JUDGMENT OF THE COURT (Second Chamber)

14 October 2010 *

In Case C-428/09,

REFERENCE for a preliminary ruling under Article 234 EC from the Conseil d'État (France), made by decision of 2 October 2009, received at the Court on 29 October 2009, in the proceedings

Union syndicale Solidaires Isère

v

Premier ministre,

Ministère du Travail, des Relations sociales, de la Famille, de la Solidarité et de la Ville,

Ministère de la Santé et des Sports,

* Language of the case: French.

THE COURT (Second Chamber),

composed of J.N. Cunha Rodrigues, President of Chamber, A. Arabadjiev, A. Rosas, U. Lõhmus and A. Ó Caoimh (Rapporteur), Judges,

Advocate General: J. Mazák,
Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— the Union syndicale Solidaires Isère, by E. Decombard, avocat,

— the French Government, by G. de Bergues and B. Messmer, acting as Agents,

— the Czech Government, by M. Smolek, acting as Agent,

— the European Commission, by M. Van Hoof 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 reference for a preliminary ruling concerns the interpretation 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).

2 The reference has been made in proceedings in which the Union syndicale Solidaires Isère [the Solidaires Isère association of trade unions] ('Union syndicale') asks the Conseil d'État to annul Decree No 2006-950 of 28 July 2006 on the educational commitment, implementing Law No 2006-586 of 23 May 2006 relative to association-based voluntary service and educational commitment, in so far as it inserted in the code du travail ('the Labour Code') Articles D.773-2-1, D.773-2-2 and D.773-2-3, and to annul the implicit decision of the Prime Minister rejecting the administrative appeal brought against that decree.

Legal context

European Union legislation

Directive 89/391/EEC

3 Under Article 2(1) 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), that directive 'shall apply to all sectors of activity, both public and private (industrial, agricultural, commercial, administrative, service, educational, cultural, leisure, etc.)'

4 Article 2(2) of that directive, however, provides that it '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'.

Directive 2003/88

5 Directive 2003/88 repealed, as from 2 August 2004, Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organisation of working time (OJ 1993 L 307, p. 18), the provisions of which it consolidated.

6 Recitals (5), (7), (15) and (16) in the preamble to Directive 2003/88 state:

'(5) All workers should have adequate rest periods. … Community workers must be granted minimum daily, weekly and annual periods of rest and adequate breaks. …

…

(7) Research has shown that the human body is more sensitive at night to environmental disturbances and also to certain burdensome forms of work organisation and that long periods of night work can be detrimental to the health of workers and can endanger safety at the workplace.

…

(15) In view of the question likely to be raised by the organisation of working time within an undertaking, it appears desirable to provide for flexibility in the application of certain provisions of this Directive, whilst ensuring compliance with the principles of protecting the safety and health of workers.

(16) It is necessary to provide that certain provisions may be subject to derogations implemented, according to the case, by the Member States or the two sides of industry. As a general rule, in the event of a derogation, the workers concerned must be given equivalent compensatory rest periods.'

7 Article 1 of Directive 2003/88, which concerns its purpose and scope, is worded as follows:

‘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/EEC, without prejudice to Articles 14, 17, 18 and 19 of this Directive.

This Directive shall not apply to seafarers, as defined in Directive 1999/63/EC [Council Directive 1999/63/EC of 21 June 1999 concerning the Agreement on the organisation of working time of seafarers concluded by the European Community Shipowners’ Association (ECSA) and the Federation of Transport Workers’ Unions in the European Union (FST) (OJ 1999 L 167, p. 33)] without prejudice to Article 2(8) of this Directive.

…’

8 Article 3 of Directive 2003/88 lays down the right of every worker to a minimum rest period of 11 consecutive hours per 24-hour period.

9 Article 17(1) to (3) of that directive provides:

'1. With due regard for the general principles of the protection of the safety and health of workers, Member States may derogate from Articles 3 to 6, 8 and 16 when, on account of the specific characteristics of the activity concerned, the duration of the working time is not measured and/or predetermined or can be determined by the workers themselves, and particularly in the case of:

(a) managing executives or other persons with autonomous decision-taking powers;

(b) family workers; or

(c) workers officiating at religious ceremonies in churches and religious communities.

