropriate services immediately in case of need. It points out, however, that, in the judgment of 21 February 2018, *Matzak* (C−518/15, EU:C:2018:82), the Court held that stand-by time served by a worker at his home must also be regarded as working time, on the basis, first, of the worker's obligation to remain at a place specified by the employer and, second, of the limitation on that worker's ability to devote himself to his personal and social interests, which results from the need to return to his workplace within a response time of eight minutes.

19 In the view of the referring court, that judgment does not preclude periods of stand-by time according to a stand-by system from also being considered as working time, namely those during which the worker, without being required to remain in a place determined by the employer, is subject to significant restrictions on the freedom to choose where he or she is present and on the organisation of his or her free time.

20 In particular, according to the referring court, the exclusion from the concept of 'working time', within the meaning of Directive 2003/88, of periods of stand-by time according to a stand-by system solely on the ground that the employer has not specified a precise location where the worker is required to be physically present, constitutes an unjustified difference in treatment compared with the situation in which the employer has imposed such a location. The obligation imposed on the worker to reach a specific location within a short period could have such a restrictive effect on the organisation of his or her free time and amounts to imposing on him or her indirectly the place where he or she is required to be physically present, thereby significantly restricting his or her ability to attend to personal matters.

21 Finally, the referring court observes that the decisive criterion used by the Bundesverwaltungsgericht (Federal Administrative Court, Germany) in determining whether a period of stand-by time must be regarded as working time is the frequency with which the worker must expect to be called upon during his periods of stand-by time. If those periods are only sporadically interrupted by incidents, they do not constitute 'working time'.

22 In those circumstances, the Verwaltungsgericht Darmstadt (Administrative Court, Darmstadt, Germany) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Is Article 2 of Directive 2003/88 to be interpreted as meaning that periods of stand-by time during which an employee is subject to the obligation to reach the town boundary of his place of employment in uniform with the service vehicle within twenty minutes are to be regarded as working time, where the employer has not prescribed a place where the employee is obliged to be physically present, but the employee is nevertheless significantly restricted in his or her choice of location and in the opportunities to devote himself to his personal and social interests?

(2) In a situation such as that of the first question referred, is Article 2 of Directive 2003/88 to be interpreted as meaning that, when defining the concept of working time, account is also to be taken of whether and to what extent a service call-out is generally to be expected during stand-by duty which is to be spent in a place not prescribed by the employer?'

Consideration of the questions referred

23 By its questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 2 of Directive 2003/88 must be interpreted as meaning that the period of stand-by time during which a worker must be able to reach the town boundary of his place of employment within 20 minutes,

with his uniform and the service vehicle made available to him by his employer, using the traffic regulations privileges and rights of priority attached to that vehicle, constitutes ‘working time’ within the meaning of that article, and whether the average frequency with which he is actually called upon to intervene during that period is to be taken into account in the context of such categorisation.

24 More specifically, it is apparent from the order for reference and from the file before the Court that the applicant in the main proceedings is required to carry out approximately 40 periods of stand-by time per year, at night during the week and at the weekend. Such periods of stand-by time are carried out according to a stand-by system, which means that he is not required to be physically present at his workplace. During those periods of stand-by time, RJ must, at all times, have with him his uniform and service vehicle, in order to be able to respond immediately to calls received by him and be able to reach the Offenbach am Main town boundary, using his traffic regulations privileges and rights of priority attached to that vehicle, within 20 minutes. That journey time corresponds to average traffic density and normal road and weather conditions.

25 As a preliminary point, it should be recalled that, while it is ultimately for the national court to examine whether the periods of stand-by time according to a stand-by system, at issue in the main proceedings, must be classified as ‘working time’ for the purposes of applying Directive 2003/88, it remains the case that it is for the Court to provide it with guidance as to the criteria to be taken into account in that examination (judgment of today, *Radiotelevizija Slovenija (Period of stand-by time in a remote location*), C−344/19, paragraphs 23 and 24 and the case-law cited).

26 With the benefit of this introductory clarification, it should be recalled, in the first place, that the purpose of Directive 2003/88 is to lay down minimum requirements intended to improve the living and working conditions of workers through approximation of national rules concerning, in particular, the duration of working time. That harmonisation at European Union level in relation to the organisation of working time is intended to guarantee better protection of the health and safety of workers by ensuring that they are entitled to minimum rest periods – particularly daily and weekly – as well as adequate breaks, and by providing for a ceiling on the duration of the working week (judgment of today, *Radiotelevizija Slovenija (Period of stand-by time in a remote location*), C−344/19, paragraph 25 and the case-law cited).

