HUNGARIAN LABOUR LAW
E - J O U R N A L

Rest periods as an essential part of the right to fair and just working conditions, focusing on the case law of the Court of Justice of the European Union

Márton Leó Zaccaria*

Abstract

The paper is based on some key concepts and practical dilemmas of working time and various forms of rest period. In the analysis, the fundamental right to fair and just working conditions, laid down in Article 31 of the Charter of the Fundamental Rights of the European Union, is in the spotlight, focusing mainly on the right to rest. Daily and weekly rest periods are both parts of this regulation, therefore the relevant norms of the working time directive – Directive 2003/88/EC – are emphasised along with some components of the related case law of the Court of Justice of the European Union. The paper's focus is on the analysis of the aforementioned fundamental rights approach, putting the question, if the traditional approach to social guarantees on the employees' side can still be enough to withstand the recent challenges of the modern day labour market. As a case study, the paper reflects on C-477/21. MÁV-START Zrt. judgment, while trying to draw adequate conclusions regarding the effective legal protection on the employees' side.

Keywords: C-477/21. MÁV-START Zrt., Charter of Fundamental Rights of the European Union, rest periods, social rights, working time

* Associate professor of law, University of Debrecen Faculty of Law.

1. Introduction[1]

The regulation of working time and rest periods is such fundamental building block of the labour law regulatory system that practically is connected to most of the decisive labour law institutions. It plays a key role in the employee's contractual performance,[2] and on the employer's side, there is an important interest in the efficient management of working time[3] and other circumstances relevant to the employment relationship (e.g. keeping the employee in a condition fit to work). At the same time, this regulatory area reflects duality: on the one hand, it must fulfil the traditional role typically worked out in the 20th century, which is based on the guarantee of the employee's social interests and premise according to which the employee has the right to adequate rest periods, paid leave and predictable working schedule.[4] On the other hand, the flexibility of working time rules and the employer's economic interest related to this[5] also have at least the same weight in the labour market, especially with regard to the more flexible forms of work (e.g. digitalisation, platformisation).

In this rather uncertain employment situation, I examine the enforcement of stable, traditional regulation of working hours within the changing labour market and labour law framework. My basic thesis is that despite the mentioned changes, this very area of regulation can provide stability for the subjects of the employment relationship, but primarily for the employee, if the essential fundamental rights approach is respected. The unique legal character and social function of daily and weekly rest periods as fundamental employees' right are also part of my hypothesis, focusing on their analysis within the core scientific framework mentioned above. The context of my research is the social policy of the European Union (hereinafter: EU) and the relevant case law of the Court of Justice of the European Union (hereinafter: CJEU), which is completed by an analysis based on Article 31 of the Charter of Fundamental Rights of the European Union (hereinafter: CFREU), especially its Paragraph (2) focusing on rest periods. To justify the above thesis, it is essential to view the normative side of working hours, rest periods, and their possible transformation not in themselves, but as part of the fair and just working conditions reflected in the aforementioned fundamental social right. In this context – complemented by the case law of the CJEU interpreting Directive 2003/88/EC of the European Parliament Council (04 November 2003) on certain aspects of organisation of working time (hereinafter: WTD) – it is precisely this link to fundamental rights that can provide stability in the uncertain situation outlined above.

---

1 The paper's text is based on a research that contains some parts in Hungarian. Some of these Hungarian parts were translated with DeepL Translate. These parts include separate sentences of the full text.

2 Kiss, György: 12. § A munkaidő. In: Kiss, György (ed.): *Munkajog*. Budapest, Dialóg Campus, 2020. 207.

3 Henriett Rab: The Four-Day Work Week Dilemmas behind Labour Law and the Labour Market. *Hungarian Labour Law E-Journal,* vol. 11., no. 1. (2024) 73–74.

4 Thomas Blanke: In: Brian Bercusson (ed.): *European Labour Law and the EU Charter of Fundamental Rights*. Baden-Baden, Nomos, 2006. 359., 376.

