

Stand-by period: qualification as working or rest time?

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By two decisions in cases (i) C-344/19 D.J. v Radiotelevizija Slovenija and (ii) C-580/19 RJ v Stadt Offenbach am Main of 9 March 2021, the Court of Justice of the European Union (“**CJEU**”) ruled that on-call time may only qualify as ‘working time’ if there are significant constraints on how the workers can use their free time during these stand-by periods.

- The first case concerned a technician who was responsible for ensuring, for several consecutive days, the operation of television transmission centres situated in a hardly accessible place in the mountains of Slovenia. During this stand-by period, the worker was not obliged to remain in the centre, but he had to be contactable by telephone and able to return to the centre within one hour, if necessary. However, given the location of the centre the worker was, in fact, obliged to remain at the place of work, without any possible leisure.
- The second case concerned a firefighter who had to execute periods of stand-by time according to a stand-by system. During those periods, he was not required to be present at a place determined by his employer but in the event of an alert, the worker had to be contactable and able to reach the city boundaries within 20 minutes with his uniform and the service vehicle made available to him.

Both claimants considered that, due to the restrictions involved, their periods of stand-by time had to be recognised as ‘working time’ and remunerated accordingly, irrespective of whether or not they had carried out any specific work during these periods.

As a preliminary matter, the CJUE recalled that stand-by time qualifies as either working or rest time within the meaning of Directive 2003/88 as those concepts are exclusive to each other.

The CJEU further clarified the determining criteria for a period of stand-by time or on-call time to qualify as ‘working time’. This is the case when it results from an overall assessment of all the circumstances of the case that the constraints imposed on workers objectively and significantly affect their ability to manage their free time during the stand-by period. The CJEU underlined that national courts shall carry out an overall assessment of the reasonableness of the time limit within

which the worker is required to resume his or her professional activities during his on-call duties.

In these two decisions, the CJEU also recalled that the classification of 'working time' or 'rest period' has no effect on the system of remuneration set up by the employer, subject to national legislation. The rules on workers' health and safety also remain unaffected. The employer may not therefore introduce periods of stand-by time which may breach the health and safety safeguards of workers on the grounds that these periods are classified as 'rest periods'.

For any further information please contact us or visit our website at www.elvingerhoss.lu.

The information contained herein is not intended to be a comprehensive study or to provide legal advice and should not be treated as a substitute for specific legal advice concerning particular situations.

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