27 The various requirements laid down in Directive 2003/88 concerning maximum working time and minimum rest periods constitute rules of EU social law of particular importance from which every worker must benefit and compliance with which should not be subordinated to purely economic considerations (judgment of today, *Radiotelevizija Slovenija (Period of stand-by time in a remote location*), C−344/19, paragraph 26 and the case-law cited).

28 Moreover, by establishing the right of every worker to a limitation of maximum working hours and to daily and weekly rest periods, Directive 2003/88 gives specific form to the fundamental right expressly enshrined in Article 31(2) of the Charter of Fundamental Rights of the European Union and must, therefore, be interpreted in the light of that Article 31(2). It follows in particular that the provisions of Directive 2003/88 may not be interpreted restrictively to the detriment of the rights that workers derive from it (judgment of today, *Radiotelevizija Slovenija (Period of stand-by time in a remote location*), C−344/19, paragraph 27 and the case-law cited).

29 In the second place, it should be noted that Article 2(1) of Directive 2003/88 defines 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, in accordance with national laws and/or practice. Under Article 2(2) of that directive, the term ‘rest period’ means any period which is not working time.

30 It follows that the two concepts, which were defined in the same way in Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organisation of working time (OJ 1993 L 307, p.18) which was succeeded by Directive 2003/88, are mutually exclusive. A worker’s time on stand-by periods must therefore be classified as either ‘working time’ or a ‘rest period’ for the purpose of applying Directive 2003/88, since the directive does not provide for any intermediate category (judgment of today,

Radiotelevizija Slovenija (Period of stand-by time in a remote location), C−344/19, paragraph 29 and the case-law cited).

31 Furthermore, the concepts of 'working time' and of 'rest period' are concepts of EU law which must be defined in accordance with objective characteristics by reference to the scheme and purpose of Directive 2003/88. Only an autonomous interpretation of that nature is capable of ensuring the full effectiveness of that directive and the uniform application of those concepts in all the Member States (judgment of today, *Radiotelevizija Slovenija (Period of stand-by time in a remote location)*, C−344/19, paragraph 30 and the case-law cited).

32 Hence, despite the reference to 'national laws and/or practice' in Article 2 of Directive 2003/88, Member States may not unilaterally determine the scope of the concepts of 'working time' and 'rest period' by making the right, which is granted directly to workers by that directive, to have working periods and corresponding rest periods duly taken into account, subject to any condition or any restriction whatsoever. Any other interpretation would frustrate the effectiveness of Directive 2003/88 and undermine its objective (judgment of today, *Radiotelevizija Slovenija (Period of stand-by time in a remote location)*, C−344/19, paragraph 31 and the case-law cited).

33 In the third place, as regards, more specifically, periods of stand-by time, it is apparent from the case-law of the Court that a period during which no actual activity is carried out by the worker for the benefit of his or her employer does not necessarily constitute a 'rest period' for the purposes of the application of Directive 2003/88.

34 Thus, first, the Court has held, regarding periods of stand-by time undertaken at places of work which were separate from the workers' residence, that the decisive factor for finding that the elements that characterise the concept of 'working time' for the purposes of Directive 2003/88 are present is the fact that the worker is required to be physically present at the place determined by the employer and to remain available to the employer in order to be able, if necessary, to provide his or her services immediately (see, to that effect, judgments of 3 October 2000, *Simap*, C−303/98, EU:C:2000:528, paragraph 48; of 9 September 2003, *Jaeger*, C−151/02, EU:C:2003:437, paragraph 63; and of 1 December 2005, *Dellas and Others*, C−14/04, EU:C:2005:728, paragraph 48).

35 It should be specified in that regard that the workplace must be understood as any place where the worker is required to exercise an activity on the employer's instruction, including where that place is not the place where he or she usually carries out his or her professional duties.

36 The Court has considered that, during such a stand-by time, the worker, who is required to remain at his or her workplace and to be available to his or her employer, must remain apart from his or her family and social environment and has little freedom to manage the time during which his or her professional services are not required. Therefore, the whole of that period must be classified as 'working time', within the meaning of Directive 2003/88, irrespective of the professional activity actually carried out by the worker during that period (see, to that effect, judgments of 9 September 2003, *Jaeger*, C−151/02, EU:C:2003:437, paragraph 65; of 5 October 2004, *Pfeiffer and Others*, C−397/01 to C−403/01, EU:C:2004:584, paragraph 93; and of 1 December 2005, *Dellas and Others*, C−14/04, EU:C:2005:728, paragraphs 46 and 58).

