Provisional text

EJUDGMENT OF THE COURT (Tenth Chamber)

28 October 2021 (*)

(Reference for a preliminary ruling – Protection of the safety and health of workers – Directive 2003/88/EC – Organisation of working time – Article 2(1) and (2) – Concepts of ‘working time’ and ‘rest period’ – Mandatory vocational training undertaken at the employer’s request)

In Case C-909/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Curtea de Apel Iaşi (Court of Appeal, Iaşi, Romania), made by decision of 3 December 2019, received at the Court on 11 December 2019, in the proceedings

BX

v

Unitatea Administrativ Teritorială D.,

THE COURT (Tenth Chamber),

composed of C. Lycourgos (Rapporteur), President of the Fourth Chamber, acting as President of the Tenth Chamber, I. Jarukaitis and M. Ilešič, Judges,

Advocate General: G. Pitruzzella,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– the Romanian Government, by E. Gane, A. Wellman and A. Rotăreanu, acting as Agents,

– the European Commission, by L. Nicolae and M. van Beek, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 2(1) and (2), and of Articles 3, 5 and 6 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), and of Article 31(2) of the Charter of Fundamental Rights of the European Union (‘the Charter’).

2 The request has been made in proceedings between BX and the Unitatea Administrativ Teritorială D. (Territorial Administrative Unit D., Romania; ‘the administration of the municipality of D.’) concerning BX’s remuneration in respect of periods of vocational training undertaken under his contract of employment.

Legal context

EU law

3 Article 1 of Directive 2003/88, entitled 'Purpose and scope', states, in paragraph 1:

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

4 Article 2 of that directive provides:

'For the purpose 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;

…'

5 Article 13 of Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union (OJ 2019 L 186, p. 105) provides:

'Member States shall ensure that where an employer is required by Union or national law or by collective agreements to provide training to a worker to carry out the work for which he or she is employed, such training shall be provided to the worker free of charge, shall count as working time and, where possible, shall take place during working hours.'

Romanian law

6 Article 111 of the Codul muncii (Labour Code) provides:

'Working time means any period of time during which an employee is working, remains at the employer's disposal and performs his or her tasks or duties, in accordance with the terms of his or her contract of employment, the applicable collective employment agreement and/or the legislation in force.'

7 Under Article 112(1) of that code, the normal duration of working time for full-time workers is 40 hours per week, divided into 8 hours per day.

8 Article 120 of that code, concerning the statutory definition and conditions of overtime, provides:

'1. Work performed in excess of the normal weekly working time provided for in Article 112 shall be regarded as overtime.

2. Overtime may not be carried out without the agreement of the employee except in cases of force majeure or urgent tasks aimed at preventing accidents or eliminating the consequences thereof.'

9 Article 196 of the Labour Code, relating to the rules governing vocational training, provides:

'1. Participation in vocational training may take place at the request of the employer or the employee.

2. The specific arrangements for vocational training, the rights and obligations of the parties, the duration of vocational training and any other related matters, including the employee's contractual obligations towards the employer which bore the expense occasioned by vocational training, shall be determined by common agreement between the parties and shall be the subject of addendums to the contracts of employment.'

10 Article 197 of that code, concerning vocational training costs and employees' rights, is worded as follows:

'1. Where the participation in courses or vocational training is at the employer's request, the latter shall bear all the costs incurred in such participation.

2. As long as he or she participates in the courses or vocational training in accordance with subparagraph 1, the employee shall be entitled to full remuneration throughout the duration of the vocational training.

3. The period during which the employee takes part in the courses or vocational training as provided for in paragraph 1 shall count towards length of service in his or her position, that period being regarded as a period of contribution to the social security system of the State.'

11 Under Article 2(1) of the ordin nr. 96 pentru aprobarea Criteriilor de performanaériță privind constituirea, încadrarea și dotarea serviciilor voluntare și a serviciilor private pentru situații de urgență (Order No 96 approving the performance criteria for the establishment, management and equipment of voluntary and private emergency services) of 14 June 2016 (*Monitorul Oficial al României*, No 469 of 23 June 2016), in the version applicable to the facts in the main proceedings ('Order No 96/2016'), the local authorities, the heads of economic operators/institutions required to set up voluntary or private emergency services, as the case may be, and the heads of private emergency services set up as service provider companies must give effect to that order.

