Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

24 February 2022 *

(Reference for a preliminary ruling – Social policy – Organisation of working time – Directive 2003/88/EC – Article 8 – Article 12(a) – Articles 20 and 31 of the Charter of Fundamental Rights of the European Union – Reduction of the normal length of night work in relation to day work – Public sector workers and private sector workers – Equal treatment)

In Case C-262/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the Rayonen sad Lukovit (District Court, Lukovit, Bulgaria), made by decision of 15 June 2020, received at the Court on 15 June 2020, in the proceedings

VB

v

Glavna direktsia 'Pozharna bezopasnost i zashtita na naselenieto'

THE COURT (Second Chamber),

composed of A. Arabadjiev, President of the First Chamber acting as President of the Second Chamber, I. Ziemele (Rapporteur), T. von Danwitz, P.G. Xuereb and A. Kumin, Judges,

Advocate General: G. Pitruzzella,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– VB, by V. Petrova, advokat,

– the German Government, by J. Möller and R. Kanitz, acting as Agents,

– the European Commission, by C. Valero and V. Bozhilova, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 2 September 2021,

* Language of the case: Bulgarian.

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 12(a) 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) and of Articles 20 and 31 of the Charter of Fundamental Rights of the European Union ('the Charter').

2 The request has been made in proceedings between VB, who works for the fire service of the Glavna direktsia 'Pozharna bezopasnost i zashtita na naselenieto' kam Ministerstvo na vatreshnite raboti ('Fire Safety and Civil Protection' Directorate-General, attached to the Ministry of the Interior, Bulgaria) ('the "Fire Safety and Civil Protection" Directorate-General'), and his directorate-general concerning the calculation and remuneration of his hours of night work.

Legal context

International law

3 Article 8 of Convention No 171 of the International Labour Organisation (ILO) of 26 June 1990 on night work provides:

'Compensation for night workers in the form of working time, pay or similar benefits shall recognise the nature of night work.'

European Union law

4 Under recitals 6 to 8 and 10 of Directive 2003/88:

'(6) Account should be taken of the principles of the [ILO] with regard to the organisation of working time, including those relating to night work.

(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.

(8) There is a need to limit the duration of periods of night work, including overtime, and to provide for employers who regularly use night workers to bring this information to the attention of the competent authorities if they so request.

…

(10) The situation of night and shift workers requires that the level of safety and health protection should be adapted to the nature of their work and that the organisation and functioning of protection and prevention services and resources should be efficient.'

5 Article 8 of that directive, which is entitled 'Length of night work', reads as follows:

'Member States shall take the measures necessary to ensure that:

(a) normal hours of work for night workers do not exceed an average of eight hours in any 24-hour period;

(b) night workers whose work involves special hazards or heavy physical or mental strain do not work more than eight hours in any period of 24 hours during which they perform night work.

For the purposes of point (b), work involving special hazards or heavy physical or mental strain shall be defined by national legislation and/or practice or by collective agreements or agreements concluded between the two sides of industry, taking account of the specific effects and hazards of night work.'

6 Article 12 of the directive, which is entitled 'Safety and health protection', provides:

'Member States shall take the measures necessary to ensure that:

(a) night workers and shift workers have safety and health protection appropriate to the nature of their work;

(b) appropriate protection and prevention services or facilities with regard to the safety and health of night workers and shift workers are equivalent to those applicable to other workers and are available at all times.'

Bulgarian law

The Labour Code

7 Under Article 140 of the kodeks na truda (Labour Code) (DV No 26 of 1 April 1986 and DV No 27 of 4 April 1986), in the version thereof applicable to the dispute in the main proceedings ('the Labour Code'):

'(1) The normal length of weekly night work in a five-day working week shall not exceed 35 hours. The normal length of night work in a five-day working week shall not exceed seven hours.

(2) Night work is work performed between 22.00 and 6.00, and, for staff under the age of 16, from 20.00 to 6.00.

…'

The Law on the Ministry of the Interior

8 Article 142 of the Zakon za Ministerstvo na vatreshnite raboti (Law on the Ministry of the Interior) (DV No 53 of 27 June 2014), in the version thereof applicable to the dispute in the main proceedings ('the Law on the Ministry of the Interior') provides:

'(1) The staff of the Ministry of the Interior are:

1. civil servants within the police and the "Fire Safety and Civil Protection" Directorate-General;

2. civil servants;

3. persons employed under a contract.

