



## Reports of Cases

### Case C-306/16

**António Fernando Maio Marques da Rosa**

**v**

**Varzim Sol — Turismo, Jogo e Animação SA**

(Request for a preliminary ruling from the Tribunal da Relação do Porto)

(Reference for a preliminary ruling — Protection of the safety and health of workers — Directive 2003/88/EC — Article 5 — Weekly rest period — National legislation providing for at least one rest day per seven-day period — Periods of more than six consecutive working days)

Summary — Judgment of the Court (Second Chamber), 9 November 2017

*Social policy — Protection of the safety and health of workers — Organisation of working time — Weekly rest period — Minimum uninterrupted weekly rest period of 24 hours — No requirement to provide that minimum period no later than the day following a period of six consecutive working days — Requirement to provide that minimum period within each seven-day period*

*(European Parliament and Council Directive 2003/88, Art. 3, 5, 6, 16(a) and (b) and 22(1)(a); Council Directive 93/104, as amended by Directive 2000/34, Art. 5)*

Article 5 of Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organisation of working time, as amended by Directive 2000/34/EC of the European Parliament and of the Council of 22 June 2000 and the first paragraph of Article 5 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 not requiring the minimum uninterrupted weekly rest period of 24 hours to which a worker is entitled to be provided no later than the day following a period of six consecutive working days, but requires that rest period to be provided within each seven-day period.

Concerning, first, the wording of Article 5 of Directive 2003/88, it follows from this that the Member States are to take the measures necessary to ensure that, ‘per each seven-day period’, every worker is entitled to a minimum uninterrupted rest period of 24 hours plus the 11 hours’ daily rest referred to in Article 3 of Directive 2003/88. However, that article does not specify when that minimum rest period must take place and thus gives Member States a degree of flexibility with regard to the choice on timing.

As the Advocate General pointed out in point 40 of his Opinion, such an interpretation of that article is supported by the various language versions of Directive 2003/88. Thus, in most of the language versions of that article, including the English, German and Portuguese versions, it is provided that the minimum uninterrupted rest period must be granted ‘per’ each seven-day period. Other versions of that article are closer to the French language version, which states that the weekly rest period must be granted ‘during’ each seven-day period.

Secondly, concerning the context of the terms at issue, that context supports that textual interpretation. It should be noted, in that regard, that the EU legislature used, in various provisions of Directive 2003/88, the term ‘reference period’ in order to specify a period within which a minimum rest period must be granted. That is the case, *inter alia*, in Article 16(a) of that directive which provides that the Member States may lay down a reference period not exceeding 14 days for the application of Article 5 of that provision. Although not expressly designated as such, the seven-day period referred to in Article 5 may, however, also be regarded as a reference period (see, to that effect, judgment of 12 November 1996, *United Kingdom v Council*, C-84/94, EU:C:1996:431, paragraph 62).

A reference period may be defined in that context as a set period within which a certain number of consecutive rest hours must be provided irrespective of when those rest hours are granted. That definition is borne out, *mutatis mutandis*, by a combined reading of Articles 16(b) and 22(1)(a) of Directive 2003/88. Under the first provision, the Member States may lay down, for the application of Article 6 of that directive, a reference period not exceeding four months. The second provision provides that no employer may require a worker to work more than 48 hours over a seven-day period, calculated as an average for the reference period referred to in Article 16(b). Thus, an equal division of the number of work hours is not required.

Thirdly, concerning the aim of Directive 2003/88, it should be pointed out that its purpose is effectively to protect the safety and health of workers. In light of that essential objective each employee must in particular enjoy adequate rest periods (judgments of 9 September 2003, *Jaeger*, C-151/02, EU:C:2003:437, paragraph 92, and of 23 December 2015, *Commission v Greece*, C-180/14, not published, EU:C:2015:840, paragraph 51). To that end, the first paragraph of Article 5 provides for a minimum uninterrupted weekly rest period for the benefit of every worker.

(see paras 39, 40, 42, 43, 45, 51, operative part)