12 According to Article 9(1)(j) of the performance criteria for the establishment, management and equipment of voluntary and private emergency services, as approved by Order No 96/2016 ('the performance criteria'):

'For the issue of a formal opinion for the establishment of the voluntary or private service, the following documents shall be lodged, as appropriate:

…

(j) documents certifying specific qualifications or professional skills;

…'

13 In accordance with Article 14(1)(a) of the performance criteria, the head of service is one of the specific positions within the voluntary and private services.

14 Under Article 17 of the performance criteria:

'Staff recruited for the specific positions referred to in Article 14(1) and those who combine the positions of head of service and specialist team leader must have the specific professional qualifications or skills certified in accordance with the regulations in force.'

15 It is apparent from Article 28(a) of the performance criteria that the head of the voluntary service must be in receipt of the formal opinion of the competent department's inspectorate, in accordance with the template set out in Annex 4 to Order No 96/2016.

16 Article 50(1) of the Ordonanța Guvernului României nr. 129/2000 privind formarea profesională a adulților (Romanian Government Order No 129/2000 concerning vocational training for adults) of 31 August 2000, in its republished version (*Monitorul Oficial al României*, No 110 of 13 February 2014), provides:

'The employee shall receive the remuneration established in accordance with the contract of employment corresponding to his or her normal working hours during the period in which he or she participates in a vocational training programme paid for by the employer.'

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

17 BX is employed by the administration of the municipality of D. within the voluntary emergency service. The position stated in his contract of employment is that of 'Head of the Prevention Department (firefighter) 541101, in accordance with the classification of professions in Romania'. BX carries out his work on a full-time basis, 8 hours per day and 40 hours per week.

18 In order to obtain the formal opinion referred to in Article 28(a) of the performance criteria, as a necessary condition for the organisation and performance of the public service activity in question in the main proceedings, BX was instructed by his employer to undertake 160 hours of vocational training. That training was completed in March and April 2017, under a vocational training contract signed by the administration of the municipality of D. with a vocational training provider, a contract in which BX appeared to be the ultimate beneficiary. The training took place at the premises of that training provider, from 15.00 to 20.00 on Mondays to Fridays, from 13.00 to 18.00 on Saturdays, and from 13.00 to 19.00 on Sundays. Finally, of the training hours completed by BX, 124 took place outside his normal working hours.

19 BX brought proceedings against the administration of the municipality of D. before the Tribunalul Vaslui (Regional Court, Vaslui, Romania) seeking, inter alia, an order that the administration of the municipality of D. pay those 124 hours as overtime.

20 Following the dismissal of his claim, BX brought an appeal before the Curtea de Apel Iaşi (Court of Appeal, Iaşi, Romania), the referring court.

21 The referring court notes, as a preliminary point, that although the employee's remuneration is a question of national law, the fact remains that the outcome of the dispute in the main proceedings depends on the preliminary question of whether the time which the applicant in the main proceedings spent in vocational training, carried out at the employer's request, at the head office of the professional service provider and outside normal working time, must be classified as working time or a rest period within the meaning of Article 2 of Directive 2003/88.

22 It states, in that regard, that it is apparent from the Romanian legislation, as interpreted by the national courts, that time spent in vocational training is not taken into account when calculating the employee's working time, so that the employee is entitled only to the remuneration corresponding to normal working hours, irrespective of the duration and period of time spent in vocational training.

23 The referring court states that, according to the case-law of the Court of Justice, the classification as 'working time', within the meaning of Directive 2003/88, of a period during which the worker is present is dependent on the worker's obligation to remain available to his or her employer. According to the referring court, the decisive factor, in that regard, is the fact that the employee is required to be physically present at the place determined by the employer and to remain available to the employer so as to be able to provide the appropriate services immediately when needed.

24 According to the referring court, in so far as it is apparent from the case-law of the Court of Justice that the possibility for workers to manage their time without major constraints and to pursue their own interests is a factor capable of demonstrating that the period of time in question does not constitute working time within the meaning of Directive 2003/88, it must be concluded that time spent in vocational training, at the employer's request, constitutes working time.

25 That said, such a conclusion is not clear from the case-law resulting, in particular, from the judgment of 9 July 2015, *Commission* v *Ireland* (C-87/14, EU:C:2015:449), in which the Court held that the training time for non-consultant hospital doctors, at issue in the case which gave rise to that judgment, did not satisfy the requirements for classification as working time within the meaning of Article 2(1) of Directive 2003/88.