5 Rab op. cit. 73.

I would also like to draw attention to the current example of the MÁV-START Zrt. judgment,[6] where the CJEU interprets the guarantees laid down in the WTD in a very strict way, almost excessively interfering with the contractual freedom of the contracting parties, which undoubtedly works against flexibility and economic interests. A crucial element of the explanation to this phenomenon is the aforementioned approach, which is aligned with Article 31 of the CFREU and focuses specifically on the protection of employees' rights, no matter the economic circumstances. In sum, my paper is based on the following hypotheses: there is no legislative or jurisprudential need that could in any way negate or override the applicability of "outdated", traditional guarantees in labour law, given their essential significance in terms of employment. The possible explanation of this premise is that the essence of subordinate work and its inner mechanisms are not changed, meaning that human work can still function optimally within the same framework. I plan to confirm my hypotheses by using an extract from the relevant case law of the CJEU analysis Article 31 of the CFREU in the context of the WTD, with a strong emphasis on the fundamental right to rest periods.

2. On the importance of fundamental rights approach

In connection what was written in the introduction, it is a conceptional constraint that it may be difficult to draw general, universal conclusions from the present study. However, the fundamental rights considerations that govern EU law – thus all Member States (hereinafter: MSs) – can be interpreted most effectively through Article 31 of the CFREU. Thus, the protective nature of working time regulation can be more definitely expressed, since in the fundamental rights approach – regardless of the specific content of the given fundamental right – the interests of the recipients, namely, the employees, are primarily manifested. In the following, my aim will be to demonstrate that even the seemingly directive-compliant, or what is more, more preferable regulation for the employees or practice of the MSs are not a guarantee of respect for social fundamental rights under the CFREU. Judgment C-477/21 and related further decisions of the CJEU mainly concerning Articles 3 and 5 of the WTD serve as case studies for all this. An overview of the role of the fundamental right of employees under Article 31 of the CFREU necessarily precedes the analysis of the case law.

The right to fair and just working conditions is enshrined in the CFREU as a fundamental and broad expectation that is relevant to substantially all working conditions to which employees are entitled to.[7] The social protection that employees are fundamentally entitled to, the protection of human dignity, the protection of health and safety at work and the full enforcement of the related right to rest are also an essential part of this right. In relation to the latter, it is necessary to combine the previously

6 C-477/21. IH v MÁV-START Vasúti Személyszállító Zrt. [ECLI:EU:C:2023:140].

7 Blanke op. cit. 359–364.

mentioned working time regulation with the appropriate provision of rest periods, since in the case of an imbalance between these two legal institutions, the fundamental right enshrined in Article 31 of the CFREU may be endangered. Basically, creating fair working conditions is the task of the labour law regimes and collective agreements on national level, but – among others – the legal interpretation emerges in this respect in the case law of the CJEU. Of course, the fundamental aims of social policy connect the latter aspects,[8] regardless of the different legal solutions of the MSs.

It is not by chance that I previously identified Article 31 of the CFREU as the starting point for my research since in my opinion, on the one hand, this right as a really traditional, "20th century" right, an entitlement to employment rights with a social content truly reflects the majority of the values to be protected in the employment relationship. On the other hand, regarding the economic nature of the right to fair and just working conditions, it is necessarily exposed also to constant threat because of the need for flexibility, which was mentioned earlier. Since the latter – starting from the economic rationalisation – primarily serves the interests of the employer, one can easily get to the violated fundamental interests of the employees. In its case law the CJEU – in the context of Article 31 of the CFREU – interpreted the right to daily and weekly rest periods, the right to paid annual leave[9], the "fair and just" nature of the organisation of working time,[10] as well as – with a case law background dating back several decades – the concept of working time[11] based on the WTD. In my opinion, the guidelines laid down in the interpretative framework point in one direction, since on the one hand, the WTD itself primarily tries to protect the health of the employees at work, and to rationalise working time systems in general. On the other hand, a kind of necessary adaptation can also be observed as in the case law of the CJEU newer types of solutions or at least solutions more responsive to current labour law situation appear. Although in some cases infringement of the employees' interests is inevitable, as well as the fact that the CJEU tries to assess the interests of the employers in given cases. Ultimately, the main goal is the perfect enforcement of Article 31 of the CFREU and the effective protection of the fundamental rights of employees laid down in it, and this will be supported by the case law analysis later in this study. Furthermore, since according to Article 51 of the CFREU together with certain provisions of the WTD Article 31 of the CFREU can be applied, the latter can be regarded as a kind of complement to, or reinforcement of, the WTD's standards, significantly exceeding the "principle" nature of the rights laid down in the CFREU.

