



Vastuvõtmise kuupäev : 30/07/2024

## **Anonymised version**

Translation

C-373/24 – 1

**Case C-373/24 [Ramavić] <sup>i</sup>**

### **Request for a preliminary ruling**

**Date lodged:**

24 May 2024

**Referring court:**

Općinski sud u Puli-Pola (Croatia)

**Date of the decision to refer:**

3 May 2024

**Applicant:**

NI

**Defendant:**

Republic of Croatia, represented by the Općinsko državno odvjetništvo u Rijeci (Municipal Public Prosecutor's Office in Rijeka)

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REPUBLIC OF CROATIA

OPĆINSKI SUD U PULI-POLA (Municipal Court in Pula)

[...]

Court of Justice of the European Union

[...]

<sup>i</sup> The name of the present case is a fictitious name. It does not correspond to the real name of any party to the proceedings.

**CASE: Request to the Court of Justice of the European Union for a preliminary ruling on the interpretation of EU law pursuant to Article 267 of the Treaty on the Functioning of the European Union ('TFEU')**

**Referring court:**

Općinski sud u Puli-Pola (Municipal Court, Pula)

[...]

**Applicant:**

NI

**Defendant:**

Republic of Croatia

represented by the Općinsko državno odvjetništvo u Rijeci (Municipal Public Prosecutor's Office in Rijeka)

The Općinski sud u Puli-Pola (Municipal Court, Pula), in its capacity as a national court, makes a request to the Court of Justice for a preliminary ruling concerning the interpretation of Article 1(3) and Article 2(1) and (2) 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, and Article 2(2) 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.

**The referring court has referred the following questions to the Court of Justice for a preliminary ruling:**

1. Does the applicant's position as a public prosecutor (deputy municipal prosecutor/municipal prosecutor) fall within the concept of 'worker' referred to in Article 1(3) of Directive 2003/88/EC, read in conjunction with Article 31 of the Charter of Fundamental Rights of the European Union, that is to say, can an officer of the public prosecutor's office be considered a worker for the purposes of applying the same working conditions to all workers employed in the public prosecutor's office?
2. In connection with the first question, must Article 2 of Directive 89/391/EEC, to which Directive 2003/88 refers in Article 1(3), be interpreted as permitting Member States to exclude officers of the public prosecutor's office (deputy municipal prosecutors/municipal prosecutors) from the application of the provisions ensuring the transposition of that directive, including the provisions of Article 2(1) and (2) of Directive 2003/88/EC, which define working time and rest periods?

**3. (a)** If the first question is answered in the affirmative and the second question is answered in the negative, the following question is referred to the Court: within the meaning of the provisions of Directive 2003/88/EC (including, in particular, Article 2(1) and other provisions), must the passive on-call duty of officers of the public prosecutor's office be considered working time in light of the restrictions to which an officer of the public prosecutor's office on passive on-call duty is subject on account of the tasks and responsibilities that the officer performs during passive on-call duty pursuant to the Opća uputa Državnog odvjetništva Republike Hrvatske o radu službe dežurstva (General recommendations of the National Public Prosecutor's Office of the Republic of Croatia concerning on-call duty) No 0-8/11-1 of 13 October 2011, as amended on 12 October 2012, and pursuant to the Zakon o kaznenom postupku (Code of Criminal Procedure) (Narodne novine Nos 152/08, 76/09, 80/11, 121/11, 91/12, 143/12, 56/13, 145/13, 152/14, 70/17, 126/19, 80/22 and 36/24), under which an officer of the public prosecutor's office, as a worker, is significantly restricted in his or her ability to perform other activities despite the fact that under the abovementioned general recommendations of the employer, he or she is obliged to perform tasks within the framework of passive on-call duty at his or her home?

**3. (b)** If the first question is answered in the affirmative and the second question is answered in the negative, the following question is referred to the Court: within the meaning of the provisions of Directive 2003/88/EC concerning certain aspects of the organisation of working time (including, in particular, Article 2(1) and other provisions), must the active on-call duty of officers of the public prosecutor's office be considered working time on account of the tasks and responsibilities that the officer performs during active on-call duty pursuant to the General recommendations of the National Public Prosecutor's Office of the Republic of Croatia concerning on-call duty No 0-8/11-1 of 13 October 2011, as amended on 12 October 2012, and pursuant to the Code of Criminal Procedure, under which an officer of the public prosecutor's office performs tasks within the framework of active on-call duty (inspections and other tasks) at his or her usual place of work or at another location determined by the employer?

#### **GROUND:**

The Municipal Court, Pula, asks the Court for an interpretation of Directive 2003/88/EC concerning certain aspects of the organisation of working time (Articles 1(3) and 2(1) and (2)), read in conjunction with Article 2(2) of Directive 89/391/EEC, in relation to officers of the public prosecutor's office who, in addition to their regular work, are required to perform additional work during active and passive on-call duty in preliminary (criminal) proceedings outside of their working time.

**I. Subject matter of the dispute in the main proceedings and the relevant facts of the case:**

The applicant is a deputy municipal public prosecutor at the Općinsko državno odvjetništvo u Puli-Pola (Municipal Public Prosecutor's Office in Pula).

