

**Judgment of the Court (Second Chamber) of 21 October 2010 (reference for a preliminary ruling from the Tribunale ordinario di Torino (Italy)) — Antonio Accardo and Others v Comune di Torino**

(Case C-227/09) <sup>(1)</sup>

*(Social policy — Protection of the safety and health of workers — Organisation of working time — Municipal police officers — Directive 93/104/EC — Directive 93/104/EC as amended by Directive 2000/34/EC — Directive 2003/88/EC — Articles 5, 17 and 18 — Maximum weekly working time — Collective agreements or agreements concluded between the two sides of industry at national or regional level — Derogations relating to deferred weekly rest periods and compensatory rest — Direct effect — Interpretation in conformity with European Union law)*

(2010/C 346/24)

Language of the case: Italian

**Referring court**

Tribunale ordinario di Torino

**Parties to the main proceedings**

*Applicants:* Antonino Accardo, Viola Acella, Antonio Acuto, Domenico Ambrisi, Paolo Battaglino, Riccardo Bevilacqua, Fabrizio Bolla, Daniela Bottazzi, Roberto Brossa, Luigi Calabro', Roberto Cammardella, Michelangelo Capaldi, Giorgio Castellaro, Davide Cauda, Tatiana Chiampo, Alessia Ciaravino, Alessandro Cicero, Paolo Curtabbi, Paolo Dabbene, Mauro D'Angelo, Giancarlo Destefanis, Mario Di Brita, Bianca Di Capua, Michele Di Chio, Marina Ferrero, Gino Forlani, Giovanni Galvagno, Sonia Genisio, Laura Dora Genovese, Sonia Gili, Maria Gualtieri, Gaetano La Spina, Maurizio Loggia, Giovanni Lucchetta, Sandra Magoga, Manuela Manfredi, Fabrizio Maschio, Sonia Mignone, Daniela Minissale, Domenico Mondello, Veronnic Mossa, Plinio Paduano, Barbaro Pallavidino, Monica Palumbo, Michele Paschetto, Frederica, Peinetti, Nadia Pizzimenti, Gianluca Ponzio, Enrico Pozzato, Gaetano Puccio, Danilo Ranzani, Pergiani Risso, Luisa Rossi, Paola Sabia, Renzo Sangiano, Davide Scagno, Paola Settia, Raffaella Sottoriva, Rossana Trancuccio, Fulvia Varotto, Giampiero Zucca, Fabrizio Lacognata, Guido Mandia, Luigi Rigon, Daniele Sgavetti

*Defendant:* Comune di Torino

**Re:**

Reference for a preliminary ruling — Tribunale ordinario di Torino — Interpretation of Articles 5, 17 and 18 of Council Directive 93/104/CE of 23 November 1993 concerning certain aspects of the organisation of working time (JO 1993 L 307, p. 18) — Derogations relating to deferred weekly rest periods and compensatory rest — Applicability to members of the municipal police force

**Operative part of the judgment**

1. Article 17(3) of Council Directive 93/104/EC of 23 November 2003 concerning certain aspects of the organization of working

time, in both its original version and in the version amended by Directive 2000/34/EC of the European Parliament and of the Council of 22 June 2000, is independent in scope in relation to Article 17(2) thereof, so that the fact that a profession is not listed in Article 17(2) does not mean that it may not be covered by the derogation provided for in Article 17(3) in either of those versions of Directive 93/104.

2. In circumstances such as those in the main proceedings, the optional derogations provided for in Article 17 of Directive 93/104 and Directive 93/104 as amended by Directive 2000/34 and, where relevant, Articles 17 and/or 18 of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organization of working time, cannot be relied on against individuals such as the applicants in the main proceedings. Moreover, those provisions cannot be interpreted as permitting or precluding the application of collective agreements such as those at issue in the main proceedings, since whether such agreements apply is a matter for domestic law.

<sup>(1)</sup> OJ C 205, 29.8.2009.