…

5. The status of persons employed under a contract shall be governed by the provisions of the Labour Code and by this law.

…'

9 Under Article 187 of the Law on the Ministry of the Interior:

'(1) The normal working hours for civil servants of the Ministry of the Interior shall be 8 hours a day and 40 hours a week for a five-day working week.

…

3. The working time of civil servants of the Ministry of the Interior shall be calculated in working days on a daily basis, whereas it shall be calculated over a three-month period for those who work shifts of 8, 12 or 24 hours. … In the case of shift work, night work may be performed from 22.00 to 6.00; however, the average working hours shall not exceed 8 hours in any 24-hour period.

…

9. The procedures for the organisation, allocation and recording of working time, compensation for work outside normal working hours, and timetabling on-call duty, rest periods and breaks of civil servants of the Ministry of the Interior shall be determined by ordinance of the Minister for the Interior.

…'

10 Article 188(2) of that law is worded as follows:

'Civil servants of the Ministry of the Interior working between 22.00 and 6.00 shall benefit from the special protection provided by the Labour Code.'

11 Ordinances issued by the Minister for the Interior on the basis of Article 187(9) of that law set out the details for the organisation and allocation of working time, compensation for work outside the normal working hours and the arrangements for on-call duty, rest periods and breaks for civil servants of the Ministry of the Interior.

12 Thus, Article 31(2) of Naredba No 8121z-407 (Ordinance No 8121z-407) of 11 August 2014 (DV No 69 of 19 August 2014) ('the 2014 Ordinance') provided for the conversion of hours of night work into hours of day work by applying a corrective multiplying factor. Pursuant to that provision, the hours worked between 22.00 and 6.00 were to be multiplied by a factor of 0.143 and the resulting figure was then to be added to the total number of hours worked in the relevant period.

13 The 2014 Ordinance was repealed by Naredba No 8121z-592 (Ordinance No 8121z-592) of 25 May 2015 (DV No 40 of 2 June 2015), which was itself repealed by Naredba No 8121z-776 (Ordinance No 8121z-776) of 29 July 2016 (DV No 60 of 2 August 2016), which no longer provided for the system of calculating hours of night work laid down in Article 31(2) of the 2014 Ordinance.

14 For workers outside the Ministry of the Interior, Article 9(2) of the Naredba za strukturata i organizatsiata na rabotnata zaplata (Ordinance on the structure and organisation of wages) (DV No 9 of 26 January 2007; 'the 2007 Ordinance') reads as follows:

'According to the calculation methods for the aggregation of working time, night hours shall be converted to day hours by a factor equal to the ratio between the normal length of day work and of night work, as established for the corresponding workplace.'

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

15 VB works for the fire service of the 'Fire Safety and Civil Protection' Directorate-General.

16 Over the period from 2 October 2016 to 2 October 2019, VB carried out night work. With regard to the account taken of that period, he considers that he is entitled to benefit from the calculation of hours of night work provided for in Article 9(2) of the 2007 Ordinance, under which the 'Fire Safety and Civil Protection' Directorate-General was required to convert the hours of night work into hours of day work, applying to the former a multiplying factor of 1.143, such that seven hours' night work would equate to eight hours' day work.

17 That directorate-general refused to pay VB 1 683.74 leva (BGN) (approximately EUR 860) as remuneration for overtime on account of the night work that he had completed over the period; VB therefore brought proceedings before the referring court for the directorate-general to be ordered to pay that amount to him.

18 The directorate-general contests VB's application on the ground that, since the repeal of the 2014 Ordinance, there is no longer a legal basis for the conversion of hours of night work into hours of day work, and that the 2007 Ordinance does not apply to civil servants of the Ministry of the Interior.

19 The referring court states, with reference to the defendant's arguments, that, pursuant to Article 187(1) of the Law on the Ministry of the Interior, the normal length of work of civil servants of that ministry is eight hours a day, including where the work is carried out at night.

20 That court states that that 'special law', which applies to the civil servants of the Ministry of the Interior, does not contain an express provision determining the normal length of night work, but rather specifies merely the period that must be regarded as night work, namely the period from 22.00 to 6.00.

21 The court does, however, take the view that, pursuant to Article 188(2) of the Law on the Ministry of the Interior, civil servants of that ministry who work between 22.00 and 6.00 should benefit from the protection provided under the Labour Code. That code provides for a shorter normal length of work for night work, which is not to exceed seven hours.