The Državno odvjetništvo Republike Hrvatske (National Public Prosecutor's Office of the Republic of Croatia) is, under Article 3 of the Zakon o državnom odvjetništvu (Law on the Public Prosecutor's Office) (Narodne novine Nos 67/18 and 21/22), an autonomous and independent body authorised and obliged to take action against perpetrators of offences and other criminal acts, to take legal action in order to protect the property of the Republic of Croatia, and to bring means of redress in order to protect the Ustav Republike Hrvatske (Constitution of the Republic of Croatia) and other laws.

Article 12 of the aforementioned Law stipulates that the National Public Prosecutor's Office of the Republic of Croatia is established for the entire territory of the Republic of Croatia, and that county and municipal public prosecutors' offices are established in the Republic of Croatia.

Municipal public prosecutors' offices are subordinate to county public prosecutors' offices, while the latter and special public prosecutors' offices are subordinate to the National Public Prosecutor's Office of the Republic of Croatia.

Under Article 29(1) of the Law on the Public Prosecutor's Office, officers of the Municipal Public Prosecutor's Office, Pula, in which the applicant is employed, appear before municipal courts and public authorities. The applicant is employed in the Kazneni odjel Općinskog državnog odvjetništva u Puli-Pola (Investigation Department of the Municipal Public Prosecutor's Office, Pula), and as a result appears in criminal cases against perpetrators of offences prosecuted by public indictment or upon a complaint from the victim, and also appears in misdemeanour proceedings in accordance with the powers laid down by law.

The applicant works full-time, 40 hours a week, from 8.00 a.m. to 4.00 p.m. Monday to Friday.

During his working time and after the end of the regular working hours of the public prosecutor's office, on weekly rest days (Saturday and Sunday) and also on days defined by law as holidays and non-working days, the applicant also performs, under Article 52 of the Poslovník državnog odvjetništva (Regulations of the Public Prosecutor's Office) (Narodne novine Nos 5/2014 and 123/2015), additional tasks related to his job in the form of on-call duty. As a result, the applicant performs his tasks either continuously for 24 hours, or for two to four days continuously for 24 hours a day. During his on-call duty, the applicant performs urgent tasks related to preliminary (criminal) proceedings in the form of 'passive' and 'active' on-call duty.

Under Article 52(1)(3) of the Regulations of the Public Prosecutor's Office, and from 27 March 2015 also under Article 2(3) of the Pravilnik o naknadama za dežurstva sudaca, državnih odvjetnika i zamjenika državnih odvjetnika (Regulations concerning remuneration for on-call duty performed by judges, public prosecutors and deputy public prosecutors) (Narodne novine No 35/2015), 'passive' on-call duty at the public prosecutor's office consists in the deputy public prosecutor having to be on duty in the town or city where the public prosecutor's office is located.

The Opća uputa o radu službe dežurstva (General recommendations concerning on-call duty) No 0–8/11–1 of 13 October 2011, adopted by the Kolegij Državnog odvjetništva Republike Hrvatske (College of the National Public Prosecutor's Office of the Republic of Croatia), as amended by Odluka (Resolution) No 0–8/11 of 24 August 2011 and No 0–8/11–2 of 12 October 2012, specifically the provisions of item A. 2(b) of Resolution No 0–8/11 of 24 August 2011, stipulate that [prosecutors] of the municipal public prosecutors' offices in Osijek, Rijeka, Split, Bjelovar, Gospić, Pula, Pazin, Koprivnica, Vinkovci and Zlatar must be 'on constant stand-by at the house or apartment in which they live' during their on-call duty.

Pursuant to Odluka Županijsko državno odvjetništvo u Puli-Pola (Resolution of the Municipal Public Prosecutor's Office, Pula) No 0–8/11–14 of 10 April 2015, [prosecutors] of the Municipal Public Prosecutor's Office, Pula, that is to say, the former Stalna služba u Pazinu (Pazin Local Branch), perform on-call duty from the end of working hours until the start of working hours on the following day, and on weekly rest days, non-working days and holidays are 'on constant stand-by at the house or apartment in which they live (passive on-call duty)', throughout the territory subject to the jurisdiction of the Municipal Public Prosecutor's Office, Pula, that is to say, the county of Istria.

Accordingly, after his normal working hours, on the days designated in the on-call duty schedule, the applicant performs job-related tasks in such a manner that he is required to be continuously present at his house or apartment and to be available on call, at all times, to police officers and other authorities, and must be ready to go immediately to the public prosecutor's office or to another location at any time in order to perform urgent tasks.

The Protokol o zajedničkom radu policije i državnog odvjetništva tijekom prethodnog i kaznenog postupka (Protocol on cooperation between the police and the public prosecutor's office during preliminary and main proceedings) effective from 1 September 2011, and the Code of Criminal Procedure, stipulate that police officers are obliged to inform the prosecutor on-call about certain police activities, and as a result the prosecutor on-call must be informed in some cases [for instance those referred to in Articles 108 and 109 of the Code of Criminal Procedure], and in other cases [for instance those referred to in Articles 17, 18 and 35 of the Protocol] the prosecutor on-call must take action immediately. In addition, item 'A. On-call Duty' of General recommendations No 0–8/11 details the activities

that a deputy public prosecutor is required to undertake during his or her on-call duty outside of the public prosecutor's office's regular working hours, especially on non-working days.