37 Second, the Court has held that a period of stand-by time according to a stand-by system must also be classified, in its entirety, as 'working time' within the meaning of Directive 2003/88, even if a worker is not required to remain at his or her workplace, where, having regard to the impact, which is objective and very significant, that the constraints imposed on the worker have on the latter's opportunities to pursue his or her personal and social interests, it differs from a period during which a worker is required simply to be at his or her employer's disposal inasmuch as it must be possible for the employer to contact him or her (see, to that effect, the judgment of 21 February 2018, *Matzak*, C−518/15, EU:C:2018:82, paragraphs 63 to 66).

38 It follows from the elements set out in paragraphs 33 to 36 of this judgment and also from the need, recalled in paragraph 27 of this judgment, to interpret Article 2(1) of Directive 2003/88 in the light of Article 31(2) of the Charter of Fundamental Rights of the European Union, that the concept of 'working time' within the meaning of Directive 2003/88 covers the entirety of periods of stand-by time, including those according to a stand-by system, during which the constraints imposed on the worker are such as to affect, objectively and very significantly, the possibility for the latter freely to manage the time during which his or her professional services are not required and to pursue his or her own interests.

39 Conversely, where the constraints imposed on a worker during a specific period of stand-by time do not reach such a level of intensity and allow him or her to manage his or her own time, and to pursue his or her own interests without major constraints, only the time linked to the provision of work actually carried out during that period constitutes 'working time' for the purposes of applying Directive 2003/88 (judgment of today, *Radiotelevizija Slovenija (Period of stand-by time in a remote location*), C−344/19, paragraph 38 and the case-law cited).

40 In that regard, it should also be specified that only the constraints that are imposed on the worker, whether by the law of the Member State concerned, by a collective agreement or by the employer pursuant, inter alia, to the employment contract, employment regulations or the system of dividing stand-by time between workers, may be taken into consideration in order to determine whether a period of stand-by time is 'working time' within the meaning of Directive 2003/88 (judgment of today, *Radiotelevizija Slovenija (Period of stand-by time in a remote location*), C−344/19, paragraph 39).

41 By contrast, organisational difficulties that a period of stand-by time may generate for the worker, which are not the result of such constraints but are, for example, the consequence of natural factors or of his or her own free choice, may not be taken into account (judgment of today, *Radiotelevizija Slovenija (Period of stand-by time in a remote location*), C−344/19, paragraph 40).

42 Thus, first, a substantial distance between the residence freely chosen by the worker and the place that he or she must be able to reach within a certain time during the period of stand-by time is not, in itself, a relevant criterion for classifying the whole of that period as 'working time' within the meaning of Article 2(1) of Directive 2003/88, at least where that place is his or her usual workplace. In such a case, the worker has been in a position to assess freely the distance between that place and his or her home (judgment of today, *Radiotelevizija Slovenija (Period of stand-by time in a remote location*), C−344/19, paragraph 41 and the case-law cited).

43 In addition, if the workplace includes or is indistinguishable from the worker's residence, the mere fact that, during a given period of stand-by time, the latter is required to remain at his or her workplace in order to be able, if necessary, to be available for his or her employer, does not suffice for that period to be classified as 'working time' within the meaning of Directive 2003/88 (judgment of today, *Radiotelevizija Slovenija (Period of stand-by time in a remote location*), C−344/19, paragraph 43 and the case-law cited).

44 Where, owing to the absence of a requirement to remain at the workplace, a period of stand-by time cannot automatically be classified as 'working time', within the meaning of Directive 2003/88, the national courts must still determine whether that classification is nevertheless required due to the consequences that all the constraints imposed on the worker have, during that period, for his or her ability freely to manage his or her time while his or her professional services are not required and to pursue his or her own interests.

45 In that context, it is necessary, more specifically, to have regard to the time period available to the worker, during the period of stand-by time, to return to his or her professional activities, starting from the moment at which the employer requests it, coupled, where appropriate, with the average frequency of the activities that the worker is actually called upon to undertake over the course of that period (judgment of today, *Radiotelevizija Slovenija (Period of stand-by time in a remote location*), C−344/19, paragraph 46).