22 The same court observes that Article 187(3) of the Law on the Ministry of the Interior does not provide that the normal length of night work is eight hours, but states merely that, in relation to shift work activities, such as those at issue here, night work is permitted between 22.00 and 6.00. It takes the view that the normal length of night work of civil servants of the Ministry of the Interior should be seven hours so that those officials are not treated less well than other public-sector workers and workers in the private sector.

23 In those circumstances, the Rayonen sad Lukovit (District Court, Lukovit, Bulgaria) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) For the purposes of effective protection under Article 12(a) of Directive [2003/88], should the normal length of night work of police officers and firefighters be shorter than the normal length of day work?

(2) For the purposes of the principle of equality set out in Articles 20 and 31 of the [Charter], must the normal length of night work laid down in national law for workers in the private sector (7 hours) also apply to public-sector workers, including police officers and firefighters?

(3) Can the objective of limiting the duration of periods of night work mentioned in recital 8 of Directive [2003/88] be effectively attained only if the normal length of night work, including for public-sector workers, is expressly laid down in national law?'

Procedure before the Court

24 The referring court requested that the case be dealt with under the urgent preliminary ruling procedure provided for in Article 23a of the Statute of the Court of Justice of the European Union and Article 107 of the Rules of Procedure of the Court of Justice.

25 On 9 July 2020, the Court decided, acting on a proposal from the Judge-Rapporteur and after hearing the Advocate General, that there was no need to grant that request.

Consideration of the request for a preliminary ruling

Admissibility

26 As a preliminary point, it must be observed that, without formally raising a plea of inadmissibility of the request for a preliminary ruling, the European Commission does express reservations in that regard, arguing that the dispute in the main proceedings does not directly concern whether Directive 2003/88 was correctly transposed into Bulgarian law.

27 The dispute in the main proceedings concerns the determination of the number of hours of overtime worked at night by the applicant in the main proceedings, beyond the normal hours of night work laid down for the private sector in Bulgaria, for the purpose of establishing the amount of the compensation owed to the person concerned and his obtaining the corresponding payment. However, as the Commission itself points out, Directive 2003/88 does not concern the remuneration of workers.

28 The Court has held that Directive 2003/88, which is based on Article 153(2) TFEU, is limited to regulating certain aspects of the organisation of working time in order to protect the safety and health of workers and does not apply, pursuant to paragraph 5 of that article, to aspects related to the remuneration of workers, save in the special case envisaged by Article 7(1) of that directive concerning annual paid holidays. Accordingly, that directive does not apply, in principle, to the remuneration of workers (see, to that effect, judgment of 30 April 2020, *Készenléti Rendőrség*, C-211/19, EU:C:2020:344, paragraph 23).

29 Nevertheless, the Court has held that the mere fact that the dispute in the main proceedings concerns remuneration does not mean that a request for a preliminary ruling raising questions related to the interpretation of provisions of Directive 2003/88 must be found to be inadmissible (see, to that effect, judgment of 21 February 2018, *Matzak*, C-518/15, EU:C:2018:82, paragraphs 25 and 26).

30 Moreover, the Court has also held that the exception provided for in Article 153(5) TFEU must be construed as covering measures – such as the equivalence of all or some of the constituent parts of pay and/or the level of pay in the Member States, or the setting of a minimum guaranteed wage – that amount to direct interference by EU law in the determination of pay within the European Union. On the other hand, it cannot be extended to any question involving any sort of link with pay; otherwise, some areas referred to in Article 153(1) TFEU would be deprived of much of their substance (judgment of 19 June 2014, *Specht and Others*, C-501/12 to C-506/12, C-540/12 and C-541/12, EU:C:2014:2005, paragraph 33 and the case-law cited).

31 In the present case, the questions referred for a preliminary ruling are concerned not with the amount of remuneration but with the procedures for the organisation, allocation and calculation of working time at night and with compensation for work outside the normal working hours.

32 The questions referred must therefore be answered.

Substance

The first and third questions

33 It should be noted, first of all, that, according to settled case-law, in order to provide a satisfactory answer to the national court which has referred a question to it, the Court of Justice may deem it necessary to consider provisions of EU law to which the national court has not referred in its question (judgment of 25 April 2013, *Jyske Bank Gibraltar*, C-212/11, EU:C:2013:270, paragraph 38 and the case-law cited).

