

Provisional text

JUDGMENT OF THE COURT (Sixth Chamber)

30 October 2025 (*)

(Reference for a preliminary ruling – Social policy – Directive 2003/88/EC – Protection of the safety and health of workers – Article 1(3) – Article 2(1) – Concept of ‘working time’ – Activities of public prosecutors – Directive 89/391/EEC – Article 2(2) – Characteristics peculiar to certain specific public service activities – Periods of time on stand-by at the workplace and periods of time on stand-by according to a stand-by system carried out outside of the workplace – Article 31 of the Charter of Fundamental Rights of the European Union – Fair and just working conditions)

In Case C-373/24 [Ramavić], (i)

REQUEST for a preliminary ruling under Article 267 TFEU from the Općinski sud u Puli-Pola (Municipal Court, Pula, Croatia), made by decision of 3 May 2024, received at the Court on 24 May 2024, in the proceedings

NI

v

Republika Hrvatska,

THE COURT (Sixth Chamber),

composed of I. Ziemele (Rapporteur), President of the Chamber, A. Kumin and S. Gervasoni, Judges,

Advocate General: J. Richard de la Tour,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the Republic of Croatia, by A. Marjanović, acting as Agent,
- the Croatian Government, by G. Vidović Mesarek, acting as Agent,
- the European Commission, by M. Mataija and D. Recchia, 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 1(3) and 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), Article 2 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) and Article 31 of the Charter of Fundamental Rights of the European Union (‘the Charter’).

- 2 The request has been made in proceedings between NI, a deputy public prosecutor in the Općinsko državno odvjetništvo u Puli-Pola (Municipal Public Prosecutor's Office, Pula, Croatia) and the Republika Hrvatska (Republic of Croatia), represented by the Općinsko državno odvjetništvo u Rijeci (Municipal Public Prosecutor's Office, Rijeka, Croatia) concerning the payment to NI of hours worked during periods of time on stand-by at the workplace and periods of time on stand-by according to a stand-by system.

Legal context

European Union law

Directive 89/391

- 3 Article 2 of Directive 89/391 provides:

‘1. This Directive shall apply to all sectors of activity, both public and private (industrial, agricultural, commercial, administrative, service, educational, cultural, leisure, etc.).

2. This Directive shall not be applicable where characteristics peculiar to certain specific public service activities, such as the armed forces or the police, or to certain specific activities in the civil protection services inevitably conflict with it.

In that event, the safety and health of workers must be ensured as far as possible in the light of the objectives of this Directive.’

Directive 2003/88

- 4 Article 1 of Directive 2003/88, entitled ‘Purpose and scope’, 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.

3. This Directive shall apply to all sectors of activity, both public and private, within the meaning of Article 2 of [Directive 89/391], without prejudice to Articles 14, 17, 18 and 19 of this Directive.

...’

- 5 Article 2 of Directive 2003/88 is worded as follows:

‘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.

...’

Croatian law

- 6 Article 121a of the Ustav Republike Hrvatske (Constitution of the Republic of Croatia) states:

‘The Public Prosecutor’s Office is an autonomous and independent judicial authority, which is empowered and required to take action against perpetrators of offences and other criminal acts, to take legal action in order to protect the property of the Republic of Croatia and to bring actions to protect the Constitution and the legal system.

The Croatian Parliament shall appoint a Prosecutor General of the Republic of Croatia for a period of four years, on a proposal of the Government of the Republic of Croatia and following the preliminary opinion of the competent commission of the Croatian Parliament.

The Superior Council of Prosecutors shall appoint and dismiss deputy public prosecutors and decide as to their disciplinary liability.

The Superior Council of Prosecutors shall adopt decisions concerning the third subparagraph of the present article impartially and on the basis of criteria previously established by law.

Deputy public prosecutors shall hold the office of prosecutor permanently.

The Superior Council of Prosecutors, composed of 11 members, shall be comprised of seven deputy prosecutors-general, two university professors in law and two parliamentarians, including one from the opposition.

The Members of the Superior Council of Prosecutors shall be elected for a term of four years and a member may serve no more than two terms.