2. Derogations provided for in paragraphs 3, 4 and 5 may be adopted by means of laws, regulations or administrative provisions or by means of collective agreements or agreements between the two sides of industry provided that the workers concerned are afforded equivalent periods of compensatory rest or that, in exceptional cases

in which it is not possible, for objective reasons, to grant such equivalent periods of compensatory rest, the workers concerned are afforded appropriate protection.

3. In accordance with paragraph 2 of this Article derogations may be made from Articles 3, 4, 5, 8 and 16:

…

(b) in the case of security and surveillance activities requiring a permanent presence in order to protect property and persons, particularly security guards and caretakers or security firms;

(c) in the case of activities involving the need for continuity of service or production, particularly …

…'

National legislation

10 Article 1 of Decree No 2006-950 inserted in the Labour Code Articles D.773-2-1 to D.773-2-7.

11 Those provisions of the Labour Code now correspond, subject to slight alterations, to Articles D.432-1 to D.432-9 of the code de l'action sociale et des familles (Code of Social Action and Families).

12 Article D.773-2-1 of the Labour Code provided that an educational commitment contract is to be entered into by a natural person and a natural or legal person as defined in Article L.774-2 and that the cumulative duration of contracts entered into by the same person cannot exceed 80 days in a period of 12 consecutive months.

13 Article D.773-2-3 of the Labour Code provided:

'In all cases, an employee shall be entitled each week to a period of rest, the duration of which shall not be less than 24 consecutive hours.'

14 Article L.774-2 of the Labour Code, to which Article D.773-2-1 of that code referred, and which now appears, subject to slight alterations, in Articles L.432-1 to L.432-4 of the code de l'action sociale et des familles, provided:

'Casual involvement, on conditions set out in this article, of a natural person in the duties of activity leader or director in an educational centre for children organised during school vacation, leave from work or in free time … shall be deemed to be an educational commitment.

…

Persons employed under an educational commitment contract shall not be subject to the provisions of Chapters I and II of Title IV of Book I, nor to the provisions of Chapters II and III of Title I of Book II, nor to the provisions of the preliminary chapter and Chapter I of Title II of the same Book of this code.

…

The working hours of persons employed under an educational commitment contract shall be determined by convention or extended sectoral agreement or, failing those, by decree. For each person, the number of days worked may not exceed an annual ceiling of 80. The person concerned shall be entitled to a minimum weekly rest period of 24 consecutive hours. …'

15 The French legislation did not provide, and still does not provide, that casual and seasonal members of staff at holiday and leisure centres, employed under educational commitment contracts, are entitled to a daily rest period with a minimum duration of 11 consecutive hours.

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

16 By action brought on 29 January 2007 the Union syndicale asked the Conseil d'État to annul Decree No 2006-950. The Union syndicale claims that that decree is contrary to Directive 2003/88 in that it denies to persons employed under educational commitment contracts, carrying out casual and seasonal activities in holiday and leisure centres, the right to a minimum daily rest period granted to workers by the Labour Code.

17 According to the Union syndicale, the lack of such a right in the French legislation disregards the objectives of Article 3 of Directive 2003/88 and the annual ceiling of 80 working days, set by the Labour Code, cannot be regarded as appropriate protection within the meaning of Article 17(2) of that directive, which sets certain conditions which the permitted derogations, in particular those from Article 3, must meet.

18 The Conseil d'État considered that a clear response was required to the issues raised in the proceedings before it concerning Articles 1, 3 and 17 of Directive 2003/88, and decided to stay the proceedings and to refer to the Court the following questions for a preliminary ruling:

'1. Does Directive [2003/88] apply to casual or seasonal staff carrying out a maximum of 80 days of work per annum in holiday and leisure activity centres?

2. If this question is answered in the affirmative:

(a) In view of the purpose of Directive [2003/88], which, as set out in Article 1(1) thereof, is to lay down minimum safety and health requirements for the organisation of working time, must Article 17 thereof be interpreted as allowing:

— under Article 17(1), the casual or seasonal activity of persons employed under educational commitment contracts to be categorised as within those activities for which "on account of the specific characteristics of the

activity concerned, the duration of the working time is not measured and/or predetermined or can be determined by the workers themselves", or

— under Article 17(3)(b) [the casual or seasonal activity of persons employed under educational commitment contracts] to be regarded as "security and surveillance activities requiring a permanent presence in order to protect property and persons"?