Taking into account all this, in the following I briefly analyse the links between Article 31 of the CFREU and Articles 3 and 4 of the WTD, then in order to make the research results widely available,

---

8 Hungler, Sára: Nemzeti érdekek és szociális integráció az Európai Unióban – az Európai Jogok Szociális pillérének kísérlete az integrációra. *Állam- és Jogtudomány,* vol. 59., no. 2. (2018) 44–45.

9 C-588/18. Federación de Trabajadores Independientes de Comercio (Fetico) and Others v Grupo de Empresas DIA S.A. and Twins Alimentación S.A. [ECLI:EU:C:2020:420].

10 See for example: C-344/19. D. J. v Radiotelevizija Slovenija [ECLI:EU:C:2021:182].

11 See for example: C-266/14. Federación de Servicios Privados del sindicato Comisiones obreras (CC.OO.) v Tyco Integrated Security SL and Tyco Integrated Fire & Security Corporation Servicios SA [ECLI:EU:C:2015:578].

I demonstrate further legal interpretation supported by CJEU judgments referring to fundamental social rights as Article 31 of the CFREU thus justifying the need to strengthen the traditional regulation of working time and rest periods.

3. The extract of the relevant case law of the CJEU – case study: C-477/21

In judgment no. C-477/21 concerning Articles 3 and 5 of the WTD, and Paragraph (2) of Article 31 of the CFREU we can see relevant, partly new legal interpretation. The CJEU judgment states that the daily rest period according to Article 3 and the weekly rest period according to Article 5 of the WTD are independent EU law concepts and their conceptual separation is absolutely necessary in order to ensure that the rest periods comply with the standards of the WTD. Consequently, the CJEU confirms in its judgment that daily and weekly rest periods are such concepts that have separate EU legal meaning.[12] Regarding the different functions of the above mentioned two concepts and the key function of the employee's workplace health and safety protection, according to the judgment, these rest periods cannot be merged, not even if the employee otherwise is entitled to the minimum rest periods under the WTD.

Therefore, the entitlement, content and the method of granting rest periods are important as well as ensuring that the fundamental social rights of employees and the original purpose of the WTD are not undermined by inadequate regulation of these legal institutions by the MSs or by employers applying these regulations inappropriately. Consequently, national regulations cannot interpret them in any certain way different from the case law, since it would basically undermine the enforcement of minimum standards ensured by the WTD.[13] Although, in principle it is not excluded that the national law contains a concept which is not perfectly equivalent with the WTD, but its conceptual essence should not be interpreted – in relation with the WTD – *contra legem*.

All this refers to the function, purpose, minimum rate of daily and weekly rest periods as well as the way in which it is granted.[14] Considering that in the case in question the Hungarian regulation – or more precisely, the employer's practice – essentially merged and combined these two types of rest periods, which are different in their function,[15] the root of the problem of legal interpretation and application can be easily discovered in relation to Act I of 2012 on the Labour Code (hereinafter: LC) and the WTD. Regarding the purpose of the rest periods, we can see minor differences between

12 C-477/21. Opinion of Advocate General Pitruzzella: IH v MÁV-START Vasúti Személyszállító Zrt. [ECLI:EU:C:2023:140] points 44–45. and 49.

13 C-477/21. Opinion of Advocate General Pitruzzella: IH v MÁV-START Vasúti Személyszállító Zrt. [ECLI:EU:C:2023:140] points 33–40.