The Members of the Superior Council of Prosecutors shall elect a President from among themselves.

The Chief Prosecutors may not be elected as members of the Superior Council of Prosecutors.

The competence, organisation, means of selecting members and method of operation of the Superior Council of Prosecutors shall be governed by law.

The establishment, organisation, mandate and competence of the public prosecutor’s office shall be governed by the law.’

7 Article 10(1) of the Zakon o radu (Labour Code) provides:

‘An employment relationship shall be based on an employment contract.’

8 Under Article 60 of that code:

‘(1) Working time is the time during which a worker is required to perform work, or during which he or she is ready (available) to perform work as instructed by the employer, at the place where his or her work is performed or at another place determined by the employer.

(2). The time during which a worker is ready to respond to a request by his or her employer to perform tasks where necessary but is not at the place where his or her work is performed or any other place decided by the employer shall not be regarded as working time.

(3) The period of stand-by duty and the level of remuneration shall be governed by the employment contract or collective agreement.

(4) The time given up by the worker to accomplish tasks at the request of his or her employer shall be regarded as working time whether it is accomplished in a place decided by the employer or in a place chosen by the worker.’

9 Article 52(1) of the Poslovnik državnog odvjetništva (Internal Rules of Procedure of the Public Prosecutor’s Office) provides:

‘Outside of normal working hours, during weekly rest days and non-working days, by way of general rule, acts shall only be carried out in the event of overriding necessity. The performance of tasks within

the framework of pre-trial proceedings (on-call duty), at regional and municipal public prosecutors' offices where such tasks are performed shall be ensured in one of the following ways:

- continuous presence in the building of the public prosecutor during working days from 16:00 to 08:00 the following working day;
- in the building of the public prosecutor from 08:00 to 20:00 – during working days from 16:00 to 20:00 and from 20:00 with mandatory presence in the place where the public prosecutor has its seat;
- mandatory presence in the place where the public prosecutor has its seat the working day after 16:00 until 08:00 the following working day and during public holidays and non-working days without interruption.

...'

- 10 General recommendation No O-8/11-1 of the National Public Prosecutor's Office of the Republic of Croatia concerning the functioning of the on-call service, of 13 October 2011, in the version applicable to the dispute in the main proceedings, provides, inter alia, that the Općinsko državno odvjetništvo u Puli-Pola (Municipal Public Prosecutor's Office, Pula) shall maintain an on-call service 'by always being available, at home or at the place of residence'.

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

- 11 NI is a deputy public prosecutor at the Općinsko državno odvjetništvo u Puli-Pola (Municipal Public Prosecutor's Office, Pula). She works there full-time, that is 40 hours per week, from 08:00 to 16:00 Monday to Friday. NI is also required to be on stand-by for periods of time, both during normal working hours and outside of those hours, during which she may be required to perform urgent tasks, in particular in the context of pre-trial criminal proceedings.
- 12 It is apparent from the order for reference that, during those periods of time on stand-by, NI may be required to be present at her home (passive on-call duty) or at the place where the public prosecutor's office has its seat (active on-call duty) and without interruption in order to be able to carry out, at any time, the urgent tasks required.
- 13 NI claims that the scheme that applies to her, in particular the obligation to be available without interruption during periods of time on stand-by, was contrary to Directive 2003/88 and the Court's case-law concerning the right to daily rest, the right to weekly rest and the prohibition on working for a period exceeding 48 hours per week and therefore brought an action before the Općinski sud u Puli-Pola (Municipal Court, Pula, Croatia), which is the referring court, seeking payment for the hours worked in the years 2015 to 2019 during periods of time on stand-by, some of which were carried out outside of normal working hours, for an amount equivalent to that corresponding to those hours.
- 14 NI claims, inter alia, that she did not benefit from adequate safety and protection at work given that she works hours outside of normal working time, without any limit on daily working time and overtime. She makes clear, moreover, that she does not receive any additional pay for overtime and hours worked on Sundays and public holidays and states that she receives a lower level of remuneration for hours worked during periods of time on stand-by than for the hours worked during normal working time.
- 15 The referring court observes that, in Croatia, the public prosecutor's office is an autonomous and independent judicial authority, which is required to take action against perpetrators of offences and to take legal action in order to protect the property of the Republic of Croatia and the Constitution. As a deputy public prosecutor, NI would therefore be regarded as an autonomous and independent public official, in accordance with legislation.
- 16 The referring court notes that the autonomy and independence linked to her position allows NI to be protected from external pressures which may influence her decisions. By contrast, the position of public prosecutors, such as NI, is characterised by their subordination to public prosecutors more senior in the

