

**Case C-477/21**

**Request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice**

**Date lodged:**

3 August 2021

**Referring court:**

Miskolci Törvényszék (Miskolc High Court, Hungary)

**Date of the decision to refer:**

28 June 2021

**Applicant:**

IH

**Defendant:**

MÁV-START Vasúti Személyszállító Zrt.

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**Subject matter of the main proceedings**

Failure by the employer to grant a period of daily rest prior to the weekly rest period or annual leave.

**Subject matter and legal basis of the request for a preliminary ruling**

Interpretation of Articles 3 and 5 of Directive 2003/88/EC read in conjunction with Article 31(2) of the Charter of Fundamental Rights of the European Union; Article 267 TFEU.

**Questions referred**

- 1) Must Article 5 of Directive [2003/88], read in conjunction with Article 31(2) of the Charter [of Fundamental Rights of the European Union], be interpreted as meaning that the daily rest period provided for in Article 3 [of that directive] forms part of the weekly rest period?

- 2) Otherwise, must Article 5 of Directive [2003/88], read in conjunction with Article 31(2) of the Charter, be interpreted as meaning that, in accordance with the objective pursued by the directive, the aforementioned article lays down only the minimum duration of the weekly rest period, which is to say that the weekly rest period must be at least 35 consecutive hours' long, provided that there are no objective, technical or work organisation conditions which preclude this?
- 3) Must Article 5 of Directive [2003/88], read in conjunction with Article 31(2) of the Charter, be interpreted as meaning that, where the law of the Member State and the applicable collective agreement provide for the grant of a continuous weekly rest period of at least 42 hours, it is compulsory, following work which has been performed on the working day prior to the weekly rest period, also to grant the twelve-hour daily rest period guaranteed along with it under the relevant legislation of that Member State and the applicable collective agreement, provided that there are no objective, technical or work organisation conditions which preclude this?
- 4) Must Article 3 of Directive [2003/88], read in conjunction with Article 31(2) of the Charter, be interpreted as meaning that a worker is entitled to a minimum rest period which must be granted within the course of 24 hours even if, for any reason, he or she does not have to work in the following 24 hours?
- 5) If Question 4 is answered in the affirmative, must Articles 3 and 5 of Directive [2003/88], read in conjunction with Article 31(2) of the Charter, be interpreted as meaning that the daily rest period [must] be granted prior to the weekly rest period?

### **Provisions of European Union law relied on**

Article 31(2) of the Charter of Fundamental Rights

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 ('the Working Time Directive'), in particular Article 5 and Articles 1, 3 and 16 to 18

Report from the Commission on the implementation by Member States of Directive 2003/88/EC concerning certain aspects of the organisation of working time [COM (2017) 254 final], the fourth paragraph of Section II and the fourth paragraph of point D of Section III

Interpretative Communication on Directive 2003/88/EC of the European Parliament and of the Council concerning certain aspects of the organisation of working time (2017/C-165/01), Chapter V, parts A and C

**Provisions of national law relied on*****Magyarország Alaptörvénye (Basic Law of Hungary) of 25 April 2011 ('The Basic Law')***

Pursuant to Article XVII(4) of the Basic Law, every worker is entitled to daily and weekly rest periods and to a period of paid annual leave.

***A munka törvénykönyvéről szóló 2012. évi I. törvény (Law I of 2012 approving the Labour Code; 'the Labour Code')***

In accordance with Article 87(1) of the Labour Code, the start and end of the working day may also fall on different calendar days.

Under Article 104(1) of the Labour Code, there must be a continuous daily rest period of at least 11 hours between the end of a day's work and the start of the following working day. According to Article 104(4), the combined duration of two consecutive daily rest periods must be at least 22 hours.

Article 105 of the Labour Code provides that two rest days per week, which may not always be on the same day, must be scheduled. In the case of variable working hours, at least one weekly rest day per month must be scheduled.

Under Article 106 of the Labour Code, an uninterrupted weekly rest period of at least 48 hours per week may be granted in lieu of weekly rest days. Workers on variable working hours may also be granted an uninterrupted weekly rest period of at least 40 hours per week. Workers must be granted a weekly rest period of at least 48 hours per week, on average, on the monthly or annual roster<sup>1</sup> of working time or over the reference period.

In accordance with Article 124(1) and (2) of the Labour Code, in the case of variable working hours, leave may be taken on any day of the week, except for on rostered weekly rest days and on public holidays.

***A vasúti közlekedésről szóló 2005. évi CLXXXIII. törvény (Law CLXXXIII of 2005 on rail transport)***

In accordance with Article 68/B(1) of this Law, in the case of rail workers, there must be a daily home rest allocation of at least twelve uninterrupted hours per 24-hour period. According to paragraph 2 of that article, although the duration of that

<sup>1</sup> [Translator's Note: According to the definition of 'munkaidőkeret' given in the 2015 railway collective agreement, this is the number of hours that a worker has to work in a calendar month or year, as the case may be. However, employers have greater freedom to determine the number of hours per day and other working conditions, provided that they comply principally with the obligation not to exceed the maximum number of working hours during the chosen period and with the rules on minimum rest periods.]

rest period may be reduced once to no fewer than nine uninterrupted hours per seven-day period, the following daily rest period must in that event be increased proportionately.

Collective agreement of MÁV-START Vasúti Személyszállító Zártkörűen Működő Részvénytársaság ('the collective agreement')

According to Article 46, point 1, of the collective agreement, locomotive drivers are entitled to a daily rest period of 12 hours which runs from the time when they arrive at their place of residence to when they leave that place for work.