46 Thus, firstly, as the Advocate General observed, in essence, in points 89 to 91 of his opinion, national courts must take into account the consequences for the worker's ability freely to manage his or her time,

resulting from the brevity of the time period within which he or she must, where action is necessary, undertake work, which, as a general rule, requires him or her to return to his or her workplace.

47 In that regard, it should be underlined that a period of stand-by time during which the worker may, taking into account the reasonable time period allowed for him or her to resume his or her professional activities, plan his or her personal and social activities does not, a priori, constitute 'working time', within the meaning of Directive 2003/88. Conversely, a period of stand-by time during which the time limit within which the worker is required to return to work is limited to a few minutes must, in principle, be regarded, in its entirety, as 'working time', within the meaning of that directive, since in that case the worker is, in practice, strongly dissuaded from planning any kind of recreational activity, even of a short duration (judgment of today, *Radiotelevizija Slovenija (Period of stand-by time in a remote location*), C−344/19, paragraph 48).

48 The fact remains that the impact of such a time limit within which the worker has to react must be evaluated following a concrete assessment that takes into account, as appropriate, the other constraints imposed on the worker, just as in the case of the facilities granted to him or her during the period of stand-by time (judgment of today, *Radiotelevizija Slovenija (Period of stand-by time in a remote location*), C−344/19, paragraph 49).

49 In particular, it is relevant, when considering the constraints involved by that reaction time, that the worker is obliged to remain at home, without being able to move freely, pending the request from his employer, or to be equipped with specific equipment when, following a call-out, he must report to his workplace. It is also relevant, when considering the facilities afforded to the employee, if a service vehicle is made available to that worker enabling him or her to use traffic regulations privileges and rights of priority, or indeed if the worker has the possibility of responding to requests from his or her employer without leaving the place where he or she is located.

50 Secondly, coupled with the period of time available to the worker to resume his or her professional activity, the average frequency of the actual services that are normally carried out by that worker during each of those periods of stand-by time must, where it is possible objectively to estimate them, be taken into account by the national courts (judgment of today, *Radiotelevizija Slovenija (Period of stand-by time in a remote location*), C−344/19, paragraph 51).

51 Thus, if the worker is, on average, called upon to act on numerous occasions during a period of stand-by time, he or she has less scope freely to manage his or her time during those periods of inactivity, given that they are frequently interrupted. That is all the more true where the activity required of the worker, during a period of stand-by time, is of a non-negligible duration (judgment of today, *Radiotelevizija Slovenija (Period of stand-by time in a remote location*), C−344/19, paragraph 52).

52 It follows that, if the worker is, on average, frequently called upon to provide services during his or her periods of stand-by time and, as a general rule, those services are not of a short duration, the entirety of those periods constitutes, in principle, 'working time' within the meaning of Directive 2003/88 (judgment of today, *Radiotelevizija Slovenija (Period of stand-by time in a remote location*), C−344/19, paragraphs 53).

53 However, the fact that, on average, the worker is only rarely called upon to act during the periods of stand-by time cannot lead to those periods being regarded as 'rest periods' within the meaning of Article 2(2) of Directive 2003/88 where the impact of the time limit imposed on the worker to return to his or her professional activities is such that it suffices to constrain, objectively and very significantly, the ability that he or she has freely to manage, during those periods, the time during which his or her professional services are not required (judgment of today, *Radiotelevizija Slovenija (Period of stand-by time in a remote location*), C−344/19, paragraph 54).

54 In the present case, it should be recalled that, according to the information provided in the order for reference, during the periods of stand-by time according to a stand-by system at issue in the main

proceedings, RJ may travel freely but must be able to reach the town boundary of Offenbach am Main, within 20 minutes, with his uniform and the service vehicle made available to him by his employer, using traffic regulations privileges and rights of priority. As has been pointed out in paragraph 13 of the present judgment, it is not apparent from the order for reference that the average frequency of his interventions during those periods was high. Furthermore, the potentially significant nature of the distance separating RJ's home from the town limits of Offenbach am Main, the habitual place of his work, is not, as such, relevant.

55 It is, however, for the referring court to assess, in the light of all the circumstances of the case, whether, during his periods of stand-by time according to a stand-by system, RJ is subject to constraints of such intensity such as to constrain, objectively and very significantly, the ability that he has freely to manage, during those periods, the time during which his professional services are not required and to devote that time to his own interests.