In this manner, the applicant, after his normal working hours from 8.00 a.m. to 4.00 p.m., in the afternoons and evenings and on non-working days, receives calls from police officers about individuals who have been detained, calls from the police officer assigned to the detention room about detainees being admitted to the detention room, calls from police officers about the need to instruct individuals of their rights within 12 hours in urgent cases, calls from police officers about the commencement of forensic examinations or the receipt of crime reports as well as calls from police officers wishing to consult the prosecutor in connection with the conduct of investigations or the urgent taking of evidence, and also gives verbal instructions to the police regarding the conduct of investigations and urgent taking of evidence and performs other official duties.

The above activities of the deputy public prosecutor on-call are significantly more concentrated in the 24-hour period when the police are required to carry out operational and investigative activities and urgently take evidence (as ordered by the prosecutor) with respect to a detainee, as this entails more phone calls between police officers and the deputy public prosecutor on-call in order to inform the prosecutor of the actions taken by the police and to coordinate those actions, as well as phone calls concerning the taking of evidence, notifications from the police to the prosecutor about the need to inspect a crime scene, and so forth.

In addition, during 'passive' on-call duty the applicant coordinates the work of all participants in the proceedings, which involves liaising with the police to arrange a date and time for bringing a detainee to the public prosecutor's office for questioning, contacting the recording technician, the minute clerk, the detainee's defence counsel and, if necessary, an interpreter, in order for those persons to be present at the interview, consulting the investigating judge on duty to set a date for a hearing on pre-trial detention and to provide the court with the motion for pre-trial detention together with attachments, as well as analysing the relevant legislation, preparing and drafting the prosecution file, and performing other necessary activities.

The applicant may at any time receive a phone call from a police officer requiring the applicant to go immediately to the scene of, for instance, a fatal traffic or workplace accident.

Such situations are referred to as 'active' on-call duty performed by deputy municipal public prosecutors. 'Active' on-call duty at the public prosecutor's office involves the deputy public prosecutor performing urgent tasks in court, at the public prosecutor's office, or at the scene of an incident; those tasks are defined in the Code of Criminal Procedure. For instance, the tasks include the initial questioning of a suspect (within 16 hours of the suspect being handed over to the police officer on duty in the detention room), requesting a search warrant

from the investigating judge (immediately), confirming verbal orders to urgently take evidence (within 24 hours), inspecting, alone or in cooperation with others, the scene of a fatal traffic or workplace accident or crime scene in accordance with the General recommendations (immediately), attending an evidentiary hearing before the investigating judge (as soon as possible), ordering preventive measures or filing a motion for pre-trial detention (within 16 hours of the suspect being handed over to the police officer on duty in the detention room), participating in a pre-trial detention hearing (within 24 hours of the suspect being handed over to the police officer on duty in the detention room), and so forth.

Despite the fact that during on-call duty (both active and passive) the applicant performs regular job-related tasks in accordance with the duties and responsibilities assigned to him, and performs them outside of his full-time working hours, that work is not considered to be his working time. Such work is considered neither regular work nor overtime, and is not taken into account in connection with the applicant's right to daily and weekly rest; additionally, the applicant does not accrue the right to days off on the basis of that on-call duty.

The employer does not include on-call duty, whether active or passive, in the maximum statutory daily and weekly working time. In cases where on-call duty continues after normal working hours or lasts for several days, the applicant actually works more than 24 hours, and sometimes more than 48 hours, without a break and without any reduction of his regular workload during the working hours of the Municipal Public Prosecutor's Office, Pula, which are from 8.00 a.m. to 4.00 p.m.

Such work during normal working hours with additional work on-call, without any regulation or restriction of maximum weekly working hours, results in the applicant being unable to set aside adequate time for rest, which undoubtedly affects his health and safety in the workplace, since working outside of working hours involves additional mental and physical exertion, strain on the eyes and vocal chords, and excessive stress. In particular, the on-call duty outside of working hours described above, which involves the obligation to answer telephone calls at all times (often in the late evening or at night) and to be on constant stand-by, results in intensified stress at work, which also has a detrimental effect on the worker's health. Such work is exhausting, because despite being on-call in the afternoons and evenings (receiving calls at any time), the applicant is required to go to his workplace and work on every working day during normal working hours and perform his regular duties.

The Ministarstvo pravosuđa Republike Hrvatske (Ministry of Justice of the Republic of Croatia) has adopted successive Regulations concerning remuneration for on-call duty performed by judges, public prosecutors and deputy public prosecutors (Narodne novine Nos 35/2015, 64/2019 and 106/23). Under that secondary legislation, on-call duty is not considered working time and does not affect the calculation of maximum weekly working hours. No daily or weekly rest



is envisaged for on-call duty, and on-call duty does not affect the applicant's regular workload.