34 In the present case, whilst the third question put by the referring court concerns recital 8 of Directive 2003/88, it must be borne in mind that, although the recitals are an integral part of that directive, explaining the objectives pursued by it, they do not have binding force per se. However, the provisions of Article 8 of that directive concern night work. In addition, as the Advocate General observed in point 30 of his Opinion, the resolution of the dispute in the main proceedings depends, in the referring court's view, on the Court's interpretation of the concept of 'length of night work' within the meaning of Article 8 of the directive.

35 In those circumstances, in order to provide a useful answer to the referring court, the first and third questions, which should be examined jointly, must be construed as seeking, in essence, to ascertain whether Article 8 and Article 12(a) of Directive 2003/88 are to be interpreted as requiring the adoption of national legislation providing that the normal length of night work for public-sector workers, such as police officers and firefighters, must be shorter than the normal length of day work laid down for such workers.

36 As is apparent from the request for a preliminary ruling, the applicant in the main proceedings is of the view that, since the Law on the Ministry of the Interior and the infra-legislative regulatory acts in force during the period concerned do not contain any rule on the conversion of hours of night work into hours of day work, the relevant provisions of the 2007 Ordinance must be applied.

37 It must be borne in mind that Directive 2003/88 lays down, under Article 1(1) thereof, minimum safety and health requirements for the organisation of working time and applies, inter alia, to certain aspects of night work, shift work and patterns of work.

38 The right of every worker to a limitation of maximum working hours and to, inter alia, daily rest periods not only constitutes a rule of EU social law of particular importance, but is also expressly enshrined in Article 31(2) of the Charter that Article 6(1) TEU recognises as having the same legal value as the Treaties (judgment of 17 March 2021, *Academia de Studii Economice din Bucureşti*, C-585/19, EU:C:2021:210, paragraph 36 and the case-law cited).

39 The provisions of Directive 2003/88, in particular Articles 8 and 12 thereof, give specific form to that fundamental right and must, therefore, be interpreted in the light of the latter (judgment of 17 March 2021, *Academia de Studii Economice din Bucureşti*, C-585/19, EU:C:2021:210, paragraph 37).

40 That being said, it follows from settled case-law of the Court that, when interpreting a provision of EU law, it is necessary to consider not only its wording but also the context in which it occurs and the objectives pursued by the rules of which it is part (judgment of 11 June 2020, *CHEP Equipment Pooling*, C-242/19, EU:C:2020:466, paragraph 32 and the case-law cited).

41 In that regard, it must be pointed out, in the first place, that the minimum requirements relating to the normal length of night work are set out in Article 8(a) of that directive, which provides that Member States are to take the measures necessary to ensure that normal hours of work for night workers do not exceed an average of 8 hours in any 24-hour period. Article 8(b) of the directive states that night workers whose work involves special hazards or heavy physical or mental strain are not to work more than 8 hours in any period of 24 hours during which they perform night work.

42 Under Article 12(a) of Directive 2003/88, Member States are to take the measures necessary to ensure that night workers and shift workers have safety and health protection appropriate to the nature of their work.

43 In the second place, as recalled in paragraph 39 of this judgment, by establishing the right of every worker to a limitation of maximum working hours and to daily and weekly rest periods, that directive gives specific form to the fundamental right expressly enshrined in Article 31(2) of the Charter and must, therefore, be interpreted in the light of that Article 31(2). The provisions of that directive thus cannot be interpreted restrictively to the detriment of the rights that the workers derive from it (judgment of 11 November 2021, *Dublin City Council*, C-214/20, EU:C:2021:909, paragraph 37 and the case-law cited).

44 In the third place, with regard to night work specifically, recital 7 of the directive takes account of the risks inherent in that period of activity. In addition, recitals 8 and 10 of the directive emphasise the potentially detrimental consequences of night work and the need to limit the length of such work in order to ensure a heightened level of health and safety protection for workers.

45 Thus, under Article 2(3) of Directive 2003/88, 'night time' is defined as any period of not less than seven hours, as defined by national law, and which must include, in any case, the period between midnight and 5.00.

46 According to Article 2(4) of that directive, a 'night worker' is defined, on the one hand, as any worker who, during 'night time' works at least three hours of his or her daily working time as a normal course and, on the other hand, any worker who is likely during 'night time' to work a certain proportion of his or her annual working time, as defined by national legislation, following consultation with the two sides of industry, or by collective agreements or agreements concluded between the two sides of industry at national or regional level.