14 Kozma, Anna – Lőrincz, György – Pál, Lajos: *A Munka Törvénykönyvének magyarázata* (ed. Petrovics Zoltán). Budapest, HVG-ORAC, 2020. 448–451.

15 C-477/21. IH v MÁV-START Vasúti Személyszállító Zrt. [ECLI:EU:C:2023:140] points 16–19.

the Hungarian labour law and the WTD, as well as the interpretation of the case law of the CJEU. These are worth mentioning because the former specifically provides rest for the day's work, and regeneration between the working days or scheduled working hours.[16]

The above mentioned independent EU legal content also means that the flexibility of the MSs' legislation and legal interpretation is significantly limited. Although the WTD does not exclude the possibility of regulating rest periods differently from the WTD – even in a collective agreement[17] -, but the substance of the individual legal institutions cannot be injured, and the national law cannot give a new or even partially different meaning to a given legal institution. The practice of the CJEU in this field is unambiguous:[18] Neither the function of the daily or weekly rest period, nor the interpretation of fundamental rights can be changed – which follows directly from Paragraph (2) of Article (31) of the CFREU[19] – which could lead to a restrictive legal interpretation. Likewise, neither the original purpose of daily and weekly rest period, as expressed by the legislator, can be lost in national legislation or legal interpretation and this implies, in addition to the evidential grammatical interpretation (e.g. "in addition")[20] a teleological interpretation. Namely, if the CJEU would accept a flexible legal interpretation of the law similar to the one seen in the MÁV-START judgment, we could even disregard the application of daily rest periods, since the weekly rest period – as the present approach of the MSs – can include the daily rest periods without a limit.[21]

However, this concept would not be consistent with its independent EU law concept, since on the one hand, its function would change (disappear), and on the other hand, the employees' fundamental right to actual and preventive rest, regeneration could not receive sufficient guarantee.[22] That is why it is important to state a close link with Article 31 of the CFREU. Besides, it is also important to keep in mind that the conceptual structure of working time and rest periods – which is based on the WTD – is itself based on independent concepts of EU law, since the differentiation of the concepts of working time and rest periods, which is the central issue of the topic, undoubtedly points in this direction.[23] However, certain concepts of the WTD *mutatis mutandis* can reflect differences regarding their legal character; e.g. it is difficult to imagine legitimate national deviation from the concept of working time, but referring to the discussed article measures can change. Nonetheless, I think that the independent

16 Kozma–Lőrincz–Pál op. cit. 448–449.

17 Karl Riesenhuber: *European Employment Law. A Systematic Exposition*. Cambridge–Antwerp–Chicago, Intersentia, 2021. 525., 536–541.

18 C-428/09. Union syndicale Solidaires Isère v Premier ministre and Others [ECLI:EU:C:2010:612] point 36.

19 Catherine Barnard: *EU Employment Law*. Oxford, Oxford University Press, 2012. 535.

20 C-477/21. Opinion of Advocate General Pitruzzella: IH v MÁV-START Vasúti Személyszállító Zrt. [ECLI:EU:C:2023:140] point 23 and 46.

21 C-477/21. Opinion of Advocate General Pitruzzella: IH v MÁV-START Vasúti Személyszállító Zrt. [ECLI:EU:C:2023:140] points 53–58.

22 C-428/09. Union syndicale Solidaires Isère v Premier ministre and Others [ECLI:EU:C:2010:612] point 36.

23 Marta Glowacka: A little less autonomy? The future of working time flexibility and its limits. *European Labour Law Journal,* vol. 11., no. 2. (2020) 13–15.

EU legal character of Articles 3 and 5 can be traced back to fundamental aims of the WTD and the method of regulation.