In view of the above, the applicant believes that the secondary legislation in question is contrary to the abovementioned Union acquis.

As regards the essential element of the concept of 'working time' within the meaning of Article 2(1) of Directive 2003/88/EC, namely that the worker is at the employer's disposal, the applicant in the main proceedings emphasises that the Court has found that a key feature of working time is that the worker is required to be physically present at the place designated by the employer and to remain at the employer's disposal in order to be able to perform work immediately if necessary. Therefore, in order for a worker to be considered at the disposal of his or her employer, that worker must be in a situation where he or she is legally obliged to follow the employer's instructions and perform actions for the employer's benefit, which the applicant believes is undisputed.

The applicant in the main proceedings stresses that during both active and passive on-call duty, as a result of his obligation to perform the tasks and duties stipulated in the Law and in the General recommendations issued by the employer, and due to his mandatory presence in the town or city where the public prosecutor's office is located, or in his home (passive on-call duty) or at his workplace in the public prosecutor's office (active on-call duty), he is completely restricted as regards managing his free time and in his choice of location, while the need to be constantly available for telephone calls prevents him from performing any activities during which he would not be able to answer a call immediately. In practice, this means that for a few days a week the applicant has no freedom to spend time with his family. He is not allowed to leave his home, engage in sports and leisure activities, or in any way organise his time for the purpose of relaxation or other activities and interests while on-call. The applicant emphasises that the restrictions to which he is subject during passive and active on-call duty are such that they objectively and significantly affect his ability to freely manage his time when he is not required to perform work, and to devote that time to his own interests.

The applicant performs identical tasks and duties during his regular full-time working hours as well. Therefore, during his on-call duty, the applicant does not perform any activities other than those he usually performs during his normal working hours.

The applicant explains that, as a result, fair working conditions are not ensured, since working time is not regulated in such a manner as to limit daily and weekly working hours, and as a result, reasonable daily and weekly working hours are not ensured. Moreover, he has no guaranteed right to uninterrupted daily rest lasting 12 hours or to weekly rest lasting 24 hours. The applicant does not enjoy adequate protection in regard to health and safety at work, and his working conditions are such that work outside of normal working hours, without any limits on maximum

weekly working hours or overtime, has a detrimental effect on his health and safety. As a result of not being able to enjoy daily and weekly rest, the applicant is exposed to health risks due to greater stress and mental and physical exertion. Moreover, the applicant is not ensured the right to fair remuneration, that is, to increased pay for overtime and for work on Sundays and holidays. In addition, the applicant explains that for his on-call duty, he is paid less than for his regular work between 8.00 a.m. and 4.00 p.m. Monday to Friday.

Officers of the public prosecutor's office – in the present case, the applicant – are subordinate to their superiors at the public prosecutor's office and to the Ministarstvo pravosuđa i uprave Republike Hrvatske (Ministry of Justice and Administration of the Republic of Croatia), which administers the justice system on behalf of the public prosecutor's office. The Ministry's tasks include the handling of complaints regarding the operation of public prosecutor's offices, namely work-related issues, providing proper working conditions for prosecutors in material and financial terms as well as in terms of premises and other conditions, approving plans for the hiring of new officers, and approving the hiring of support staff for prosecutors [Article 66(1) of the Law on the Prosecutor's Office, and so forth].

Vacant deputy public prosecutor positions can only be filled in accordance with the Plan popunjavanja slobodnih mjesta zamjenika državnih odvjetnika (Plan for filling vacant deputy public prosecutor positions), which is adopted by the Glavni državni odvjetnik (National Public Prosecutor), with the prior approval of the ministry responsible for justice, by the end of the calendar year [Article 48 of the Zakon o državnoodvjetničkom vijeću (Law on the Public Prosecutors' Council)], which makes the hiring of prosecutors subject to the political will and capabilities of the executive branch of government. Public prosecutors and their deputies (officers of the public prosecutor's office) are appointed and dismissed in the manner, under the conditions, and according to the procedure set forth in the Law on the Public Prosecutors' Council.

As regards dismissal from the position of public prosecutor, which a deputy public prosecutor may request on his or her own behalf, the Državnoodvjetničko vijeće (Public Prosecutors' Council) may remove a deputy against his or her will and for other statutory reasons (disciplinary sanction, criminal conviction, unsatisfactory performance, loss of competence, and so forth).

Officers of the public prosecutor's office are subject to disciplinary liability, that is to say, they are accountable to the Public Prosecutors' Council [Articles 85 to 99 of the Law on the Public Prosecutor's Council] for disciplinary offences [abuse of position, unjustified failure to perform or improper performance of prosecutorial duties, performing duties or work and activities that are incompatible with the position of prosecutor, performing any other activity without the approval of the Council, disrupting the work of the public prosecutor's office in a manner that significantly impacts its activities, violating official secrecy related to holding the position of prosecutor, behaviour or conduct

incompatible with the basic principles of the Etički kodeks državnih odvjetnika i zamjenika državnih odvjetnika (Code of ethics for public prosecutors and deputy public prosecutors) that is detrimental to the image of the public prosecutor's office or the position of prosecutor, failing to submit an asset declaration, providing false data in an asset declaration or submitting an incomplete asset declaration, violating personal data protection regulations], which constitutes a relationship to that body that is typical of an employment relationship.