(b) In the latter case, should the conditions laid down in Article 17(2) of [Directive 2003/88], in terms of "equivalent periods of compensatory rest" or "appropriate protection" to be afforded to the workers concerned, be regarded as being satisfied by a rule restricting the activity of persons employed under the contracts in question to 80 days of work per annum in holiday and leisure activity centres?'

The questions referred for a preliminary ruling

The first question

19 By its first question, the referring court asks whether persons employed under contracts such as the educational commitment contracts at issue in the main proceedings, carrying out casual and seasonal activities in holiday and leisure centres, and completing a maximum of 80 working days per annum, fall within the scope of Directive 2003/88.

20 It must first be recalled that that directive establishes minimum health and safety requirements in respect of the organisation of working time.

21 Directive 2003/88 defines its scope broadly, in that, as is clear from Article 1(3), it applies to all sectors of activity, both public and private, within the meaning of Article 2(1) of Directive 89/391, with the exception of certain specific sectors which are expressly listed (see Case C-173/99 *BECTU* [2001] ECR I-4881, paragraph 45).

22 The Court has previously held that it is clear, both from the purpose of Directive 89/391 (encouraging improvements in the health and safety of workers at work) and from the wording of Article 2(1) thereof, that this basic directive must also be taken to be broad in scope (Joined Cases C-397/01 to C-403/01 *Pfeiffer and Others* [2004] ECR I-8835, paragraph 52).

23 The activities listed in Article 2(1) of Directive 89/391, which is moreover not exhaustive, include educational, cultural and leisure activities and, generally, service activities.

24 Under the first subparagraph of Article 2(2) of Directive 89/391, that basic directive is not to be applicable where characteristics peculiar to certain specific public service activities or to certain specific activities in the civil protection services inevitably conflict with it. However, those exceptions to the scope of Directive 89/391 must be

interpreted restrictively, and reference is made to certain specific public service activities intended to uphold public order and security which are essential for the proper functioning of society (see, to that effect, Case C-303/98 *Simap* [2000] ECR I-7963, paragraphs 35 and 36, and *Pfeiffer and Others*, paragraphs 52 to 55).

25 It is clear that the activity of casual and seasonal staff at holiday and leisure centres cannot be regarded as comparable to such activities.

26 It must therefore be concluded that the activity of such staff is within the scope of both Directive 89/391 and Directive 2003/88, since the scope exception in the second subparagraph of Article 1(3) of the latter directive is applicable only to seafarers.

27 It must also 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.

28 The consequence of that fact is that, for the purposes of applying Directive 2003/88, that concept may not be interpreted differently according to the law of Member States but has an autonomous meaning specific to European Union law. The 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. The essential feature of an employment relationship, however, 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 receives remuneration (see, by analogy, for the purposes of Article 39 EC, Case 66/85 *Lawrie-Blum* [1986] ECR 2121, paragraphs 16 and 17, and also Case C-138/02 *Collins* [2004] ECR I-2703, paragraph 26).

29 It is for the national court to apply that concept of a 'worker' in any classification, 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.

30 Even though, according to the order for reference, the persons employed under educational commitment contracts are not subject to certain provisions of the Labour Code, it must be recalled that the Court has held that the *sui generis* legal nature of the employment relationship under national law cannot have any consequence in regard to whether or not the person is a worker for the purposes of European Union law (see Case C-116/06 *Kiiski* [2007] ECR I-7643, paragraph 26 and case-law cited).

31 As regards workers employed on a fixed-term contract, such as those employed under the contract at issue in the main proceedings, the Court has previously ruled, in connection with Directive 93/104, that that directive draws no distinction between workers employed under such a contract and those employed under a contract of indefinite duration, in particular with regard to the provisions concerning minimum rest periods, which refer in most cases to 'every worker' (see, to that effect, *BECTU*, paragraph 46). That ruling holds equally true for Directive 2003/88, and in particular Article 3 thereof concerning the daily rest period.

32 Having regard to the information provided by the referring court, it is evident that persons such as the casual and seasonal staff employed under the contract at issue in the main proceedings, completing a maximum of 80 working days per annum in holiday and leisure centres, come within the scope of the concept of 'workers' as defined in paragraph 28 of this judgment.