26 Nevertheless, in the present case, according to the referring court, there is no doubt that participation in vocational training, undertaken by the applicant in the main proceedings at the employer's request outside working hours, in a municipality other than that of the employee's domicile, in order to obtain a formal opinion necessary for the organisation and exercise of the public service in question in the main proceedings, constitutes an interference with the full and free exercise of the right to rest, since the person concerned bears the obligation arising, from a geographical and temporal perspective, from

the need to attend vocational training. Thus, the time spent in vocational training cannot be regarded as complying with the requirements of the definition of 'rest period' within the meaning of Article 2(2) of Directive 2003/88, as interpreted by the case-law of the Court.

27 Lastly, the referring court refers to Article 13 of Directive 2019/1152, from which it is apparent that the EU legislature classifies as working time the time which a worker spends on training to carry out the work for which he or she is employed. However, that directive is not applicable *ratione temporis* to the dispute in the main proceedings.

28 That court adds that, if the time spent on training an employee does not fall within the concept of working time within the meaning of Article 2(l) of Directive 2003/88, it would have to be concluded that Article 2(2), and Articles 3, 5 and 6 of that directive, which relate to, respectively, daily rest, weekly rest and maximum weekly working time, and Article 31(2) of the Charter, under which, inter alia, every worker has the right to limitation of maximum working hours, to daily and weekly rest periods, preclude any interference with the employee's free exercise of daily and weekly rest periods, including interference caused by tasks which are peripheral, ancillary to, or carried out alongside the working relationship, such as, in the present case, tasks involving participation in vocational training.

29 According to the referring court, although participation in vocational training during normal working hours is regarded under Romanian legislation as a period of contribution to the social security system of the State, counts towards length of service in the position and allows the employee to receive the relevant remuneration, that legislation does not, however, govern a situation in which vocational training takes place outside normal working hours and it does not impose any obligation on the employer with regard to training times or any limitation on compliance with weekly working time. The referring court therefore asks whether those provisions preclude national legislation which, while establishing an obligation for the employee to undertake vocational training, does not require his or her employer to comply with the employee's rest period as regard the time during which training courses are to be attended.

30 In those circumstances, the Cortea d'Appel Iași (Court of Appeal, Iași) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Is Article 2(1) of Directive [2003/88] to be interpreted as meaning that the period of time during which a worker attends mandatory vocational training courses after completing his or her normal hours of work, at the premises of the training services provider, away from his or her place of work, and without performing any of his or her service duties, constitutes "working time"?

(2) In the event that the first question is answered in the negative, are Article 31(2) of the [Charter] and Articles 2(2), 3, 5 and 6 of Directive [2003/88] to be interpreted as precluding national legislation which, while establishing the need for employees to undertake vocational training, does not oblige employers to observe workers' rest periods in so far as concerns the time during which training courses are to be attended?'

Consideration of the questions referred for a preliminary ruling

31 As a preliminary point, it should be noted that the dispute in the main proceedings concerns the remuneration to which a worker claims to be entitled in respect of periods of vocational training which he had to undertake on the instructions of his employer.

32 It follows from the Court's case-law, however, 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 9 March 2021, *Radiotelevizija Slovenija (Period of stand-by time in a remote location)*, C-344/19, EU:C:2021:182, paragraph 57 and the case-law cited).

33 That being so, since, as stated by the referring court, in the context of the dispute in the main proceedings, the question of remuneration for periods of vocational training undertaken by the applicant in the main proceedings depends on the classification of those periods as ‘working time’ or ‘rest period’ within the meaning of Directive 2003/88, it is necessary to answer the questions referred, which concern that classification.

The first question

34 By its first question, the referring court asks, in essence, whether Article 2(1) of Directive 2003/88 must be interpreted as meaning that the period during which workers attend vocational training required by their employer, which takes place away from their usual place of work, at the premises of the training services provider, during which they do not perform their normal duties, constitutes working time within the meaning of that provision.

35 In that regard, it must be noted, 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 EU 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 9 March 2021, *Radiotelevizija Slovenija (Period of stand-by time in a remote location)*, C-344/19, EU:C:2021:182, paragraph 25 and the case-law cited).

36 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, compliance with which should not be subordinated to purely economic considerations. By establishing the right of every worker to a limitation of maximum working hours and to daily and weekly rest periods, that directive gives specific form to the fundamental right expressly enshrined in Article 31(2) of the Charter 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 9 March 2021, *Radiotelevizija Slovenija (Period of stand-by time in a remote location)*, C-344/19, EU:C:2021:182, paragraphs 26 and 27 and the case-law cited).

37 In the second place, it should be noted that Article 2(1) of Directive 2003/88 defines ‘working time’ as ‘any period during which the worker is working, at the employer’s disposal and carrying out his activity or duties’. In Article 2(2) of that directive, the concept of ‘rest period’ is defined negatively as any period which is not working time.

