

# Being on-call at home is working time: the Matzak-case

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### Introduction

On 21 February 2018, the Court of Justice of the European Union interpreted the notion of 'working time' mentioned in the European Working Time Directive (2003/88). The Court stated that stand-by time which a worker spends at home with the duty to respond to calls from his employer must be regarded as 'working time'.

The case (Case C-518/15) concerns a dispute arising from the Higher Labour Court of Brussels (Belgium) in proceedings between the town of Nivelles (Belgium) and Mr. Matzak concerning the remuneration of services performed within the fire service in that town, particularly for his stand-by services. Mr. Matzak argued that his 'stand-by services' must be categorised as working time, within the meaning of the European Working Time Directive.

### The judgment

In its judgment, the European Court made clear that the European Working Time Directive is limited to regulating certain aspects of the organisation of working time in order to protect the safety and health of workers. In principle, it does not apply to the remuneration of workers. That is a matter for the national court to deal with. Nevertheless, the European Court found the case sufficiently relevant to deal with the question whether stand-by time needs to be seen as working time.

In answering the question, the European Court first clarified that a *volunteer* firefighter can also be considered as a 'worker' in the sense of the Working Time Directive. The Court held that the fact that Mr. Matzak does not have the status of a professional firefighter under national law, is irrelevant for his classification as 'worker' within the meaning of the European legislation. For the purposes of applying the European Working Time Directive, the concept of 'worker' may not be interpreted differently according to the law of the member states. It has an autonomous EU law

meaning. It seemed in the Court's view, that Mr. Matzak had to be regarded as a 'worker' for the purposes of the Working Time Directive.

The European Court then came to the heart of the matter. With regard to the notion of 'working time', the Court noted that it already had occasion to give rulings on the issue of stand-by time. In earlier case law, the Court specified that the concepts of 'working time' and of 'rest period' are mutually exclusive (see for example the *Simap* case, C-303/98). For the Court, stand-by time spent by a worker in the course of his activities carried out for his employer must be classified either as 'working time' or 'rest period'.

The Court followed that it is apparent from its former case-law that the determining factor for the classification of 'working time', within the meaning of the Working Time Directive, is the requirement that the worker 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. Those obligations, according to the Court, make it impossible for the workers concerned to choose the place where they stay during stand-by periods.

The Court observed that the situation is different where the worker performs a stand-by duty according to a stand-by system which requires that the worker be permanently accessible without being required to be present at the place of work. Even if he is at the disposal of his employer, since it must be possible to contact him, in that situation the worker may manage his time with fewer constraints and pursue his own interests. In those circumstances, only time linked to the actual provision of services must be regarded as 'working time'.

In the case of Mr. Matzak, the worker was not only to be contactable during his stand-by time. He was, on the one hand, obliged to respond to calls from his employer within 8 minutes and, on the other hand, required to be physically present at the place determined by the employer. That place was Mr. Matzak's home and not, as in the Court's former case law, the normal place of work. Pointing out that the EU working time legislation is intended to improve workers' living and working conditions, the Court expanded the concept of working time to Mr. Matzak's situation. The obligation to remain physically present at the place determined by the employer and the geographical and temporal constraints resulting from the requirement to reach his place of work within 8 minutes are, according to the Court, such as to objectively limit the opportunities which a worker in Mr. Matzak's circumstances has to devote himself to his personal and social interests.

The Court held that the European Working Time Directive must be interpreted as meaning that stand-by time which a worker spends at home with the duty to respond to calls from his employer within 8 minutes, very significantly restricting the opportunities for other activities, must be regarded as 'working time'.

## Observations

The Court of Justice has been called before to respond to questions regarding the concept of working time. In a wide range of cases the Court stressed that this is a European notion, to be understood in light of the purposes of the Working Time Directive, which is the promotion of the worker's health and safety. From this, it guarantees limits to working time and the respect of sufficient rest periods and free time. However, it is clear that discussions on remuneration issues can follow from this. This is a matter for national law, as remuneration rights are not included in the Working Time Directive and pay is excluded from the EU's social-regulatory competences (cf. 153,5 TFEU).

Stand-by time has been considered as working time before, but the former case law concerned situations in which workers had to be stand-by at the location of the employer. In the past, the Court even seemed to deny working time when time was spent at the worker's home. So the innovation of the present *Matzak*-case is that stand-by time spent at home now actually qualifies as working time.

Until a couple of years the Court was really strict in its interpretation that only time spent at the workplace could qualify as working time. But the *Tyco*-case (European Court of Justice, 10 September 2015, nr. C-266/14) marked an end to this strictness. At least for employees who do not have a fixed work of place, the Court considered that also travel time to the workplace, is working time. It seems that the Court continues its more flexible point of view in the case discussed.

However, not all stand-by or on-call time will be working time for the Court. The Court clearly indicated that there are limits. The context will play a role and in this case it seemed important that the worker had to be ready for work within 8 minutes. The Court will take into account the limitation on the worker's freedom and restrictions following obligations or conditions of work.

The impact of the *Matzak*-case on national legal systems and on the organization of work in enterprises and public services, will be significant. There is an immediate consequence for the case law of the Belgian *Cour de Cassation*, which decided in a judgment of 10 March 2014 that on-call time spent at home is not working time. But it is clear that this national case law has now come under pressure and will have to be reformed. It is also clear that this will not be the last case of the Court of Justice of the European Union on the notion of working time. Perhaps some day the Court might decide that working time and rest period are not mutually exclusive, as was proposed in the revision of the Working Time Directive when 'on call time' was proposed as a third category of time. Where it will lead us, is something only time can tell.

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