33 In the light of the foregoing, the answer to the first question referred is that persons employed under contracts such as the educational commitment contracts at issue in the main proceedings, carrying out casual and seasonal activities in holiday and leisure centres, and completing a maximum of 80 working days per annum, are within the scope of Directive 2003/88.

The second question

34 By its second question, which has two parts, the referring court asks, in essence, whether workers such as those employed under educational commitment contracts, carrying out casual and seasonal activities in holiday and leisure centres, come within the scope of either the derogation in Article 17(1) of Directive 2003/88 or the derogation provided for in Article 17(3)(b). If Article 17(3)(b) of Directive 2003/88 is applicable, the referring court asks whether the conditions set out in Article 17(2) – to the effect that the workers concerned are to be afforded equivalent periods of compensatory rest or, in exceptional cases, where it is not possible for objective reasons to grant such periods, appropriate protection – are satisfied by national legislation which restricts the activity of such workers to 80 working days per annum.

35 In that context, it must first be recalled that, in accordance with Article 3 of Directive 2003/88, Member States are required to take the measures necessary to ensure that every worker is entitled to a minimum rest period of 11 consecutive hours in every 24-hour period.

36 It is clear from the Court's case-law that, in view of both the wording of Directive 2003/88 and its purpose and scheme, the various requirements it lays down concerning minimum rest periods, such as the period mentioned in Article 3, constitute rules of European Union social law of particular importance from which every worker must benefit as a minimum requirement necessary to ensure the protection of his health and safety (see, in particular, *BECTU*, paragraphs 43 and 47, and Case C-484/04 *Commission* v *United Kingdom* [2006] ECR I-7471, paragraph 38).

37 In the light of the essential purpose of Directive 2003/88, which aims to protect effectively the health and safety of workers, each worker must, inter alia, enjoy adequate rest periods, which must not only be effective in enabling the persons concerned to recover from the fatigue engendered by their work, but also be preventive in nature, so as to reduce as much as possible the risk of affecting the health or safety of employees which successive periods of work without the necessary rest are likely to produce (Case C-151/02 *Jaeger* [2003] ECR I-8389, paragraph 92, and *Commission* v *United Kingdom*, paragraph 41).

38 It follows from the foregoing that national legislation such as that at issue in the main proceedings which, although restricting the activity carried out under educational commitment contracts to 80 days per annum, does not provide that the members of casual and seasonal staff employed at holiday and leisure centres under such

contracts are entitled to the minimum daily rest period required by Article 3 of Directive 2003/88, is in principle incompatible with that directive.

39 The position would be different only if such legislation fell within the permitted derogations provided for by Directive 2003/88, in particular in Article 17.

40 As exceptions to the European Union system for the organisation of working time put in place by Directive 2003/88, those derogations must be interpreted in such a way that their scope is limited to what is strictly necessary in order to safeguard the interests which those derogations enable to be protected (see *Jaeger*, paragraph 89).

41 As regards, first, the derogation from Article 3 of Directive 2003/88 in Article 17(1) of that directive, that derogation applies to workers whose working time, as a whole, is not measured or predetermined, or can be determined by the workers themselves on account of the specific characteristics of the activity carried out.

42 As stated by the Union syndicale and the European Commission, there is nothing in the documents submitted to the Court to indicate that workers employed in holiday and leisure centres under an educational commitment contract are able to decide the number of hours which they are to work. The description by the French Government of the activities of those workers and the operation of such centres, the accuracy of which it is for the referring court to determine, suggests that they are not. Nor do the

documents submitted to the Court contain any material to indicate that those workers are not obliged to be present at their place of work at fixed times.

43 It must therefore be held that, having regard to the information provided to the Court, Article 17(1) of Directive 2003/88 concerns activities which bear no relation to activities such as those carried out by persons employed under educational commitment contracts at holiday and leisure centres.

44 Secondly, as regards the derogation in Article 17(3)(b) of Directive 2003/88, that provision states that, in accordance with paragraph 2 of that article, derogations may be made from Article 3 of the directive 'in the case of security and surveillance activities requiring a permanent presence in order to protect property and persons, particularly security guards and caretakers or security firms'.