Articles 3 and 5 of the WTD have dual legal nature, since they both represent the employee's fundamental entitlement consisting of two important components without which the legislator's aim cannot be reached. All this – namely, the relationship between the spirit and the method of regulation – is strengthened by the preamble of the WTD as follows: "All workers should have adequate rest periods. The concept of 'rest' must be expressed in units of time, i.e. in days, hours and/or fractions thereof. Community workers must be granted minimum daily, weekly and annual periods of rest and adequate breaks. It is also necessary in this context to place a maximum limit on weekly working hours."[24]

Articles 3 and 5 of the WTD provides for the subjective right itself, that is the fundamental legitimate claim that every employee is entitled to time off from work, rest, regeneration, and, as a result, health and safety at work.[25] That is, the WTD establishes that employees have the right to daily and weekly rest periods at the minimum level required by the WTD. Naturally, it is important that all this is only the minimum social rights for the employees, consequently, it cannot be excluded that the MSs introduce e.g. new forms of rest period in their legal system, or apply these solutions definitely to the benefit of the employees.[26] This interpretation is consistent with the above several times mentioned Article 31 of the CFREU, mainly due to the extent of the right to fair and just working conditions.

At this point the second component of Articles 3 and 5 of the WTD plays a key role, namely, the essential content of the subjective right, the quantitative characteristic, i.e. the daily and weekly rest periods. In my opinion, its importance can be demonstrated from two sides. First, the basic case reflects that ensuring the entitlement alone is not necessarily enough, but the actual entitlement and the actual period of time taken as rest is also important. In the MÁV-START case the employees actually benefited from both weekly and daily rest periods, but on the one hand, the separation of these entitlements – and the resulting employee demand – were not necessarily transparent, and on the other hand, the amount of the daily rest period was not consistent with the requirement of the WTD. From this point of view, it is irrelevant how big the difference was – e.g. the employer gives the employee ten or five hours instead of eleven hours – as well as the employer may compensate for these periods by "extending" the weekly rest period. The employer has the possibility to do this because of the impartiality towards the employee. Furthermore, another important finding of the MÁV-START judgment is that the daily rest period must be given before the weekly rest period in all cases,[27] and this also implies the strict separation of the two concepts.

---

24 Paragraph (5) of Preamble, WTD.

25 Riesenhuber op. cit. 523–525., 530.

26 C-477/21. Opinion of Advocate General Pitruzzella: IH v MÁV-START Vasúti Személyszállító Zrt. [ECLI:EU:C:2023:140] points 47 and 56–58.

27 C-477/21. IH v MÁV-START Vasúti Személyszállító Zrt. [ECLI:EU:C:2023:140] point 58.

Second, the above detailed specification of the content does not allow us to simplify, merge these concepts if we regard them independent EU legal concepts as different categories of rest periods. As I have mentioned the entitlement, the purpose of rest periods, the way they are given, and their amount are different, so in principle it is impossible that they "merge". In overall, it can be concluded that the title and the method of giving rest periods cannot be replaced by the fact that the period of rest granted by the employer is even longer than the minimum under the WTD, since it is not in consistence with the aim of Articles 3 and 5 of the WTD – and Paragraph (2) of Article 31 of the CFREU – and on the other hand, in this way the national legislator and the employer could guarantee only one aspect (rest itself) of the of the substantive right ensured for the employees.

4. Rest periods as central elements of Article 31 of the CFREU

The context of the relevant European case law referring to Articles 3 and 5 of the WTD in connection with the statement in the MÁV-START judgment, the conceptual independence of the daily and weekly rest periods, their separation, method of giving them, their minimal amount, and on the basis of Paragraph (2) of Article 31 of the CFREU, are social, substantive legal background. All these issues also can be discovered more or less in the earlier CJEU case law. In my opinion, the EU social policy importance of judgment C-477/21 is in a sense beyond itself. On the one hand, it tries to interpret several legal issues specifically concerning WTD and Article 31 of the CFREU, and on the other hand, it tries to clarify issues, which are important in European labour law regulations in social policy[28] and would be difficult to be interpreted in themselves without a context. In relation to the following specific issues, it is justified to examine the fit with the previous case law: independent European legal conceptual nature of the daily and weekly rest periods, strict separation of the two concepts, substantial legal connection between daily and weekly rest periods and the permitted deviations of the MSs and the application of the regulations more favourable for the employees. The interpretative framework, also in this regard, is a substantive social law approach ensured by Article 31 of the CFREU.