Under Article 47 of the collective agreement, drivers are also entitled to a weekly rest period such that they have at least 48 hours' uninterrupted rest between two shifts. Instead of rest days, drivers may be granted an uninterrupted rest period of at least 48 hours per week. In that event, workers are entitled to a weekly rest period of at least 48 hours, on average, on the monthly or annual roster of working time.

Pursuant to Article 51 of the collective agreement, drivers must be granted leave on rostered working days, so that leave granted is calculated and recorded as the number of hours drivers are not rostered to work. In addition, leave days granted to a worker must be scheduled and calculated on the basis of full-time working hours.

***Decision No 12/2020 of the Alkotmánybíróság (Constitutional Court, Hungary) of 22 June 2020***

The Alkotmánybíróság (Constitutional Court) held that it follows from the Basic Law that workers are entitled to a daily rest period and a weekly rest day on independent legal grounds because those two rest allocations serve different purposes. In that regard, the interpretation adopted by the Kúria (Supreme Court, Hungary) to the effect that the daily rest period and the weekly rest day may be granted simultaneously is not in line with Article XVII(4) of the Basic Law.

Consequently, the daily rest period and the weekly rest day may not be granted simultaneously.

**Brief presentation of the facts and the main proceedings**

- 1 The applicant is employed by the defendant as a locomotive driver. His work does not require him to take part in cross-border rail transport and he is not considered to be a mobile worker performing cross-border interoperability services in the railway sector.
- 2 The applicant's employment is governed by the collective agreement concluded between the defendant and the trade unions. The defendant employs the applicant on the basis of a monthly working time roster and sets for him, as for all train

drivers, a weekly rest allocation based on a weekly reference period rather than on specific weekly rest days.

- 3 The employer granted the applicant a *daily rest period* between shifts of 12 hours, which he was allowed to spend at home and in connection with which the employer made an allowance for the time needed to travel to and from work (thirty minutes each way, known as *standard travel time*).
- 4 The worker was entitled to a *weekly rest period* of at least 48 hours. If the defendant could not grant a continuous weekly rest period of 48 hours in a given week, it would offer the applicant an uninterrupted rest period of at least 42 hours, so as to ensure that he benefited from a weekly rest period of at least 48 hours, on average, on the working time roster. The employer did not provide either a daily rest allocation between two shifts or standard travel time in connection with the weekly rest period. Instead, it provided a continuous weekly rest period of at least 48 hours.
- 5 The applicant could not claim a daily rest period or standard travel time either before or after leave.
- 6 Consequently, the employer did not grant the applicant a daily rest period when it had granted him a weekly rest allocation or leave (which is to say that it did not do so either at the beginning or at the end of such periods).

#### **Essential arguments of the parties in the main proceedings**

- 7 According to the applicant, the daily rest period and the weekly rest period, or the daily rest period and leave, must be granted consecutively and independently of each other. It is unlawful to grant them simultaneously or to merge them. The employer should have granted him daily rest periods before weekly rest periods and leave.
- 8 According to the defendant, neither the decision of the Alkotmánybíróság (Constitutional Court) nor the relevant Hungarian legislation support the inference that daily rest periods and weekly rest periods, or daily rest periods and leave, must be granted consecutively.
- 9 In the view of the defendant, the daily rest period must be granted between every two successive shifts within a 24-hour period. For every seven days, a worker is entitled to a weekly rest period in lieu of a daily rest period, the former being longer than the latter. Leave may also be granted in lieu of a daily rest period.

#### **Brief presentation of the grounds of the request for a preliminary ruling**

- 10 The decision of the Alkotmánybíróság (Constitutional Court) on which the parties in the present proceedings have relied related to health professionals subject to

significantly different rules. That court also examined weekly rest days, whereas this case is concerned with the weekly rest period. Consequently, the aforementioned decision of the Alkotmánybíróság (Constitutional Court) is not applicable in the present case.

- 11 Under the relevant Hungarian legislation, the weekly rest period must be 48 hours' (or at least 42 hours') long and the concept of the weekly rest period provided for in the Labour Code and in the collective agreement makes no reference to the daily rest period or to the duration thereof. What is more, the collective agreement departs in a manner favourable to workers from the rules on daily rest periods and weekly rest periods that are laid down both in the Working Time Directive and in the Labour Code.
- 12 The referring court considers that the weekly rest period referred to in Article 5 of the Working Time Directive must already encompass the daily rest period. According to the wording of Article 5 of that directive, the minimum uninterrupted rest period of 24 hours and the 11 hours' daily rest laid down in Article 3 thereof together form the weekly rest period. Consequently, the weekly rest period must be at least 35 hours.
- 13 Nonetheless, the Hungarian version of the Working Time Directive departs slightly from other language versions of that directive. According to the Hungarian version, every worker is entitled, for each seven-day period, to a minimum uninterrupted rest period of 24 hours **in addition to** ('továbbá') the 11 hours' daily rest period laid down in Article 3. By contrast, the English, German and French versions use the terms 'plus', 'zuzüglich' and 's'ajoutent', respectively, instead of 'továbbá'.
- 14 Consequently, the Miskolci Törvényszék (Miskolc High Court, Hungary) seeks clarification as to whether the concept of weekly rest referred to in the Working Time Directive is to be interpreted as meaning that, following the uninterrupted rest period of at least 24 hours, a worker is still entitled to the (11-hour) daily rest period, or whether the concept of weekly rest is to be interpreted as meaning that the 24 hours and the 11 hours must be added together and that, on that basis, workers are entitled, in total, to a continuous period of rest of at least 35 hours.
- 15 Clarification is also sought as to whether the daily rest period between the end of one given working day and the start of the following working day must be granted even if the latter does not start on that same day or on the day immediately after but, where necessary (because of leave or weekly rest), several days later.