45 While is it true, as maintained by the Union syndicale and the Czech Government, that the members of staff at holiday and leisure centres carry out activities designed to educate and occupy children accommodated in those centres, it is equally true, as asserted by the French Government, that it is also the responsibility of such staff to ensure continual supervision of those children. Since those children are not accompanied by their parents, they are, in order to ensure their safety, under constant supervision by the staff working in those centres. Furthermore, as the French Government maintains, the pedagogic and educational value of those centres is also to be found, at least partly, in that specific and novel *modus operandi* whereby for several days the children accommodated there live continuously with their activity leaders and directors.

46 In those circumstances, it is clear that the activities of workers such as those employed under educational commitment contracts, working in holiday and leisure centres, may fall within the scope of the derogation provided for in Article 17(3)(b) of Directive 2003/88, to the extent that the conditions stated in Article 17(2) are satisfied.

47 Further, as stated by the Commission, having regard to the characteristics of the activities at holiday and leisure centres and their operation, those activities might possibly also fall within the scope of the derogation from Article 3 of Directive 2003/88 provided for in Article 17(3)(c) of that directive, relating to activities characterised by the need to ensure continuity of service or production.

48 True, the activities of casual and seasonal staff at holiday and leisure centres are not among those listed within that provision. However, it is clear, first, that the list concerned is not exhaustive and, second, that, as follows from paragraph 45 of this judgment, the need to ensure continuity of service is also a characteristic of those activities, since children accommodated in those centres live, throughout the period of their stay, continuously with and under the supervision of the staff of those centres.

49 That said, in the very wording of Article 17(2) of Directive 2003/88, the implementation of derogations in Article 17(3)(b) and (c) of that article, in particular in relation to the duration of the daily rest period provided for by Article 3 of that directive, is expressly stated to be subject to the condition that the workers concerned are to be afforded equivalent periods of compensatory rest or that, in exceptional cases in which

the granting of such equivalent periods of compensatory rest is not possible for objective reasons, those workers are to be afforded appropriate protection.

50 It follows from the Court's case-law that 'equivalent periods of compensatory rest' within the meaning of Article 17(2) of Directive 2003/188 must, in order to comply with both those qualifications and the objective of the directive as described in paragraph 37 of this judgment, be characterised by the fact that during such periods the worker is not subject to any obligation vis-à-vis his employer which may prevent him from pursuing freely and without interruption his own interests in order to neutralise the effects of work on his safety or health. Such rest periods must therefore follow on immediately from the working time which they are supposed to counteract in order to prevent the worker from experiencing a state of fatigue or overload owing to the accumulation of consecutive periods of work (see *Jaeger*, paragraph 94).

51 In order to ensure the worker's safety and to protect his health effectively, provision must as a general rule be made for a period of work regularly to alternate with a rest period. In order to be able to rest effectively, the worker must be able to remove himself from his working environment for a specific number of hours which must not only be consecutive but must also directly follow a period of work in order to enable him to relax and dispel the fatigue caused by the performance of his duties. That requirement appears all the more necessary where, by way of exception to the general rule, normal daily working time is extended by completion of a period of on-call duty (see *Jaeger*, paragraph 95).

52 In those circumstances, a provision of national law such as that at issue in the main proceedings, which provides that the cumulative duration of contracts such as educational commitment contracts entered into by the same person may not exceed 80

days in a period of 12 consecutive months, does not satisfy the obligation, incumbent on Member States and, where appropriate, the two sides of industry, to ensure that equivalent periods of compensatory rest as required by Article 17(2) of Directive 2003/88 are provided.

53 As maintained by the Union syndicale and the Czech Government, taking into account the objective of protection pursued by Directive 2003/88, the maximum number of working days per annum is of no relevance to the abovementioned equivalent periods of compensatory rest.

54 The French Government submits however that the exceptional nature of the activities of the staff at holiday and leisure centres does not allow provision of equivalent periods of compensatory rest. The persons accommodated there are children who, for the several days they spend there, are subject to day and night supervision by the same members of staff. If compensatory rest, as defined by the Court in paragraph 94 of *Jaeger*, were granted to casual and seasonal members of staff at those centres, the result would be that they would take that rest during the stay of the children under their care and consequently those children would be temporarily deprived, also during the night, of the presence of their leaders, the very persons who, in the absence of the children's parents, are the adults who know the children best and whom the children trust. Since there are objective reasons which prevent the granting of equivalent periods of compensatory rest, the imposition of an annual ceiling on the number of days which can be worked by persons employed under educational commitment contracts represents appropriate protection for the workers concerned within the meaning of Article 17(2) of Directive 2003/88.