An officer of the public prosecutor's office is not allowed to perform other activities without the approval of the Council, and that restriction by the employer of his or her freedom to perform other activities is even more stringent than in most other jobs. The performance and competence of an officer of the public prosecutor's office are also subject to assessment by the head of the public prosecutor's office [Articles 109 to 116 of the Law on the Public Prosecutor's Office]. It should be noted that the performance of other employees of the public prosecutor's office is assessed as well, and that unsatisfactory performance assessments of officers of the public prosecutor's office, like those of civil servants, may result in a disciplinary sanction or even in the termination of service or employment.

Pay slips are issued to officers of the public prosecutor's office in the same manner as to other civil servants and administrative employees, and the salaries of officers of the public prosecutor's office are calculated using the Registar zaposlenih u javnim službama (Registry of government employees, or COP) in the same manner as in the case of other civil servants and administrative employees. In addition, the income (salary) of officers of the public prosecutor's office is treated in the same manner as the income (salary) of other staff, namely as salaried income, which, for all employees of the public prosecutor's office, including officers, is taxed according to the same regulations as those pertaining to ordinary employees [Article 21 of the Zakon o porezu na dohodak (Law on Income Tax)], while mandatory health and pension insurance contributions are calculated and paid on salaried income under the same regulations, all in accordance with Article 10 of the Law on the Public Prosecutor's Office, which stipulates that the salary and allowances of public prosecutors and deputy public prosecutors are regulated by law. Therefore, remuneration is paid to officers of the public prosecutor's office in return for their professional activity, that is, work performed on a full-time basis, and remuneration for work performed is a fundamental feature of the employment relationship.

Although the law stipulates that officers of the public prosecutor's office are autonomous and independent in their work [Articles 5(2) and 57(4) of the Law on the Public Prosecutor's Office], the independence of an officer of the public prosecutor's office when working on a case and taking decisions may nevertheless be restricted in the following manner, as stipulated in the Law on the Public Prosecutor's Office: a deputy may receive orders from his or her superiors to carry out a specific action in a case or receive binding instructions concerning a decision to be issued in a case, or he or she may be removed from a case, and so

forth – those issues are regulated by Article 53 and Articles 84 to 86 of the Law on the Public Prosecutor's Office. Additionally, deputies in lower-level public prosecutor's offices are supervised by a higher-level office [Article 87 of the Law on the Public Prosecutor's Office], all of which is consistent with the hierarchical structure of the public prosecutor's office set forth in Article 13(2) of the Law on the Public Prosecutor's Office [municipal public prosecutors' offices are subordinate to county public prosecutors' offices, while the latter and special prosecutors' offices are subordinate to the National Public Prosecutor's Office of the Republic of Croatia]. The above indicates that officers of the public prosecutor's office are subordinate both to the head of the office and to a higher-level public prosecutor's office, and that subordination is characteristic of the employment relationship.

The principle of autonomy and independence of the actions of deputies was established to dispel any legitimate doubts on the part of citizens about the possibility of external influence on the decisions of the public prosecutor's office and about its neutrality with respect to conflicting interests, but that principle, as described here, does not prevent an officer of the public prosecutor's office from being considered a worker.

Furthermore, in accordance with Article 7 of the Law on the Public Prosecutor's Office, everyone has the right to submit to the competent prosecutor, verbally or in writing, requests and complaints concerning the operation of the relevant public prosecutor's office or the office directly subordinate to it, and to receive a response.

At the same time, as regards liability for the work done by officers of the public prosecutor's office, Article 57(4) of the Law on the Public Prosecutor's Office stipulates that a deputy public prosecutor is responsible for the work on a case that has been assigned to him or her, and Article 108 of that Law sets forth the rules related to the civil liability of deputies and the financial damage caused to the state (the employer) if an officer performs work in an improper or unlawful manner.

With regard to the organisation of work of each officer of the public prosecutor's office, in terms of the employer-employee relationship, an officer's tasks and duties are established annually in a work schedule, in which the head of the public prosecutor's office determines the department in which the deputy public prosecutor is to work, the types of cases to be handled by him or her, and the workload; the head of the office may also assign other tasks and responsibilities to the deputy (for instance, additional workload as a department head, spokesperson tasks, mentoring of trainees or assistants, on-call duty, and so forth). With regard to on-call duty, the prosecutor who is head of the public prosecutor's office adopts a monthly schedule that specifies on which days a deputy will perform tasks outside of his or her working time (on-call duty), which means that deputies must be available on the day of their on-call duty and perform tasks outside of their working time if necessary. In addition to the above, deputies are assigned hearings and meetings (including in cases that are assigned to other deputies) on a weekly

basis, and the schedule is adopted by the head of the investigation department. Furthermore, under Article 54(3) of the Law on the Public Prosecutor's Office, the prosecutor who is head of the public prosecutor's office may additionally assign a deputy to perform administrative work within the prosecutor's office. If a deputy refuses to carry out work assigned in that manner in accordance with approved schedules and orders, he or she will be subject to disciplinary liability for the improper performance of duties.

