

THE DEFINITION OF WORKING TIME IN CERTAIN EU MEMBER STATES' LABOUR LAW

WITH SPECIAL REGARDS TO THE CONFORMITY OF THIS DEFINITION WITH THE PROVISIONS OF THE DIRECTIVE 2003/88/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL CONCERNING CERTAIN ASPECTS OF THE ORGANIZATION OF WORKING TIME

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Abstract: One of the most important issues of my PhD dissertation, which is being prepared, is whether what can be considered as working time. I have already proved in one of my previous articles which is expected to be published soon that Act I of 2012 on the Labour Code, i.e. essentially the definition of working time in the Hungarian law is not in conformity with the definition of working time regulated in Article 2 of the EU directive mentioned in the title of the presentation, which definition has been interpreted several times by the Court of Justice of the European Union. In my presentation and based on that in my dissertation to be prepared I would like to investigate whether the working time definitions of other EU Member States - contrary to the Hungarian law - are in conformity with the working time definition of the directive or not. In my presentation and in my dissertation I would like to investigate the question as well that those periods I referred to in my previous article, with special regard to the travelling time, movements within the factory, and stand by, the judgement of which in the EU law are uncertain, are considered as working time or not in certain EU Member States.

Keywords: directive, EU law, stand-by, travelling time, working time

1. Introduction

One of the most important thesis in my PhD essay on the making is that the main service of the employee in an employment relationship is stand-by in order to work during working time, as de facto Karl Marx has already stated it in his: *Lohnarbeit und Kapital*¹ already in 1849, and not merely the performance of work, as some labour laws, also the Hungarian Labor Code (Act I of 2012) suggest. Since, in order to examine this problem, the mere definitions on the service of the employee in the individual labour codes will not help (in fact: they are the problem...), we should put a twist in our examination, and instead of that, the notion of working time should be examined. I believe that with examining the notion of working time we will come closer to the very heart of the notion of employment relationship, as well, for one simple reason.

It is obvious that the employee has to work only during working time. There is no working

obligation of the employee during periods which do not qualify as working time. Nevertheless, the obligation of working will not be a distinctive element for the

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¹ MARX, KARL: *Lohnarbeit und Kapital* 1849, 2016, Gesammelte Werke, Köln, p. 178.



employment relationship from other work related legal relationships. The attorney-at-law also has to work on behalf of his client, just like a hairdresser. Therefore I believe that those who see the working obligation as a main definitiary element in the employment obligation are on a wrong path – I strongly believe that the real answer to that question lies in the definition of working time. To simplify it a bit, I believe that the main service of the employee is not working, but being available for work.

Now, after the assumptions are set, another goal can be also set as the aim of present essay.

It is a well-known fact among labour lawyers that the Hungarian working time regulation is not in line with Directive 2003/88/EC² of the European Parliament and of the Council concerning certain aspects of the organisation of working time from many aspects, including failure on the definition of working time, on the rest time provisions, on the length of working time, on the calculation of annual leave during reference periods, and also on the notion of reference periods, too.

However, I, as a Hungarian labour lawyer, was curious about the fact whether such “inconsistencies” can be also discovered in the labour laws of the countries which share similar historic and economic situation with Hungary. When writing this essay, I intentionally wanted to examine these countries instead of western European ones, whose traditions and experiences are different from ours, are in a different economic situation and whose labour law are also more well-known as that of our neighbours.

Before I go into details of examining the notion of working time in said neighbouring EU countries, of course first we should examine the base of all: the notion of working time in the EU law.

According to the Directive, "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.³

As we see, this definition can be interpreted in at least two ways, the first one will be that working time will be the pure period of working, however, the European Court of Justice has accepted the other possible definition, namely that any periods, during which the employee is at the disposal of the employer shall be qualified as working time.

In the case *Simap*,⁴ the court held that what most national labour laws on call, so a period of availability to be spent at the workplace without a working obligation but with an obligation to be ready to work is in its entirety working time.

According to *Dellas*⁵ case: Member states – despite of the definition above – may not defineworking time narrowly, so de facto, working time shall have the same definition all over the European Union.

According to the case *Tyco*⁶: a certain type of travelling time is working time, namely the one where the employee visiting several clients leaves his/her home in order

² Hereinafter referred to as Directive.

³ Directive, Article 2, Section 1.

⁴ Case C-303/98. Sindicato de Médicos de Asistencia Pública (*Simap*) v Conselleria de Sanidad y Consumo de la Generalidad Valenciana.

⁵ Case C-14/04. Abdelkader *Dellas* and Others v Premier ministre and Ministre des Affaires sociales, du Travail et de la Solidarité.

to visit the client. The interpretation of this court decision is not clear, there are debates going on all over Europe how this decision is to be interpreted. Let me introduce you a few examples: It is not clear from the present legal situation, created by the case *Tyco*, exactly what travelling times qualify as working time? The travel between the home and the workplace? What about the travel if the means of travelling is supported by the employer? What if the employer orders the worker to be at a designated place in order to wait for the bus to pick him up to take him to work? How does the time qualify when the employer orders the worker to wait at least a certain period of time at that designated place?