hierarchy and to the Ministry of Justice and Administration. Those public prosecutors are also subject to a mandatory appraisal of their work and their abilities, may be subject to disciplinary sanctions and cannot carry out different duties without the approval of the Superior Council of Prosecutors.

- 17 Further, the referring court states that NI tends to carry out tasks after her normal working time, which implies that she is permanently available, contactable at any time by telephone, in particular by members of law enforcement and that she can immediately go to the premises of the public prosecutor's office or elsewhere to perform urgent tasks following a request to attend by a police office, such as at road traffic accidents or fatal accidents at work.
- 18 Hours worked during on-call duty, whether active or passive, and outside of normal working hours, are not regarded as normal working time or overtime and are not taken into account for the exercise of the right to daily or weekly rest or the right to annual leave.
- 19 Consequently, working those hours affects NI's health and safety at work, who is subject to additional mental and physical exertion. In particular, the fact of being contactable at any time during periods of time on stand-by, often late in the evening or during the night and required to be ready, during those periods, to work hours outside of normal working time, represents increased stress linked to her work.
- 20 In order to resolve the dispute in the main proceedings, and in particular the payment of the hours of work sought by NI, the referring court is of the view that it is necessary, first, to determine whether the applicant in the main proceedings must be regarded as a 'worker' so that she falls within the scope of Directive 2003/88 and, second, to classify the hours worked in the course of time on stand-by. In that last regard, that court asks whether the fact that those hours are not regarded as 'working time', within the meaning of that directive, constitutes an infringement of that directive.
- 21 In those circumstances, the Općinski sud u Puli-Pola (Municipal Court, Pula) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
 - '(1) Does the applicant's position as a public prosecutor (deputy municipal prosecutor/municipal prosecutor) fall within the concept of "worker" referred to in Article 1(3) of [Directive 2003/88], read in conjunction with Article 31 of the [Charter], that is to say, can an officer of the public prosecutor's office be considered a worker for the purposes of applying the same working conditions to all workers employed in the public prosecutor's office?
 - (2) In connection with the first question, must Article 2 of [Directive 89/391], to which Directive 2003/88 refers in Article 1(3), be interpreted as permitting Member States to exclude officers of the public prosecutor's office (deputy municipal prosecutors/municipal prosecutors) from the application of the provisions ensuring the transposition of that directive, including the provisions of Article 2(1) and (2) of [Directive 2003/88], which define working time and rest periods?
 - (3) (a) If the first question is answered in the affirmative and the second question is answered in the negative, the following question is referred to the Court: within the meaning of the provisions of [Directive 2003/88] (including, in particular, Article 2(1) and other provisions), must the passive on-call duty of officers of the public prosecutor's office be considered working time in the light of the restrictions to which an officer of the public prosecutor's office on passive on-call duty is subject on account of the tasks and responsibilities that the officer performs during passive on-call duty pursuant to the Opća uputa Državnog odvjetništva Republike Hrvatske o radu službe dežurstva (General recommendations of the National Public Prosecutor's Office of the Republic of Croatia concerning on-call duty) No O-8/11-1 of 13 October 2011, as amended on 12 October 2012, and pursuant to the Zakon o kaznenom postupku (Code of Criminal Procedure) ..., under which an officer of the public prosecutor's office, as a worker, is significantly restricted in his or her ability to perform other activities despite the fact that under the abovementioned general recommendations ..., he or she is obliged to perform tasks within the framework of passive on-call duty at his or her home?
 - (b) If the first question is answered in the affirmative and the second question is answered in the negative, the following question is referred to the Court: within the meaning of the provisions of [Directive 2003/88] concerning certain aspects of the organisation of working time (including,