47 It follows from the foregoing that Directive 2003/88 establishes common minimum requirements that include additional protection for night workers.

48 Article 8 of that directive thus requires that the maximum length of night work be fixed. In turn, the obligation under Article 12(a) of the directive to take the measures necessary to ensure that night workers and shift workers have safety and health protection appropriate to the nature of their work leaves the Member States a degree of latitude as regards the appropriate measures to be implemented (see, to that effect, judgments of 24 January 2012, *Dominguez*, C-282/10, EU:C:2012:33, paragraphs 35 and 48, and of 11 April 2019, *Syndicat des cadres de la sécurité intérieure*, C-254/18, EU:C:2019:318, paragraphs 23 and 35).

49 Accordingly, it must be stated, as the Advocate General did in point 66 of his Opinion, that no provision in that directive gives an indication of a difference or a ratio between the normal length of night work and that of day work. The former may therefore, in principle, be laid down independently from the latter.

50 The view must therefore be taken that Directive 2003/88 does not require the adoption of measures establishing a difference between the normal length of night work and that of day work. Accordingly, that directive does not require the adoption of a special provision specifically governing the normal and maximum length of night work, provided that it is limited in accordance with the requirements under Article 8 of the directive.

51 That said, it must be pointed out that the obligation mentioned in paragraph 48 of this judgment must be implemented in such a way as to achieve the objectives of protection laid down by the directive itself. Specifically, the Member States are required to ensure compliance with the principles of the health and safety protection of workers when determining the necessary level of health and safety protection for night workers. They must therefore ensure that night workers enjoy other protective measures in the form of working time, pay, allowances or similar benefits, such as to compensate for the particular burden entailed by that type of work, as emphasised in particular by Directive 2003/88, and, accordingly, to recognise the nature of night work.

52 In that regard, it must be stated that work performed at night may differ in terms of difficulty and stress, which may require that special arrangements be put in place for certain workers in order to protect their health and safety. In the present case, the work performed at night by firefighters and police officers could justify such special arrangements being put in place. The referring court in fact observes that the special and extremely important duties of those public-sector workers mean that the workers are subject to many additional requirements and obligations, such as on-call duty of up to 24 hours' duration or special obligations in emergencies.

53 Therefore, in the light of the greater burden associated with night work as compared with day work, the reduction of the normal length of night work in relation to that of day work may be an appropriate solution with a view to ensuring the protection of the health and safety of the workers concerned, even though that is not the only possible solution. Depending on the nature of the activity concerned, granting additional rest periods or periods of free time, for example, could also contribute to the protection of the health and safety of those workers.

54 In that connection, it must be recalled that it follows from recital 6 of Directive 2003/88 that account should be taken of the ILO principles with regard to the organisation of working time, inter alia those relating to night work, and that, under Article 8 of Convention No 171 of the ILO, compensation for night workers in the form of working time, pay or similar benefits is to recognise the nature of night work. That provision thus confirms that the measures that Member States are obliged to take, in accordance with Article 12(a) of that directive, do not have to refer expressly to the length of night work.

55 In the light of all the foregoing considerations, the answer to the first and third questions is that Article 8 and Article 12(a) of Directive 2003/88 are to be interpreted as not requiring the adoption of national legislation providing that the normal length of night work for public-sector workers, such as police officers and firefighters, must be shorter than the normal length of day work laid down for those workers. Such workers must, in any case, enjoy other protective measures in the form of working time, pay, allowances or similar benefits, such as to compensate for the particular burden entailed by the night work they perform.

The second question

56 By its second question, the referring court asks, in essence, whether Directive 2003/88, read in the light of Articles 20 and 31 of the Charter, is to be interpreted as requiring that the normal length of night work fixed at seven hours in the law of a Member State for workers in the private sector applies to public-sector workers, such as police officers and firefighters.

57 Under Article 20 of the Charter, 'everyone is equal before the law'.

58 The Court has held that the principle of equal treatment, which is enshrined in Articles 20 and 21 of the Charter, is a general principle of EU law, which requires that comparable situations must not be treated differently and that different situations must not be treated in the same way unless such treatment is objectively justified. A difference in treatment is justified if it is based on an objective and reasonable criterion, that is, if the difference relates to a legally permitted aim pursued by the legislation in question, and it is proportionate to the aim pursued by the treatment (judgment of 9 March 2017, *Milkova*, C-406/15, EU:C:2017:198, paragraph 55 and the case-law cited).