55 With regard to this argument, it must be observed that, as is clear from the wording of Article 17(2) of Directive 2003/88, only in absolutely exceptional circumstances can

that provision allow other 'appropriate protection' to be afforded to the worker, when the granting of equivalent periods of compensatory rest is impossible for objective reasons (see, by analogy, *Jaeger*, paragraph 98).

56 The order for reference contains little specific information on how the activities of the staff at the holiday and leisure centres are conducted, how those activities are organised and what staff are needed at those centres.

57 It is certainly not inconceivable, in the light of the description of those activities and the responsibilities of the staff at the centres concerned for the children accommodated there, that, exceptionally, for objective reasons, it may not be possible to ensure the regular alternation of a period of work and a period of rest, as required by Article 3 of Directive 2003/88, in accordance with *Jaeger*, cited above.

58 It remains the case, however, that the imposition of an annual ceiling on the number of days worked such as that provided for by the French legislation at issue in the main proceedings cannot in any circumstances be regarded as appropriate protection within the meaning of Article 17(2) of Directive 2003/88. As is clear from Recital (15) of that directive, while a degree of flexibility is allowed to Member States in the application of certain provisions of that directive, they must nevertheless ensure compliance with the principles of protecting the health and safety of workers.

59 While Article 17(2) of Directive 2003/88 must therefore be interpreted as allowing Member States and, where appropriate, the two sides of industry, some latitude when establishing, in exceptional cases, an appropriate protection for the workers concerned, the position remains that the objective of that protection, which concerns the

health and safety of those workers, is exactly the same as that of the minimum daily rest period provided for in Article 3 of that directive or the equivalent period of compensatory rest provided for in Article 17(2), namely to enable those workers to relax and dispel the fatigue caused by the performance of their duties.

60 While the particular nature of the work or the particular circumstances in which that work is carried out create the possibility, exceptionally, of derogating from Article 3 of Directive 2003/88 and the obligation to ensure a regular alternation of a period of work and a period of rest, national legislation which does not allow workers to enjoy the right to a daily rest period for the entire duration of the employment contract, even if the contract concerned has a maximum duration of 80 days per annum, not only nullifies an individual right expressly granted by that directive but is also contrary to its objective (see, to that effect, in relation to Article 7(1) of Directive 2003/88, *BECTU*, paragraph 48).

61 In the light of the foregoing, the answer to the second question is that persons employed under contracts such as the educational commitment contracts at issue in the main proceedings, carrying out casual and seasonal activities at holiday and leisure centres, fall within the scope of the derogation in Article 17(3)(b) and/or 17(3)(c) of Directive 2003/88.

62 National legislation which restricts the activity carried out under educational commitment contracts to 80 days per annum does not satisfy the conditions set out in Article 17(2) of that directive which govern the application of that derogation, to the effect that the workers concerned are to be afforded equivalent periods of compensatory rest or, in exceptional cases where the granting of such periods is not possible for objective reasons, appropriate protection.

Costs

63 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 (Second Chamber) hereby rules:

1. **Persons employed under contracts such as the educational commitment contracts at issue in the main proceedings, carrying out casual and seasonal activities in holiday and leisure centres, and completing a maximum of 80 working days per annum, are within the scope 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.**

2. **Persons employed under contracts such as the educational commitment contracts at issue in the main proceedings, carrying out casual and seasonal activities at holiday and leisure centres, fall within the scope of the derogation in Article 17(3)(b) and/or 17(3)(c) of Directive 2003/88.**

National legislation which restricts the activity carried out under such contracts to 80 days per annum does not satisfy the conditions set out in Article 17(2) of that directive which govern the application of that derogation, to the effect that the workers concerned are to be afforded equivalent periods

of compensatory rest or, in exceptional cases where the granting of such periods is not possible for objective reasons, appropriate protection.

[Signatures]