in particular, Article 2(1) and other provisions), must the active on-call duty of officers of the public prosecutor's office be considered working time on account of the tasks and responsibilities that the officer performs during active on-call duty pursuant to the General recommendations of the National Public Prosecutor's Office of the Republic of Croatia concerning on-call duty [No O-8/11-1] of 13 October 2011, as amended on 12 October 2012, and pursuant to the Code of Criminal Procedure, under which an officer of the public prosecutor's office performs tasks within the framework of active on-call duty (inspections and other tasks) at his or her usual place of work or at another location determined by the employer?'

Consideration of the questions referred

The first question

- 22 By its first question, the referring court asks, in essence, whether Article 1(3) of Directive 2003/88, read in conjunction with Article 31 of the Charter, must be interpreted as meaning that public prosecutors fall within the scope of that directive.
- 23 As a preliminary point, it must be borne in mind that, while the concept of a 'worker' is defined in Article 3(a) of Directive 89/391 to mean any person employed by an employer, including trainees and apprentices but excluding domestic servants, Directive 2003/88 made no reference to either that provision of Directive 89/391 or the definition of a 'worker' to be derived from national legislation and/or practices (judgment of 14 October 2010, *Union syndicale Solidaires Isère*, C-428/09, EU:C:2010:612, paragraph 27).
- 24 It follows that, for the purposes of applying Directive 2003/88, and in the light of Article 31 of the Charter, the concept of 'worker', which may not be interpreted differently according to the law of Member States, has an autonomous meaning specific to EU law (judgments of 14 October 2010, *Union syndicale Solidaires Isère*, C-428/09, EU:C:2010:612, paragraph 28; of 21 February 2018, *Matzak*, C-518/15, EU:C:2018:82, paragraph 28; and of 16 July 2020, *Governo della Repubblica italiana (Status of Italian magistrates)*, C-658/18, EU:C:2020:572, paragraphs 88 and 89).
- 25 That concept must be defined in accordance with objective criteria which distinguish the employment relationship by reference to the rights and duties of the persons concerned (judgment of 16 July 2020, *Governo della Repubblica italiana (Status of Italian magistrates)*, C-658/18, EU:C:2020:572, paragraph 90 and the case-law cited).
- 26 Therefore, it is ultimately for the national court to apply that concept of 'worker' in any classification to a person, and the national court must base that classification on objective criteria and make an overall assessment of all the circumstances of the case brought before it, having regard both to the nature of the activities concerned and the relationship of the parties involved (judgment of 16 July 2020, *Governo della Repubblica italiana (Status of Italian magistrates)*, C-658/18, EU:C:2020:572, paragraph 91 and the case-law cited).
- 27 In that regard, the essential feature of an employment relationship is that for a certain period of time a person performs services for and under the direction of another person in return for which he or she receives remuneration. It follows that an employment relationship implies the existence of a hierarchical relationship between the worker and his or her employer. Whether such a relationship exists must, in each particular case, be assessed on the basis of all the factors and circumstances characterising the relationship between the parties (judgment of 15 July 2021, *Ministrstvo za obrambo*, C-742/19, EU:C:2021:597, paragraph 49 and the case-law cited).
- 28 Consequently, in order to assess whether public prosecutors, such as the applicant in the main proceedings, fall within the scope of Directive 2003/88, it is for the referring court to examine the tasks and duties carried out by those prosecutors and the obligations which they have to their employer.
- 29 That said, the Court, in the context of a reference for a preliminary ruling, may provide the referring court with guidance, on the basis of the documents relating to the main proceedings and the written and oral observations which it has before it, in order to enable that court to resolve the dispute before it

(see, by analogy, judgment of 6 October 2021, *ECOTEX BULGARIA*, C-544/19, EU:C:2021:803 paragraph 72 and the case-law cited).