**Judgment of the Court (Third Chamber) of 21 October 2010 (reference for a preliminary ruling from the Gerechtshof te Amsterdam (Netherlands)) — Albron Catering BV v FNV Bondgenoten, John Roest**

(Case C-242/09) <sup>(1)</sup>

*(Social policy — Transfers of undertakings — Directive 2001/23/EC — Safeguarding of employees' rights — Group of companies in which staff employed by an 'employer' company and assigned on a permanent basis to an 'operating' company — Transfer of an operating company)*

(2010/C 346/25)

Language of the case: Dutch

**Referring court**

Gerechtshof te Amsterdam

**Parties to the main proceedings**

*Applicant:* Albron Catering BV

*Defendant:* FNV Bondgenoten, John Roest

**Re:**

Reference for a preliminary ruling — Gerechtshof te Amsterdam — Interpretation of Article 3(1) of Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses (OJ 2001 L 82, p. 16) — Company with all the personnel of a group of companies which makes it available to operating companies of the group according to their needs — Transfer of the activity of an operating company outside the group — Classification

### Operative part of the judgment

In the event of a transfer within the meaning of Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, of an undertaking belonging to a group to an undertaking outside that group, it is also possible to regard as a 'transferor', within the meaning of Article 2(1)(a) of that directive, the group company to which the employees were assigned on a permanent basis without however being linked to the latter by a contract of employment, even though there exists within that group an undertaking with which the employees concerned were linked by such a contract of employment.

(<sup>1</sup>) OJ C 220, 12.9.2009, p. 21.

**Judgment of the Court (Second Chamber) of 14 October 2010 (reference for a preliminary ruling from the Verwaltungsgericht Halle (Germany)) — Günter Fuß v Stadt Halle**

(Case C-243/09) (<sup>1</sup>)

*(Social policy — Protection of the safety and health of workers — Directive 2003/88/EC — Organisation of working time — Fire fighters employed in the public sector — Operational service — Article 6(b) and Article 22(1)(b) — Maximum weekly working time — Refusal to work longer than that time — Compulsory transfer to another service — Direct effect — Consequence for national courts)*

(2010/C 346/26)

Language of the case: German

### Referring court

Verwaltungsgericht Halle

### Parties to the main proceedings

Applicant: Günter Fuß

Defendant: Stadt Halle

### Re:

Reference for a preliminary ruling — Verwaltungsgericht Halle — Interpretation of Article 22(1)(b) 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) — National legislation providing, in breach of that directive, for working time of more than 48 hours during a seven-day period for officials working as on-call professional firefighters — Compulsory transfer of an official who refused to work such hours to a post at the same grade in the administration — Concept of 'detriment'

### Operative part of the judgment

Article 6(b) 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 precluding national rules, such as those at issue in the main proceedings, which allow a public-sector employer to transfer compulsorily to another service a worker employed as a fire fighter in an operational service on the ground that that worker has requested compliance, within the latter service, with the maximum average weekly working time laid down in that provision. The fact that such a worker suffers no specific detriment by reason of that transfer, other than that resulting from the infringement of Article 6(b) of Directive 2003/88, is irrelevant in that regard.

(<sup>1</sup>) OJ C 233, 26.9.2009.

**Judgment of the Court (Fourth Chamber) of 21 October 2010 (reference for a preliminary ruling from the Cour constitutionnelle (Belgium)) — Execution of a European arrest warrant issued in respect of I.B.**

(Case C-306/09) (<sup>1</sup>)

*(Police and judicial cooperation in criminal matters — Framework Decision 2002/584/JHA — European arrest warrant and the surrender procedures between Member States — Article 4 — Grounds for optional non-execution — Article 4(6) — Arrest warrant issued for the purposes of execution of a sentence — Article 5 — Guarantees to be provided by the issuing Member State — Article 5(1) — Sentence imposed in absentia — Article 5(3) — Arrest warrant issued for the purposes of criminal prosecution — Surrender subject to the condition that the requested person be returned to the Member State of execution — Joint application of Article 5(1) and Article 5(3) — Compatibility)*

(2010/C 346/27)

Language of the case: French

### Referring court

Cour constitutionnelle

### Party to the main proceedings

I.B.

### Re:

Reference for a preliminary ruling — Cour constitutionnelle (Belgium) — Interpretation of Articles 4(6) and 5(3) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ 2002 L 190, p. 1) and of Article 6(2) of the EU Treaty — Grounds for optional non-execution of the European arrest warrant and guarantees to be given by the issuing Member State — Possibility for the executing Member State to make the surrender of a person residing on its territory subject to the condition that that person, after having been heard in the issuing Member State, be returned to