In connection with the above, the applicant believes that officers of the public prosecutor's office hold their positions within the framework of an employer-employee relationship in the organisational sense, which does not affect their independence when working on cases and making decisions; that independence, however, may be restricted in certain cases specified in law due to the hierarchical structure of the public prosecutor's office.

The applicant believes that officers of the public prosecutor's office and their duties or activities are part of the public sector and therefore fall within the scope of Directive 89/391/EEC and Directive 2003/88/EC, which were adopted to protect the health and safety of workers on account of the absolute necessity to guarantee effective protection of the community at large. Moreover, the applicant believes that the definition of the term 'worker' encompasses all workers without drawing a distinction according to whether their employer is in the public or private sector (judgment of 19 March 2020, *Sánchez Ruiz and Others*, C-103/18 and C-429/18, EU:C:2020:219, paragraph 108). In the Court's judgment of 16 July 2020, *Governo della Repubblica italiana (Status of Italian Magistrates)*, C-658/18, EU:C:2020:572, paragraph 96, it was found that the *sui generis* legal nature of an employment relationship in national law can in no way whatsoever affect whether or not the person is a 'worker' for the purposes of EU law (judgment of 26 March 2015, *Fenoli*, C-316/13, EU:C:2015:200, paragraph 31).

## II. Applicant's claim

The applicant brought an action before the Municipal Court, Pula for payment of remuneration for on-call hours worked, claiming that the defendant, which takes the position that those hours do not constitute working time, refuses – in violation of national legislation and the Union acquis – to pay remuneration to the applicant for work thus performed. More specifically, under the Regulations concerning remuneration for on-call duty performed by judges, public prosecutors and deputy public prosecutors, the applicant is remunerated for on-call duty at a rate lower than that which he receives during normal working hours.

The applicant bases his claim on the Court's positions expressed in *Simap* (C-303/98), *Jaeger* (C-151/02), *UX v Governo della Repubblica Italiana* (C-658/18), *UO v Készenléti Rendőrség* (C-211/19), C-658/18, *Dellas* (C-14/04), *Grigore* (C-258/10), *Vorel* (C-437/05), *XR v Dopravni podnik hl.m. Prahy, akciová společnost* (C-107/19), C-241/99, C-437/05, and *Matzak* (C-518/15).

### III. Defendant's defence

By challenging the legitimacy of the action brought, the defendant does not recognise the legal basis for the applicant's claim and requests that it be dismissed, arguing that the provisions of the directive in question do not apply to the applicant as a deputy public prosecutor (an officer of the judiciary), that is to say, the applicant cannot be considered a worker.

The defendant believes that the substantive rights of deputy public prosecutors in connection with their on-call duty during the period covered by the action (2015–2019) were regulated by the Regulations concerning remuneration for on-call duty performed by judges, public prosecutors and deputy public prosecutors (Narodne novine No 35/2015), which were adopted pursuant to Article 135(2) of the Zakon o sudovima (Law on Courts) (Narodne novine Nos 28/13, 33/15, 82/15, 82/16, 67/18 and 126/19), and Article 46(2) of the Law on the Public Prosecutor's Office, under which the Minister of Justice is authorised to determine the conditions for payment and amount of remuneration due for performing inspections and other tasks within the framework of preliminary proceedings. The abovementioned secondary legislation determines the amount of remuneration due for on-call duty, which includes time outside of the normal working hours of judicial authorities, as well as rest periods, non-working days and public holidays, in proportion to the number of hours worked. Article 2 of the abovementioned Regulations includes a definition of active and passive on-call duty. Active on-call duty is considered to be duty in court and at the prosecutor's office and the performance of urgent tasks by a judge, public prosecutor or deputy public prosecutor outside of court and outside of the public prosecutor's office, while passive on-call duty means the mandatory presence of a judge in the town or city where the court is located or of a public prosecutor or deputy public prosecutor in the town or city where the public prosecutor's office is located. Article 3 of the Regulations specifies the amount of remuneration due for on-call duty; the provisions of the Regulations are fully consistent with the laws of the Republic of Croatia.

### IV. Provisions of national law relied on

1. The Zakon o radu (Labour Law) (Narodne novine Nos 93/2014, 127/2017, 98/2019, 151/2022 and 64/2023)

Article 60(1) of the Labour Law stipulates that working time is the time during which a worker is required to perform work or during which he or she is ready (available) to perform work as instructed by the employer, at the place where his or her work is performed or at another place determined by the employer.

Article 4 of the Labour Law stipulates that a worker (wage earner, employee, appointee, administrative employee, civil servant, and so forth) within the meaning of the Law is a natural person who performs specific work for the employer within the framework of an employment relationship; the same article

stipulates that an employer within the meaning of the Law is a natural or legal person who employs the worker and for whom the worker performs specific work within the framework of an employment relationship.

Article 5(1) stipulates that the employer is obliged to keep a record of the workers it employs.