- 30 It is apparent from the order for reference that the duties of public prosecutors, such as prosecutors at the municipal public prosecutor's office, consist in carrying out, at the premises of the court or the public prosecutor's office, or the place where the events occurred, the service tasks laid down, *inter alia*, by the Code of Criminal Procedure, under the supervision of a senior prosecutor.
- 31 According to the referring court, a public prosecutor of the municipal prosecutor's office may, at any time, receive a request to attend from a police officer, pursuant to which he or she is required to go immediately to the place of the incident in question. He or she may also be required to carry out the first interview of the accused person, or to ask the investigating judge for a search warrant, to confirm urgent investigative measures which have been ordered verbally, to carry out inspections of the scene or take part in those inspections in the case of road traffic accidents, fatal accidents at work or other offences, to be present during witness interviews conducted by the investigating judge, to take preventive measures or to request that the accused person is placed in pre-trial detention and to attend hearings in relation to that detention.
- 32 In that regard, it is apparent from the order for reference that the position of public prosecutors, such as NI, is characterised by their subordination to public prosecutors more senior in the hierarchy and to the Ministry of Justice and Administration, which administers the justice system on behalf of the public prosecutor's office, including examining complaints regarding the actions of public prosecutors or matters concerning the professional liability of those prosecutors, ensuring that public prosecutor's offices have appropriate material and financial resources, premises and other conditions as may be necessary for the functioning of those offices, approving plans for the employment of new public prosecutors, and approving the employment of support staff for public prosecutors.
- 33 Further, it is clear from the order for reference that junior public prosecutors are subject to supervision by senior public prosecutors, in accordance with the hierarchical organisation of the public prosecutor's office, by which municipal public prosecutor's offices are subordinate to regional public prosecutor's offices, which, together with the specialist public prosecutors' offices, are subordinate to the Public Prosecutor's Office of the Republic of Croatia. Consequently, the Superior Council of Prosecutors could remove a public prosecutor for a disciplinary offence because of a criminal conviction, insufficient abilities or even loss of competence.
- 34 Accordingly, subject to verification by the referring court, it appears that a deputy public prosecutor of the municipal public prosecutor's office is subordinate as regards senior public prosecutors, which characterises the existence of an employment relationship.
- 35 In the light of the foregoing, the answer to the first question is that Article 1(3) of Directive 2003/88, read in conjunction with Article 31 of the Charter, must be interpreted as meaning that public prosecutors fall within the scope of that directive.

The second question

- 36 By its second question, the referring court asks, in essence, whether Article 2 of Directive 89/391, to which Article 1(3) of Directive 2003/88 refers, must be interpreted as meaning that it precludes national legislation which excludes the activity of public prosecutors from the scope of Directive 2003/88.
- 37 In that regard, it must be borne in mind that, according to Article 1(3) of Directive 2003/88, read in conjunction with Article 2 of Directive 89/391, to which Article 1(3) refers, those directives are to apply to all sectors of activity, both public and private, in order to encourage improvements in the safety and health of workers at work and to regulate certain aspects of the organisation of their working time (judgment of 3 May 2012, *Neidel*, C-337/10, EU:C:2012:263, paragraph 20).
- 38 However, Article 2(2) of Directive 89/391 provides, in its first subparagraph, that that directive is inapplicable where characteristics peculiar to certain specific public service activities, such as the armed forces or the police, or to certain specific activities in the civil protection services inevitably conflict with it, and states, in its second subparagraph, that, in that event, the safety and health of

workers must nevertheless be ensured as far as possible in the light of the objectives of that directive (judgment of 15 July 2021, *Ministrstvo za obrambo*, C-742/19, EU:C:2021:597, paragraph 53).