What if the employer fails to provide means of travelling (bus) to the employees who performed overtime and they cannot go home from the workplace? How does moving inside the premises of the employer qualify, for example if the official workplace is to be reached only by a 20-minute walk from the main entrance of the employer?

And the most interesting question: Also with regards to *Matzak* case,⁷ how does stand-by qualify?

There is also one major issue with respect to the directive: Does the 48 hour limit of weekly working time to be counted per worker or per employment? – In my opinion, it is out of question that the former interpretation is correct, however, in quite a number of countries that limit is per employment.

In my presentation, I have examined the law of Hungary and certain further central European countries with respect to the above issues.

2. Hungary

In Hungary, the working time is defined as the period prescribed to work⁸ – this is of course not in line with the definition of the directive, it is much narrower than that, even regarding the above mention ECJ court practice. Stand by – unless the worker works during it – does not qualify as working time. The 48 hours limit is per employment.

3. Slovenia

In the Slovenian labour law, working time is defined as comprising of three elements: effective working hours, breaks (this is in favour of employees) and justified absences.⁹ There is, however, no provision in the Slovenian Labour Code on how to count such justified absences into the working time, which may be problematic with respect to Article 16 of the Directive.

⁶ Case C-266/14. *Federación de Servicios Privados del sindicato Comisiones obreras (CC.OO.) v Tyco Integrated Security SL, Tyco Integrated Fire & Security Corporation Servicios SA.*

⁷ Case C-518/15. *Ville de Nivelles v Rudy Matzak.*

⁸ Labour Code, Section 86, Subsection 1.

⁹ Employment Relationships Act, Article 141, Section 1.

Effective working hours shall be the hours during which a worker carries out his work, which means that he is at the employer's disposal and fulfils his working obligations arising from the employment contract. The worker must carry out work with due diligence at the workplace and with regard to the type of work for which the employment contract has been concluded, at the location and during the working time laid down for carrying out the work, taking into consideration the employer's organisation of work and business operations. As a consequence of the above travelling time is not working time under Slovenian labour law. However, the 48 hour-limit has a per worker effect. There is no mention of on-call time in Slovenian labour law.

4. Estonia

In the Estonian Labour code¹⁰ there is no definition of working time. The 48-hour limit is a per worker one. Travelling time not part of working time. Breaks are usually not part of working time. There is no clear difference between on call and stand by.

5. Slovakia

The Slovakian Labour Code' definition on Working time¹¹ is a bit "tricky", but can be interpreted as in line with the directive. According to the Slovakian Labour Code Working time is the time segment when an employee shall be at the disposal of the employer, performs work and discharges obligations pursuant to the employment contract. A rest period shall be any period which is not working time. In Slovakia, breaks not part of working time. Stand by and on call regulated similar to Hungary. There is no mention of per person limit for the 48-hour rule, so with this respect Slovakia is probably in breach of the EU law, just like Hungary.

6. Czechia

In Czechia working time means a period of time for which an employee is obliged to perform work for his employer and a period of time for which an employee is ready to perform work at the workplace according to his employer's instructions.¹² Rest period is any period not qualified as working time. As a consequence travelling time not working time, stand by is not working time. Breaks are not part of working time.

7. Poland

In Poland, working time is the time when the employee remains at the disposal of the employer in a work establishment, or in any other place designated as the place of

¹⁰ Employment Contracts Act, 2009.

¹¹ Labour Code of the Slovak Republic, Section 85, Subsection 1.

¹² Labour Code, No. 262/2006 Col, Section 78, Subsection 1a.

performing work.¹³ This is in line with the EU definition, however, not in connection with travelling time. On-call is working time. Stand-by is not mentioned in Polish law, also not the per person limit not mentioned.

8. Summary

As you see, compliance problems can be discovered in all countries examined – however, in some countries like Slovenia this seem to be less of a problem than in others, for example Hungary.

List of References

- [1] Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time.
- [2] Act I of 2012 on the Labor Code.
- [3] Employment Relationships Act Ur. l. RS, No. 42/2002, Ur. l. RS, No. 103/2007.
- [4] Employment Contracts Act, 2009.
- [5] Labour Code of the Slovak Republic.
- [6] Labour Code, No. 262/2006 Col.
- [7] Act 23 of 1997 on The Labour Code.
- [8] Case C-303/98. Sindicato de Médicos de Asistencia Pública (Simap) v Conselleria de Sanidad y Consumo de la Generalidad Valenciana.
- [9] Case C-14/04. Abdelkader Deltas and Others v Premier ministre and Ministre des Affaires sociales, du Travail et de la Solidarité.
- [10] Case C-266/14. Federación de Servicios Privados del sindicato Comisiones obreras (CC.OO.) v Tyco Integrated Security SL, Tyco Integrated Fire & Security Corporation Servicios SA.
- [11] Case C-518/15. Ville de Nivelles v Rudy Matzak.
- [12] MARX, KARL: *Lohnarbeit und Kapital 1849*, 2016, Gesammelte Werke, Köln.

¹³ Act 23 of 1997 on The Labour Code, Article 128, Section 1.