59 In turn, Article 31(1) of the Charter provides that 'every worker has the right to working conditions which respect his or her health, safety and dignity', and Article 31(2) thereof states that 'every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave'.

60 It must be recalled that the scope of the Charter, as regards action by the Member States, is defined in Article 51(1) thereof, under which the provisions of the Charter are addressed to the institutions of the European Union and to the Member States only when they are implementing EU law and, according to settled case-law, the concept of 'implementation of Union law' within the meaning of that provision presupposes a degree of connection between an act of EU law and the national measure at issue which goes beyond the matters referred to or the indirect effects of one of the matters on the other, having regard to the assessment criteria laid down by the Court (judgment of 22 April 2021, *Profi Credit Slovakia*, C-485/19, EU:C:2021:313, paragraph 37 and the case-law cited).

61 In that regard, it must be observed, on the one hand, that Article 140(1) of the Labour Code sets out that the normal length of night work in a five-day working week is seven hours. As the referring court points out, that provision applies to private-sector workers.

62 On the other hand, pursuant to Article 187(3) of the Law on the Ministry of the Interior, in the case of shift work, night work may be performed from 22.00 to 6.00; however, the average working time of civil servants of that ministry is not to exceed 8 hours in any 24-hour period.

63 Those provisions detail the working arrangements applicable to night work in relation to health and safety and, in particular, the limitation of the length of night work. Such provisions constitute an implementation of that directive and, therefore, fall within the scope of EU law.

64 The referring court takes the view that the relevant national legislation establishes a scheme applicable to private-sector workers that is more favourable than that applicable to public-sector workers, in particular civil servants of the Ministry of the Interior. It also states that the absence of

any special provision governing the normal and maximum length of night work of such officials within the police and the fire service would give rise to discrimination against them as compared with officials of that ministry employed under a contract.

65 It must be observed, in that regard, that the Court has held that a difference in treatment based on whether the employment relationship is statutory or contractual may, in principle, be assessed with regard to the principle of equal treatment, which is a general principle of EU law, now enshrined in Articles 20 and 21 of the Charter (judgment of 22 January 2020, *Baldonedo Martín*, C-177/18, EU:C:2020:26, paragraph 56 and the case-law cited).

66 It is therefore necessary to examine whether Directive 2003/88, in the light of Articles 20 and 31 of the Charter, is to be interpreted as precluding a situation in which certain public-sector workers, in particular civil servants of the Ministry of the Interior, including police officers and firefighters, whose normal working time at night may be up to eight hours, do not enjoy the more favourable ordinary law scheme applicable to workers in the private sector, under which the normal length of night work is fixed at seven hours.

67 As regards the requirement that the situations in question are comparable for the purpose of determining whether there is a breach of the principle of equal treatment, the Court has explained, first and foremost, that that comparability must be assessed not in a global and abstract manner, but in a specific and concrete manner having regard to all the elements which characterise those situations, in the light, in particular, of the subject matter and purpose of the national legislation which makes the distinction at issue, as well as, where appropriate, in the light of the principles and objectives pertaining to the field to which that national legislation relates (judgment of 26 June 2018, *MB (Change of gender and retirement pension)*, C-451/16, EU:C:2018:492, paragraph 42 and the case-law cited).

68 In the present case, it is apparent from the information contained in the order for reference that the subject matter of the national legislation at issue in the main proceedings is how to account for working time at night for a particular post. More specifically, the dispute in the main proceedings concerns the lack of a special provision governing the normal and maximum length of night work, as well as the conversion of hours of night work into hours of day work by applying a multiplying factor.

69 Thus, the national law appears, first, to exclude civil servants of the Ministry of the Interior, such as police officers and firefighters, from the ordinary law scheme providing for a limitation of the normal length of night work to seven hours and, secondly, not to grant those civil servants the benefit of the conversion of hours of night work into hours of day work.

70 It is for the referring court, which alone has jurisdiction to assess the facts, to make the necessary determinations in order, first, to identify the relevant categories of workers and, secondly, to determine whether the requirement of the comparability of the situations in question is satisfied (see, to that effect, judgment of 5 June 2018, *Montero Mateos*, C-677/16, EU:C:2018:393, paragraph 52).