- 39 It should be noted, in that regard, that the first subparagraph of Article 2(2) of Directive 89/391 must be interpreted in such a way that its scope is restricted to what is strictly necessary in order to safeguard the interests which it allows the Member States to protect (judgment of 15 July 2021, *Ministrstvo za obrambo*, C-742/19, EU:C:2021:597, paragraph 55 and the case-law cited).
- 40 The criterion used in that provision to exclude certain activities from the scope of Directive 89/391 and, consequently, from that of Directive 2003/88, is based not on the fact that workers belong to one of the sectors of the public service referred to in that provision, taken as a whole, but exclusively on the specific nature of certain particular tasks performed by workers in those sectors, which justify an exception to the rule on the protection of the safety and health of workers, on account of the absolute necessity to guarantee effective protection of the community at large (judgment of 15 July 2021, *Ministrstvo za obrambo*, C-742/19, EU:C:2021:597, paragraph 56 and the case-law cited).
- 41 Among the characteristics peculiar to the specific activities which justify, pursuant to the first subparagraph of Article 2(2) of Directive 89/391, an exception to the rules for the protection of the safety and health of workers, is the fact that, by their nature, they do not lend themselves to planning as regards working time (judgment of 15 July 2021, *Ministrstvo za obrambo*, C-742/19, EU:C:2021:597, paragraph 57 and the case-law cited).
- 42 The first subparagraph of Article 2(2) of Directive 89/391 thus safeguards the efficiency of specific public service activities which must be continuous in order to ensure the effective performance of essential functions of the State. That continuity requirement must be assessed by taking into consideration the specific nature of the activity in question (judgment of 15 July 2021, *Ministrstvo za obrambo*, C-742/19, EU:C:2021:597, paragraph 58 and the case-law cited).
- 43 In that regard, first, the Court has held that the continuity requirement of services in the areas of public health, public safety and public order does not prevent the activities of those services, when performed in normal circumstances, from being organised, as regards the working hours of their employees, with the consequence that the exception provided for in the first subparagraph of Article 2(2) of Directive 89/391 is applicable to such services only in circumstances whose gravity and scale are exceptional, such as natural or technological disasters, attacks or serious accidents, which require the adoption of measures indispensable for the protection of the life, health and safety of the community at large, measures the proper implementation of which would be jeopardised if all the rules laid down in Directive 2003/88 had to be observed. In such cases, it is appropriate to give absolute priority to the objective of protecting the population, to the detriment of compliance with the provisions of Directive 2003/88, which may be temporarily disregarded within those services (judgment of 15 July 2021, *Ministrstvo za obrambo*, C-742/19, EU:C:2021:597, paragraph 59 and the case-law cited).
- 44 Second, the Court has held that certain specific public service activities, even when performed in normal circumstances, have characteristics which mean that their very nature is absolutely incompatible with the planning of working time in a way that respects the requirements imposed by Directive 2003/88 (judgment of 15 July 2021, *Ministrstvo za obrambo*, C-742/19, EU:C:2021:597, paragraph 60 and the case-law cited).
- 45 That is true, in particular, of activities which, in order effectively to meet their public interest objective, can be carried out only on a continuous basis and only by the same worker, without it being possible to establish a rotation system allowing the worker to be granted, at regular intervals, the right to rest hours or days after he or she has worked for a certain number of hours or days (judgment of 15 July 2021, *Ministrstvo za obrambo*, C-742/19, EU:C:2021:597, paragraph 61 and the case-law cited).
- 46 In that context, it is for the referring court, which is competent to interpret national law, to verify the extent to which the case-law referred to in paragraphs 40 to 45 above applies to the activity of public prosecutors of the municipal public prosecutor's office, such as NI. Nevertheless, in accordance with the case-law referred to in paragraph 29 above, the Court may provide the referring court with guidance for the assessment it is to carry out.