Besides, the research could be widened, since the problems of rest periods examined here are not either fully independent from further regulative areas of the WTD interpreted by the CJEU (e.g. the concept of working time, the relationship between the WTD and the CFREU), but the detailed analysis of them would go beyond the scope of this study.

In the decision itself and in the Advocate General's opinion, we can find several references to earlier cases of the CJEU, so I will discuss them later. At the same time, it is necessary to state that in the

[28] Niall O'Connor: Interpreting employment legislation through a fundamental rights lens: What's the purpose? *European Labour Law Journal,* vol. 8., no. 3. (2017) 13–14.

earlier processed case law there is no decision which is totally identical or substantially similar to the present judgment. I mean that in the focus of the earlier judgments of the CJEU referred below – and reflected in the opinion and also in the judgment[29] – there is not or not exclusively the issue whether the weekly rest period under Article 5 of the WTD can merge the rest period under Article 3 of the WTD in a legitimate, directive-conform way; at least not in the way that the concerned employees nevertheless benefit from the minimum rest periods under the WTD and may even be entitled to a longer period.[30] From this point of view, the conclusion and justification of the MÁV-START judgment can be regarded novel and special because of the following. Based on the above, it is not enough to examine whether the employees can take up at least the minimum amount of weekly and daily rest time under the WTD, but also whether the entitlement and the method of giving these amounts of rest periods are relevant under the new judgment. Namely, the earlier case law mainly decisively examined the issues of ensuring the minimum periods under Articles 3 and 5 of the WTD,[31] so if in those cases the method of giving rest period in the MÁV-START judgment would be accepted as lawful, the infringement to the employees' rights would be more serious,, since the employees would not get the minimum rest periods. However, the legal situation is even more nuanced in the present judgment since regarding the minimum amount of rest period under the WTD the employees received the minimum rest period.

Although it is difficult to draw a clear conclusion from the text of the WTD, it is – based on the labour law theory – ultimately generally accepted that the concept of daily and weekly rest periods cannot be merged.[32] In our case this "merge" means that any interpretation or national legislation – collective agreement clause, or employer's action –, which would result that the minimum daily rest period of 11 hours would be given to the employee in such a way that it is included in the weekly rest period, which is also based on the obligation under the WTD, is incompatible with the WTD. This regulative restriction means that conceptually the employee cannot spend the employee's rest time under two different legal titles, that is, the daily rest time cannot be replaced by any means even by

29 C-344/19. D. J. v Radiotelevizija Slovenija [ECLI:EU:C:2021:182]; C-55/18. Federación de Servicios de Comisiones Obreras (CCOO) v Deutsche Bank SAE [ECLI:EU:C:2019:402]; C-428/09. Union syndicale Solidaires Isère v Premier ministre and Others [ECLI:EU:C:2010:612]; C-588/18. Federación de Trabajadores Independientes de Comercio (Fetico) and Others v Grupo de Empresas DIA S.A. and Twins Alimentación S.A. [ECLI:EU:C:2020:420]; C-306/16. António Fernando Maio Marques da Rosa v Varzim Sol – Turismo, Jogo e Animação, SA [ECLI:EU:C:2017:844]; C-266/14. Federación de Servicios Privados del sindicato Comisiones obreras (CC.OO.) v Tyco Integrated Security SL and Tyco Integrated Fire & Security Corporation Servicios SA [ECLI:EU:C:2015:578]; C-173/99. The Queen v Secretary of State for Trade and Industry, ex parte Broadcasting, Entertainment, Cinematographic and Theatre Union (BECTU) [ECLI:EU:C:2001:356g]; C-147/17. Sindicatul Familia Constanţa and Others v Direcţia Generală de Asistenţă Socială şi Protecţia Copilului Constanţa [ECLI:EU:C:2018:926]; C-254/18. Syndicat des cadres de la sécurité intérieure v Premier ministre and Others [ECLI:EU:C:2019:318]; C-484/04. Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland [ECLI:EU:C:2006:526]; C-426/20. GD and ES v Luso Temp - Empresa de Trabalho Temporário SA [ECLI:EU:C:2022:373] and C-151/02. Landeshauptstadt Kiel v Norbert Jaeger [ECLI:EU:C:2003:437].