**2.** The *Zakon o Registru zaposlenih u javnom sektoru* (Law on the Register of Public Sector Employees) (Narodne novine No 34/11, in the wording in effect until 10 June 2023).

Article 3 stipulates that those employed in the public administration include civil servants and government employees, appointees and administrative employees, state officials appointed to a position in a state or public administration body, and officers of the judiciary.

**3.** The *Zakon o Registru zaposlenih i centraliziranom obračunu plaća u državnoj službi i javnim službama* (Law on the Register of Employees and Centralised Calculation of Salaries in the State and Public Administration) (Narodne novine No 59/23, in the wording in effect from 10 June 2023).

Article 3 stipulates that those employed in the civil service and public administration include civil servants and government employees, appointees and public administration employees, state officials, officers of the judiciary, as well as persons in an employment relationship with state bodies under separate regulations who do not have the status of civil servants.

**4.** The *Zakon o kaznenom postupku* (Code of Criminal Procedure) (Narodne novine Nos 152/08, 76/09, 80/11, 121/11, 91/12, 143/12, 56/13, 145/13, 152/14, 70/17, 126/19, 80/22, and 36/24) specifies the applicant's duties as a deputy public prosecutor in criminal proceedings; it also specifies short deadlines for taking certain actions in those proceedings, from which it follows that the applicant is obliged to perform those actions while on-call without being able to wait for normal working hours to begin (in particular, the provisions of Article 40, Article 108(5), Article 108b, Article 109(4), Article 112(3), Article 207(2), Article 207(5) and the chapter entitled 'Urgent Taking of Evidence', Article 212, Article 214, Article 220, Article 242, Article 245, Article 246, Article 249, and Article 339a).

**5.** The *Zakon o sudovima* (Law on Courts) (Narodne novine Nos 28/13, 33/15, 82/15, 82/16, 67/18, 126/19, 130/20, 21/22, 60/22, 16/23, 155/23 and 36/24), in Article 35(2), stipulates that the minister responsible for justice determines in the regulations the payment conditions and amount of remuneration for judges, civil servants and administrative employees performing inspections as well as remuneration for performing tasks within the framework of preliminary proceedings and remuneration for on-call duty.

6. The *Zakon o državnom odvjetništvu* (Law on the Public Prosecutor's Office) (Narodne novine Nos 76/09, 153/09, 116/10, 145/10, 57/11, 130/11, 72/13, 148/13, 33/15, 82/15 and 67/18), in Article 46(2), authorises the Minister of Justice to determine the payment conditions and amount of remuneration for inspections and performing tasks within the framework of preliminary proceedings. The same provision is contained in Article 103(4) of the current Law on the Public Prosecutor's Office (Narodne novine Nos 67/18 and 21/22).

7. The *Poslovnik državnog odvjetništva* (Regulations of the Public Prosecutor's Office) (Narodne novine Nos 5/14, 123/15, and 67/18), in particular Article 52.

Article 52 stipulates that outside of normal working hours, on weekly rest days, non-working days and holidays, only urgent tasks, as a rule, are to be performed. The performance of tasks within the framework of preliminary proceedings (on-call duty) at municipal and county public prosecutors' offices where such tasks are performed is ensured in one of the following ways: continuous presence [...] at the public prosecutor's office until 8.00 p.m. is mandatory, and after 8.00 p.m. continuous presence in the town or city where the public prosecutor's office is located is mandatory until the start of normal working hours on the following day. The performance of tasks within the framework of preliminary proceedings at the public prosecutor's office on weekly rest days, non-working days and holidays is ensured in those municipal and county public prosecutors' offices where on-call duty is performed continuously. When tasks within the framework of preliminary proceedings are not performed at the county public prosecutor's office, those tasks are performed by officers and other employees who, in accordance with their schedules, must remain in the town or city where the public prosecutor's office is located.

The public prosecutor's office informs the relevant court and police headquarters about the on-call duty schedule of such officers and employees and where they can be found outside of normal working hours.

8. The *Poslovnik državnog odvjetništva* (Regulations of the Public Prosecutor's Office) (Narodne novine No 128/19), in particular Articles 64 to 66.

Article 64 stipulates that after the normal working hours of the public prosecutor's office, on weekly rest days, non-working days and holidays, on-call duty is organised in order for urgent tasks to be performed. At municipal and county public prosecutors' offices and at special prosecutors' offices, on working days from the end of working hours until the beginning of working hours on the next working day, on-call duty may be organised on a continuous basis at the public prosecutor's office or on a purely stand-by basis, and on weekly rest days, non-working days and holidays the organisation of on-call duty is decided by the competent prosecutor. The performance of tasks during on-call duty is recorded in a register in electronic form, with all relevant events entered therein; the prosecutor may also decide to maintain the register in paper form as well.



Article 65 (Duty schedule) stipulates that the prosecutor establishes a duty schedule for officers and employees for a period of at least one month. The duty schedule designates the officers and employees who are on-call on specific days, the location where they perform their on-call duty and their contact details. As a rule, public prosecutor's offices provide on-call services in accordance with their substantive and local jurisdiction.