- 47 In that regard, it must be stated that it is apparent from the order for reference that the activity of public prosecutors of the municipal public prosecutor's office falls, in principle, within the scope of Article 2(1) of Directive 89/391, in so far as it is an administrative activity or a service activity in the public sector (see, by analogy, judgment of 16 July 2020, *Governo della Repubblica italiana (Status of Italian magistrates)*, C-658/18, EU:C:2020:572, paragraph 85).
- 48 Moreover, nothing in that order for reference mentions that the activity carried out by public prosecutors of the municipal public prosecutor's office have specific characteristics which prevent planning working time in accordance with the requirements laid down in Directive 2003/88. For example, as regards the powers and responsibilities of those prosecutors, it cannot be excluded that the continuity of the functions of a public prosecutor's office may be ensured by way of a rotation system of public prosecutors of the municipal public prosecutor's office. It is clear from the order for reference that their period of time on stand-by is planned one month in advance and that it is possible that a municipal or regional public prosecutor's office is responsible for providing an on-call service, which normally must be carried out by another public prosecutor's office. It does not therefore appear that a rotation system or planning system for working time is incompatible per se with the characteristics of those activities.
- 49 Thus, it appears that, where the activities of public prosecutors are carried out in normal circumstances, they may be subject to the planning of working time in a way that respects the requirements imposed by Directive 2003/88.
- 50 In the light of all of the foregoing considerations, the answer to the second question is that Article 2 of Directive 89/391, to which Article 1(3) of Directive 2003/88 refers, must be interpreted as meaning that it precludes national legislation which excludes the activity of public prosecutors from the scope of Directive 2003/88, in so far as that activity, where it is carried out in normal circumstances, may be subject to the planning of working time in a way that respects the requirements imposed by Directive 2003/88.

The third question

- 51 By its third question, the referring court asks, in essence, whether Article 2 of Directive 2003/88 must be interpreted as meaning that a period of time on stand-by carried out outside of normal working time by public prosecutors, which requires the mandatory presence of those prosecutors at the workplace, or a period of time on stand-by according to a stand-by system, which requires their mandatory presence at home, must be classified as 'working time', within the meaning of Article 2.
- 52 Article 2 of Directive 2003/88 defines the concept of 'working time' as any period during which the worker is at work, at the employer's disposal and carrying out his or her activity or duties, in accordance with national laws and/or practice. According to settled case-law, that concept is placed in opposition to rest periods, the two being mutually exclusive (judgment of 10 September 2015, *Federación de Servicios Privados del sindicato Comisiones obreras*, C-266/14, EU:C:2015:578, paragraph 25 and the case-law cited).
- 53 In that regard, it is necessary to take into account the fact that Article 2 does not provide for any intermediary category between the concepts of 'working time' and 'rest period' (judgment of 10 September 2015, *Federación de Servicios Privados del sindicato Comisiones obreras*, C-266/14, EU:C:2015:578, paragraph 26 and the case-law cited) and the fact that neither the intensity of the work carried out by the employee nor his or her output are among the elements that characterise 'working time' for the purposes of that directive. Accordingly, a period of stand-by time carried out by public prosecutors of the municipal public prosecutor's office must be classified as either 'working time' or a 'rest period' for the purpose of applying Directive 2003/88 (see, by analogy, judgment of 9 September 2021, *Dopravní podnik hl. m. Prahy*, C-107/19, EU:C:2021:722, paragraph 28 and the case-law cited).
- 54 Furthermore, the concepts of 'working time' and '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 September 2021, *Dopravní podnik hl. m. Prahy*, C-107/19, EU:C:2021:722, paragraph 29 and the case-law cited).

- 55 It is therefore necessary to examine whether, in a situation such as that at issue in the main proceedings, the constituent elements of the concept of ‘working time’ are present where the worker carries out stand-by time at his or her workplace or a period of stand-by time according to a stand-by system, namely a period during which the worker remains at his or her employer’s disposal in order to provide work at the employer’s request without being required to remain at his or her work place (judgment of 9 September 2021, *Dopravní podnik hl. m. Prahy*, C-107/19, EU:C:2021:722, paragraph 33 and the case-law cited).
- 56 As regards 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 (judgment of 9 September 2021, *Dopravní podnik hl. m. Prahy*, C-107/19, EU:C:2021:722, paragraph 30 and the case-law cited).
- 57 In that regard, in the first place, so far as concerns the period of stand-by time carried out at the workplace, the Court has previously made clear 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 the appropriate services immediately (judgment of 9 September 2021, *Dopravní podnik hl. m. Prahy*, C-107/19, EU:C:2021:722, paragraph 31 and the case-law cited).
- 58 The Court has considered that, during such a period of stand-by time, a 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 (judgment of 9 September 2021, *Dopravní podnik hl. m. Prahy*, C-107/19, EU:C:2021:722, paragraph 32 and the case-law cited).
- 59 In the second place, as regards a period of stand-by time according to a stand-by system, the Court has held that such a period 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 (judgment of 9 September 2021, *Dopravní podnik hl. m. Prahy*, C-107/19, EU:C:2021:722, paragraph 33 and the case-law cited).
- 60 It follows 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 (judgment of 9 September 2021, *Dopravní podnik hl. m. Prahy*, C-107/19, EU:C:2021:722, paragraph 34 and the case-law cited).
- 61 In that regard, the Court has found 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 9 September 2021, *Dopravní podnik hl. m. Prahy*, C-107/19, EU:C:2021:722, paragraph 35 and the case-law cited).