30 In fact, the applicable clauses of the collective agreement in effect, granted longer weekly rest period to the workers than the minimum standards laid down in the WTD. See in detail: C-477/21. IH v MÁV-START Vasúti Személyszállító Zrt. [ECLI:EU:C:2023:140] point 46.

31 Barnard op. cit. 538–540.

32 C-477/21. Opinion of Advocate General Pitruzzella: IH v MÁV-START Vasúti Személyszállító Zrt. [ECLI:EU:C:2023:140] points 43–46.

a longer weekly rest period even given in a different distribution. It is not inconceivable that such a solution – in this sense hypothetical – can reflect difference for the benefit of the employee. Namely, the employees' weekly rest period – similarly to the analysed case law – essentially exceeds the minimum amount under Article 5 of the WTD. I think that the above mentioned "merger" would be contrary to Paragraph (2) of Article 31 of the CFREU, that is, in that case the employees' fundamental right to just and fair working conditions would be violated.

At the same time, it is important to state that even in such an undoubtedly special situation, daily rest time as an independent entitlement, given by independent action of the employer cannot be neglected, – since according to the CJEU – this kind of method of rest periods-calculation only seemingly serves the interest of the employee.[33] The reason for that is, even though the employee would not otherwise work as scheduled during the period covered by the weekly rest period[34] – although an exception may be making extraordinary work[35] –, finally, the employee will be entitled to less resting time than the minimum amount of it. From another point of view, it may arise as a general concern that in case the weekly rest period is longer, the daily rest time (may) become shorter. However, neither the WTD nor Paragraph (2) of Article 31 of the CFREU nor the consistent case-law of the CJEU states that such a measure or regulation is incompatible with the WTD, in particular, in the light of Articles 3, 5 and 17 and its purpose and social policy function.[36]

There is no doubt that Articles 3 and 5 of the WTD grant two important types of entitlement to rest periods for employees under two separate, essentially independent legal titles. Accordingly, there is no "hierarchy" between the two rights, i.e. it is not a choice or even a need to allocate working time, managing it, but an employee's entitlement based on a fundamental social right explicitly regulated in one row – and in a narrower sense a fundamental right – regulated by the WTD.[37] To confirm this, it is worth quoting some fragments of the judgment of the case C-428/09[38]:

> "In that context, it must first be recalled that, in accordance with Article 3 of Directive 2003/88, Member States are required to take the measures necessary to ensure that every worker is entitled to a minimum rest period of 11 consecutive hours in every 24hour period. It is clear from the Court's case-law that, in view of both the wording of Directive 2003/88 and its purpose and scheme, the various requirements it lays down concerning minimum rest periods, such as the period mentioned in Article 3, constitute rules of European Union social

33 C-477/21. IH v MÁV-START Vasúti Személyszállító Zrt. [ECLI:EU:C:2023:140] points 50–52.

34 Pál, Lajos: A munkaszüneti nap és a munkaidő megszervezésének kérdései. *Pro Futuro,* vol. 11., no. 2. (2021) 136., 146.

35 Kozma–Lőrincz–Pál op. cit. 461–464.

36 Vincenzo Ferrante: Between health and salary: The incomplete regulation of working time in European law. *European Labour Law Journal,* vol. 10., no. 4. (2019) 379–384.

37 C-477/21. Opinion of Advocate General Pitruzzella: IH v MÁV-START Vasúti Személyszállító Zrt. [ECLI:EU:C:2023:140] points 44–45., 49.