56 In the fourth place, it is important to recall that, save in the special case covered by Article 7(1) of Directive 2003/88 concerning annual paid holidays, that directive is limited to regulating certain aspects of the organisation of working time in order to protect the safety and health of workers, with the result that, in principle, it does not apply to the remuneration of workers (judgment of today, *Radiotelevizija Slovenija (Period of stand-by time in a remote location*), C−344/19, paragraph 57).

57 Therefore, the way in which workers are remunerated for periods of stand-by time is not covered by Directive 2003/88 but by the relevant provisions of national law. Consequently, that directive does not preclude the application of a law of a Member State, a collective labour agreement, or an employer's decision that, for the purposes of the remuneration of stand-by time which makes a distinction between the treatment of periods in the course of which work is actually done and those during which no actual work is done, even if those periods must be regarded, in their entirety, as 'working time' for the purposes of that directive (judgment of today, *Radiotelevizija Slovenija (Period of stand-by time in a remote location*), C−344/19, paragraph 58 and the case-law cited).

58 Similarly, Directive 2003/88 does not preclude a law of a Member State, a collective labour agreement or an employer's decision that, as regards periods of stand-by time which should be entirely regarded as not being covered by the concept of 'working time' for the purposes of that directive, nevertheless provides for the payment to the worker concerned of a sum intended to compensate him or her for the inconvenience that those periods of stand-by time cause to the organisation of his or her time and to the pursuit of his or her own interests (judgment of today, *Radiotelevizija Slovenija (Period of stand-by time in a remote location*), C−344/19, paragraph 59).

59 In the fifth and final place, it follows from paragraph 29 of this judgment that periods of stand-by time that do not meet the conditions to be classified as 'working time' within the meaning of Article 2(1) of Directive 2003/88 must be regarded, with the exception of time linked to the provision of work actually carried out during those periods, as 'rest periods', within the meaning of Article 2(2) thereof, and, as such, must be included in the calculation of minimum periods of daily and weekly rest laid down in Articles 3 and 5 of that directive.

60 However, it should be noted that the classification of a period of stand-by time as a 'rest period' for the purposes of applying Directive 2003/88 is without prejudice to the duty of employers to comply with their specific obligations under Articles 5 and 6 of Directive 89/391 to protect the safety and health of their workers. It follows that employers cannot establish stand-by periods that are so long or so frequent that they constitute a risk to the safety or health of workers, irrespective of those periods being classified as 'rest periods' within the meaning of Article 2(2) of Directive 2003/88. It is for the Member States to define, in their national law, the detailed arrangements for the application of that obligation (judgment of today, *Radiotelevizija Slovenija (Period of stand-by time in a remote location*), C−344/19, paragraphs 61 to 65 and the case-law cited).

61 It follows from all the foregoing considerations that the answer to the questions referred is that Article 2(1) of Directive 2003/88 must be interpreted as meaning that a period of stand-by time according to a stand-by system, during which a worker must be able to reach the town boundary of his or her workplace within a 20 minute response time, in uniform with the service vehicle made available to him or her by his or her employer, using traffic regulations privileges and rights of priority attached to that vehicle, constitutes, in its entirety, 'working time', within the meaning of that provision, solely if it follows from an overall assessment of all the circumstances of the case, in particular the consequences of such a response time and, where appropriate, the average frequency of interventions during that period, that the constraints imposed on that worker during that period are of such a nature as to constrain objectively and very significantly the ability that he or she has to freely manage, during the same period, the time during which his or her professional services are not required and to devote that time to his or her own interests.

Costs

62 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

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 must be interpreted as meaning that a period of stand-by time according to a stand-by system, during which a worker must be able to reach the town boundary of his or her workplace within a 20 minute response time, in uniform with the service vehicle made available to him or her by his or her employer, using traffic regulations privileges and rights of priority attached to that vehicle, constitutes, in its entirety, 'working time', within the meaning of that provision, solely if it follows from an overall assessment of all the circumstances of the case, in particular the consequences of such a response time and, where appropriate, the average frequency of interventions during that period, that the constraints imposed on that worker during that period are of such a nature as to constrain objectively and very significantly the ability that he or she has to freely manage, during the same period, the time during which his or her professional services are not required and to devote that time to his or her own interests.

[Signatures]

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* Language of the case: German