- 62 Nevertheless, as the Court has made clear, the impact of such a time limit in which the worker has to react must be evaluated following a concrete assessment which takes into account, as appropriate, the other constraints imposed on the worker during his or her period of stand-by time, including according to a stand-by system (see, to that effect, judgment of 9 September 2021, *Dopravní podnik hl. m. Prahy, C-107/19*, EU:C:2021:722, paragraph 36 and the case-law cited).
- 63 It is apparent from the order for reference that a deputy public prosecutor at the municipal public prosecutor's office, such as NI, is required, during the entirety of his or her stand-by time, to be ready, at any time, to act to perform tasks and duties equivalent to those that he or she carries out during normal working time at the workplace. Consequently, it appears that that prosecutor cannot actually, during a period of time on stand-by, move away from his or her workplace or, during a period of time on stand-by according to a stand-by system, his or her home, and pursue his or her own interests.
- 64 It is for the referring court, however, to assess, in the light of all the relevant elements and in accordance with the case-law referred to in paragraphs 55 to 62 above whether, in the present case, the period of time on stand-by carried out by a prosecutor of the municipal public prosecutor's office at his or her workplace and the period of time on stand-by according to a stand-by system carried out by that prosecutor at his or her home must be classified as 'working time' within the meaning of Directive 2003/88.
- 65 In the light of the foregoing, the answer to the third question is that Article 2 of Directive 2003/88 must be interpreted as meaning that a period of time on stand-by carried out outside of normal working time by public prosecutors, which requires the mandatory presence of those prosecutors at the workplace, or a period of time on stand-by according to a stand-by system, which requires the public prosecutor to be present at his or her home, must be classified as 'working time', within the meaning of Article 2, in so far as, during those periods of time on stand-by, the constraints imposed on those public prosecutors are such that they objectively and very significantly affect the ability, for those public prosecutors, freely to manage, during those periods, the time during which their professional services are not required and to use that time to pursue their own interests.

Costs

- 66 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 (Sixth Chamber) hereby rules:

1. **Article 1(3) 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, read in conjunction with Article 31 of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that public prosecutors fall within the scope of that directive.**
2. **Article 2 of Council Directive 89/391/ECC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work, to which Article 1(3) of Directive 2003/88 refers, must be interpreted as meaning that it precludes national legislation which excludes the activity of public prosecutors from the scope of Directive 2003/88, in so far as that activity, where it is carried out in normal circumstances, may be subject to the planning of working time in a way that respects the requirements imposed by Directive 2003/88.**
3. **Article 2 of Directive 2003/88 must be interpreted as meaning that a period of time on stand-by carried out outside of normal working time by public prosecutors, which requires the mandatory presence of those prosecutors at the workplace, or a period of time on stand-by according to a stand-by system, which requires the public prosecutor to be present at his or her home, must be classified as 'working time', within the meaning of Article 2, in so far**

as, during those periods of time on stand-by, the constraints imposed on those public prosecutors are such that they objectively and very significantly affect the ability, for those public prosecutors, freely to manage, during those periods, the time during which their professional services are not required and to use that time to pursue their own interests.

[Signatures]

* Language of the case: Croatian

i The name of the present case is a fictitious name. It does not correspond to the real name of any party to the proceedings.