71 However, the Court, when a request for a preliminary ruling is made to it, has jurisdiction, in the light of the information in the file, to give clarifications to guide the referring court in giving judgment in the main proceedings (judgment of 29 October 2020, *Veselības ministrija*, C-243/19, EU:C:2020:872, paragraph 38 and the case-law cited).

72 As is clear from the case-law recalled in paragraph 67 of this judgment, it falls to that court to determine which category of workers benefits from the ordinary law scheme, laid down in Article 140 of the Labour Code, and which other category is excluded from that scheme. Consideration will then have to be given to whether that exclusion was decided by the national legislature taking into account, inter alia, the objective characteristics of the duties performed by the workers in that latter category. It appears that, in the present case, the referring court analyses abstract categories of workers, such as that of public-sector workers, providing the example of the specific category of civil servants of the Ministry of the Interior, in particular that of police officers and firefighters, and that of private-sector workers, without providing information that would allow specific categories of persons in comparable situations to be identified and compared in a specific and concrete manner, including as regards the night-work conditions applicable to the workers in each of those categories. No information of that kind is contained in the request for a preliminary ruling.

73 As for the justification of any difference in treatment, it must be recalled that, according to settled case-law, a difference in treatment is justified if it is based on an objective and reasonable criterion, that is, whether the difference relates to a legally permitted aim pursued by the legislation in question, and it is proportionate to the aim pursued by the treatment (judgment of 29 October 2020, *Veselības ministrija*, C-243/19, EU:C:2020:872, paragraph 37 and the case-law cited).

74 In that regard, it is apparent from the request for a preliminary ruling that the non-inclusion, in Ordinances Nos 8121z-592 and 8121z-776, of the mechanism for the conversion of hours of night work into hours of day work at issue in the main proceedings is based on legal and economic grounds.

75 First, pursuant to Article 187(1) and (3) of the Law on the Ministry of the Interior, the normal length of work is the same during the day and at night, such that the ratio between the normal length of day work and the normal length of night work is equal to 1 and no conversion is required.

76 Subject to the determinations which it will be for the referring court to make, an argument to that effect does not, however, appear to correspond to a legally permitted aim capable of justifying the difference in treatment at issue in the main proceedings.

77 Secondly, the renewal of such a conversion mechanism would have necessitated significant additional financial resources.

78 Such an argument cannot, however, succeed. While EU law does not prevent Member States from taking into account budgetary considerations alongside considerations of a political, social or demographic nature and from influencing the nature or the scope of the measures that they wish to adopt, such considerations cannot constitute, on their own, an aim of general interest.

79 It must be recalled that a difference in treatment introduced by provisions of national law relating to night work between different categories of workers in comparable situations would, if not based on such an objective and reasonable criterion, be incompatible with EU law and would require, as the case may be, the national court to interpret national law, to the greatest extent possible, in the light of the text and the purpose of the provision of primary law applicable, taking into consideration the whole body of national law and applying the interpretative methods recognised

by national law, with a view to ensuring that that provision is fully effective and to achieving an outcome consistent with the objective which it pursues (judgment of 6 October 2021, *Sumal*, C-882/19, EU:C:2021:800, paragraph 71 and the case-law cited).

80 In the light of all the foregoing considerations, the answer to the second question is that Articles 20 and 31 of the Charter are to be interpreted as not precluding the normal length of night work fixed at seven hours in the national law of a Member State for workers in the private sector from not applying to public-sector workers, including police officers and firefighters, if that difference in treatment is based on an objective and reasonable criterion, that is, if the difference relates to a legally permitted aim pursued by that legislation, and it is proportionate to that aim.

Costs

81 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national 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. **Article 8 and Article 12(a) 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 are to be interpreted as not requiring the adoption of national legislation providing that the normal length of night work for public-sector workers, such as police officers and firefighters, must be shorter than the normal length of day work laid down for those workers. Such workers must, in any case, enjoy other protective measures in the form of working time, pay, allowances or similar benefits, such as to compensate for the particular burden entailed by the night work they perform.**

2. **Articles 20 and 31 of the Charter of Fundamental Rights of the European Union are to be interpreted as not precluding the normal length of night work fixed at seven hours in the national law of a Member State for workers in the private sector from not applying to public-sector workers, including police officers and firefighters, if that difference in treatment is based on an objective and reasonable criterion, that is, if the difference relates to a legally permitted aim pursued by that legislation, and it is proportionate to that aim.**

[Signatures]