

Case C-428/09

Union syndicale Solidaires Isère

v

Premier ministre and Others

(Reference for a preliminary
ruling from the Conseil d'État (France))

(Social policy — Protection of the safety and health of workers — Directive 2003/88/EC — Organisation of working time — Articles 1, 3 and 17 — Scope — Casual and seasonal activity of persons employed under an 'educational commitment contract' — Restriction on the working time of such staff in holiday and leisure centres to 80 days per annum — National legislation not providing, for such staff, a minimum daily rest period — Derogations from Article 17 — Conditions — Ensuring an equivalent period of compensatory rest or, in exceptional cases, appropriate protection)

Judgment of the Court (Second Chamber), 14 October 2010 I - 9963

Summary of the Judgment

1. *Social policy — Protection of the safety and health of workers — Directive 2003/88 concerning certain aspects of the organisation of working time — Scope (European Parliament and Council Directive 2003/88, Art. 1(3))*

2. *Social policy — Protection of the safety and health of workers — Directive 2003/88 concerning certain aspects of the organisation of working time — Minimum rest period (European Parliament and Council Directive 2003/88, Arts 3, 17(2) and (3)(b) and (c))*

1. Persons employed under educational commitment contracts, 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 concerning certain aspects of the organisation of working time.

(see para. 33, operative part 1)

2. Persons employed under educational commitment contracts, carrying out casual and seasonal activities at holiday and leisure centres, and completing a maximum of 80 working days per annum, fall within the scope of the derogation in Article 17(3)(b) and/or 17(3)(c) of Directive 2003/88 concerning certain aspects of the organisation of working time.

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. 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 that directive 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, which is to protect effectively the health and safety of workers.

However, national legislation which restricts the activity carried out by persons employed under such contracts to 80 working days per annum does not satisfy

(see paras 37, 46-47, 52, 60-62, operative part 2)