Article 66 stipulates that municipal and county public prosecutors inform the relevant courts, relevant police headquarters and a higher-level prosecutor's office of their on-call duty schedules.

**9.** The *Pravilnik o naknadama za dežurstva sudaca, državnih odvjetnika i zamjenika državnih odvjetnika* (Regulations concerning remuneration for on-call duty performed by judges, public prosecutors and deputy public prosecutors) (Narodne novine No 35/2015) stipulates the amount of remuneration due for the active and passive on-call duty of judges, public prosecutors and deputy public prosecutors depending on the conditions and duration of that on-call duty.

**10.** The *Pravilnik o naknadama za dežurstva sudaca, državnih odvjetnika i zamjenika državnih odvjetnika* (Regulations concerning remuneration for the on-call duty of judges, public prosecutors and deputy public prosecutors) (Narodne novine Nos 64/19 and 106/23) (currently in effect) stipulates the amount of remuneration due for the active and passive on-call duty of judges, public prosecutors and deputy public prosecutors depending on the conditions and duration of that on-call duty.

**11.** The *Opća uputa o radu službe dežurstva* (General recommendations concerning on-call duty) No 0–8/11–1 of 13 October 2011, adopted by the Kolegij Državnog odvjetništva Republike Hrvatske (College of the National Public Prosecutor's Office of the Republic of Croatia), as amended by Odluka (Resolution) No 0–8/11 of 24 August 2011 and No 0–8/11–2 of 12 October 2012, specifically the provisions of item A. 2(b) of Resolution No 0–8/11 of 24 August 2011, stipulate that [prosecutors] of the municipal public prosecutors' offices in Osijek, Rijeka, Split, Bjelovar, Gospić, Pula, Pazin, Koprivnica, Vinkovci and Zlatar must be on constant stand-by at the house or apartment in which they live during their on-call duty.

**12.** The *Protokol o zajedničkom radu policije i državnog odvjetništva tijekom prethodnog i kaznenog postupka* (Protocol on cooperation between the police and the public prosecutor's office during preliminary and main proceedings) of 1 September 2011 defines the cooperation between the police and public prosecutors, specifying the situations in which police officers are required to immediately inform or request action from the prosecutor on-call (Article 10, Article 12, Article 17, Article 18, Article 20, Article 35, Article 45 and others).

## **V. Provisions of EU law, the interpretation of which is sought in the request for a preliminary ruling in the present case**

1. 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).

### Article 2 (Scope)

1. This Directive shall apply to all sectors of activity, both public and private (industrial, agricultural, commercial, administrative, service, educational, cultural, leisure, etc.).

2. This Directive 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.

In that event, the safety and health of workers must be ensured as far as possible in the light of the objectives of this Directive.

### Article 3 (Definitions)

For the purposes of this Directive, the following terms shall have the following meanings:

(a) worker: any person employed by an employer, including trainees and apprentices but excluding domestic servants;

(b) employer: any natural or legal person who has an employment relationship with the worker and has responsibility for the undertaking and/or establishment;

2. The provisions 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 (which are still fully applicable to the areas regulated by Directive 2003/88/EC of 4 November 2003 concerning certain aspects of the organisation of working time)

### Article 1

#### Purpose and scope

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 without prejudice to Article 2(8) of this Directive.

4. The provisions of Directive 89/391/EEC are fully applicable to the matters referred to in paragraph 2, without prejudice to more stringent and/or specific provisions contained in this Directive.

#### Article 2 (Definitions)

For the purpose of this Directive, the following definitions shall apply:

1. ‘working time’ means any period during which the worker is working, at the employer’s disposal and carrying out his activity or duties, in accordance with national laws and/or practice;

2. ‘rest period’ means any period which is not working time.

3. Article 31 of the Charter, which establishes the right to fair and just working conditions, and the related right to liberty provided for in Article 6 of the Charter, and the right to respect for private and family life provided for in Article 7 of the Charter. Additionally, the right to equality before the law provided for in Article 20 of the Charter.

4. Article 2 of the revised European Social Charter of 3 May 1996 establishing the right to just conditions of work, Article 3 establishing the right to safe and healthy working conditions, Article 4 establishing the right to a fair remuneration and Article 26 establishing the right to dignity at work.

5. The Court’s positions expressed in *Simap* (C-303/98), *Jaeger* (C-151/02), *Matzak* (C-518/15), *UX v Governo della Repubblica Italiana* (C-658/18), *UO v Készenléti Rendőrség* (C-211/19), *XR v Dopravni podnik hl.m. Prahy, akciová společnost* (C-107/19), *Dellas* (C-14/04), *Grigore* (C-258/10), *Vorel* (C-437/05), C-241/99, and C-437/05.

#### **VI. Reasons for seeking an interpretation of the provisions of EU law**

The applicant believes that the Court’s case-law supports his claim that the on-call time of deputy public prosecutors/public prosecutors must be considered working time as established in national law.

In light of the above, the referring court submits to the Court the questions set out on the [second and third pages] of this request for a preliminary ruling.

Enclosed are copies of case file [...].

Pula, 3 May 2024

[...]