

FINLAND

Supreme Court 2018:10  
12.2.2018 (S2013/737)  
ECLI:FI:KKO:2018:10

*Application of the Finnish Working Time Act to the work of substitute foster parents at a children's village — Working Time Directive 2003/88/EC — time limits for taking legal action*

HEADNOTES

*Facts*

Plaintiffs A, B, C and D had worked as substitute foster parents (so-called children's village parents) for an employer which organized care and welfare in a family-like environment, while the foster parents were on annual leave or otherwise on their days off. The working hours of the substitutes had been defined in the employment contracts in full days, and their work as substitutes had generally continued for several days at a time, during periods set out in the work schedule confirmed by the employer. During their period of work the substitutes had lived with the children in homes in the children's village, and had decided independently on the practical arrangement of their working duties.

The Supreme Court had to decide the question of whether the employer had to pay the plaintiffs for their overtime work as well as compensation for evening and night work, as well as Saturday and Sunday work that they had claimed. For this reason, the Supreme Court had to decide the question of whether the employment relationship in which they served as substitute foster parents in the children's village fell under the scope of the Working Time Act.

According to section 1 of the Working Time Act, the Act applies to work performed under an employment contract as referred to in section 1(1) of the Employment Contract Act (55/2001), unless otherwise

provided. Section 2(1) of the Working Time Act provides for derogations to the scope of the Working Time Act. According to paragraph 3 of this provision, with the exception of section 15(3) of the Working Time Act, the Act does not apply to work performed by an employee at home or otherwise in conditions where it cannot be considered a duty of the employer to monitor arrangement of the time spent on said work.

The Working Time Act implements the Working Time Directive 2003/88/EC. According to the Working Time Act, the right to additional payments that relate to working hours depends on whether the Working Time Act applies to the employment relationship in question. Although the Working Time Directive does not apply to wages, interpretation of the provisions on the scope of its application are for this reason relevant. Article 17 of the Working Time Directive provides for certain situations where derogations may be made from the provisions on working time. In accordance with paragraph 1, a derogation may be made for workers whose total working time is not measured or predetermined or can be determined by the workers themselves on the basis of the specific characteristics of the activity concerned. The examples given of such employees are managing executives or other persons with autonomous decision-taking powers, family workers, or workers officiating in religious ceremonies in churches and religious communities.

### *Decision*

The Supreme Court requested a preliminary ruling from the European Court of Justice (ECJ) on the interpretation of Article 17(1) of the Working Time Directive. In *Hälvä and others*, C-175/16, EU:C:2017:617, the ECJ held, on the grounds noted in the judgement, that Article 17(1) was to be interpreted so that it would not apply to paid employment of the type at issue in the case, which consists in caring for children in a family-like environment, relieving the person principally responsible for that task, where it is not established that the working time as a whole is not measured or predetermined or it may be determined by the workers themselves, which the referring court had to ascertain.

### *Law Applied*

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