38 Thus, the concepts of ‘working time’ and ‘rest period’ are mutually exclusive. The time spent by a worker in vocational training 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 (see, by analogy, judgment of 9 March 2021, *Radiotelevizija Slovenija (Period of stand-by time in a remote location)*, C-344/19, EU:C:2021:182, paragraph 29 and the case-law cited).

39 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 9 March 2021, *Radiotelevizija Slovenija (Period of stand-by time in a remote location)*, C-344/19, EU:C:2021:182, paragraph 30 and the case-law cited).

40 In that regard, the Court has held that a 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, judgment of 9 March 2021, *Radiotelevizija Slovenija (Period of stand-by time in a remote location)*, C-344/19, EU:C:2021:182, paragraph 33).

41 In that context, 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 (judgment of 9 March 2021, *Radiotelevizija Slovenija (Period of stand-by time in a remote location)*, C-344/19, EU:C:2021:182, paragraph 34).

42 Where a worker receives instructions from his or her employer to attend vocational training so as to be able to carry out his or her duties and, moreover, where that employer has itself signed the vocational training contract with the undertaking called upon to provide that training, it must be held that, during the periods of vocational training, that worker is at his or her employer's disposal within the meaning of Article 2(1) of Directive 2003/88.

43 It must be noted that it is irrelevant, in that regard, that, in the present case, BX's obligation to attend vocational training arises from national legislation, given that, as is apparent from the request for a preliminary ruling, first, BX was already employed by the administration of the municipality of D. in the position for which vocational training was required and, second, that administration was under an obligation to require BX to attend that training in order to be able to retain him in his position.

44 The fact, emphasised by the referring court, that the periods of vocational training take place, in whole or in part, outside normal working hours is also irrelevant since, for the purposes of the concept of 'working time', Directive 2003/88 draws no distinction according to whether or not such time is spent within normal working hours (see, by analogy, judgment of 3 October 2000, *Simap*, C-303/98, EU:C:2000:528, paragraph 51).

45 Moreover, the fact that the vocational training in question does not take place at the worker's usual place of work, but at the premises of the undertaking providing the training services, does not alter the fact that, as follows from the case-law cited in paragraph 41 of the present judgment, the worker is required to be physically present at the place determined by the employer and, consequently, does not, in accordance with the case-law cited in paragraph 40 above, prevent the periods of vocational training in question from being classified as 'working time' within the meaning of Directive 2003/88.

46 Lastly, the fact that the activity carried out by a worker during periods of vocational training differs from that which he or she carries out in the course of his or her normal duties also does not preclude those periods from being classified as working time where the vocational training is undertaken at the employer's request and where, consequently, the worker is subject, as part of that training, to the employer's instructions.

47 It must be added that that interpretation is supported by the objective of Directive 2003/88, referred to in paragraph 35 of the present judgment, and by the case-law referred to in paragraph 36 of the present judgment, according to which the provisions of Directive 2003/88 may not be interpreted restrictively to the detriment of the rights that a worker derive from it. An interpretation of the concept of 'working time' within the meaning of Article 2(1) of that directive, which does not include the periods of vocational training undertaken by the worker at his or her employer's request, would enable the latter to impose on the worker, who is the weaker party in the employment relationship (see, to that effect, judgments of 14 May 2019, *CCOO*, C-55/18, EU:C:2019:402, paragraph 44, and of 17 March 2021, *Academia de Studii Economice din Bucureşti*, C-585/19, EU:C:2021:210, paragraph 51) training obligations outside of normal working hours, to the detriment of the worker's right to have sufficient rest.

48 In the light of those factors, it appears that BX's periods of vocational training must be regarded as constituting working time within the meaning of Article 2(1) of Directive 2003/88, which, nevertheless, is a matter for the referring court to determine.

49 In the light of all the foregoing considerations, the answer to the first question referred for a preliminary ruling is that Article 2(1) of Directive 2003/88 must be interpreted as meaning that the period during which a worker attends vocational training required by his or her employer, which takes place away from his or her usual place of work, at the premises of the training services provider, during which he or she does not perform his or her normal duties, constitutes 'working time' within the meaning of that provision.

The second question

50 In the light of the answer given to the first question, there is no need to answer the second question.

Costs

51 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Tenth 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 the period during which a worker attends vocational training required by his or her employer, which takes place away from his or her usual place of work, at the premises of the training services provider, during which he or she does not perform his or her normal duties, constitutes 'working time' within the meaning of that provision.

[Signatures]

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* Language of the case: Romanian.