38 C-428/09. Union syndicale Solidaires Isère v Premier ministre and Others [ECLI:EU:C:2010:612].

> law of particular importance from which every worker must benefit as a minimum requirement necessary to ensure the protection of his health and safety (see, in particular, BECTU, paragraphs 43 and 47, and Case C484/04 Commission v United Kingdom [2006] ECR I7471, paragraph 38)."
>
> "[…] It follows from the foregoing that national legislation such as that at issue in the main proceedings which, although restricting the activity carried out under educational commitment contracts to 80 days per annum, does not provide that the members of casual and seasonal staff employed at holiday and leisure centres under such contracts are entitled to the minimum daily rest period required by Article 3 of Directive 2003/88, is in principle incompatible with that directive."[39]

In my opinion it is clear from the cited points of the judgment that Article 3 of the WTD provides for a mandatory, non-exceptional minimum daily rest period. This leads to the conclusion that it has not got a direct link to the weekly rest period, namely, e.g. it cannot be combined or substituted for it. I think that the cited judgment is related to the MÁV-START judgment on four points, and as a preliminary assessment, it can be noted that the new interpretation of the law fits into the context of the interpretation of the law created by the earlier judgment.

For the sake of conceptual clarity is important that the CJEU cites the relevant rules of the daily rest period as a "particularly important" rule of EU social law, and this is a forward-looking position from the part of the CJEU (of course, chronological specialities must be taken into account, e.g. the judgment was relatively new at the time of the judgment). Consequently, it cannot get less importance than the legislator originally intended, so any situation in which the danger of overshadowing this rule or even neglecting it in a MS arises must be avoided. The method of scheduling rest periods in which giving daily rest time to the employee is not wholly transparent and exclusive itself is contrary to the WTD. Finally, it cannot be compensated in any way even with the extension of the weekly rest period, at least it also can be concluded from this key importance.

In general, in coherence with the WTD, the proper regulation of daily rest time serves the health of the employees and the employees' safe at work[40] mainly with guaranteeing proper regeneration.[41] As a result, if the daily rest time is not ensured for the employee at least in the minimum amount and proper way under the WTD, this fundamental requirement that can be traced back to a concrete fundamental right would be infringed. However, since it is a principle of "special importance" of European labour law,[42] there is definitely a risk, that such national regulation or practice is not in coherence with Article

---

39 C-428/09. Union syndicale Solidaires Isère v Premier ministre and Others [ECLI:EU:C:2010:612] points 35–38.

40 Barnard op. cit. 502., 532–534.

41 Fodor T., Gábor – Szemenyei, Barabás Máté: A napi és heti pihenőidők kiadásának problémája. *Munkajog,* vol. 7., no. 2. (2023) 18.

42 C-428/09. Union syndicale Solidaires Isère v Premier ministre and Others [ECLI:EU:C:2010:612] point 36.

3 of the WTD. In my opinion, regarding the special function and also the general importance of the daily rest time conceptual separation is important, since without it, this fundamental right would not be guaranteed. This "special importance" emphasises a strong link to Article 31 of the CFREU that also fits within the legal protective aspects mentioned above.

Point 37 of judgment C-428/09 sates the "effective" and "preventive" nature of the daily rest period as fundamental criteria referring to its special and important purpose. On the one hand, it has to serve the necessary rest, recreation as consequence of the already done work – in this sense daily working activity – and on the other hand, as a whole, in the future it has to minimize the employee's health risk that is caused by the working activity. Since, on this basis the daily rest period has a dual purpose, it is of high importance that it is given independently, and not as a part of the weekly rest period. Although the function of the weekly rest period is similar, but it must be emphasised that Article 3 of the WTD gives a specific meaning and a dual function to the legal institution of daily rest, that – in my opinion and also according to the consequent interpretation of the judge – it cannot be replaced or substituted by a longer or different weekly rest period, as it can be seen from the MÁV-START case.[43]

It is worth recalling a few lines from judgment C-227/09[44] concerning Articles 3 and 5 of the WTD:

> "With regard to weekly rest periods, the first subparagraph of Article 5 of the Working Time Directives provides that the Member States are to 'take the measures necessary to ensure that, per each seven-day period, every worker is entitled to a minimum uninterrupted rest period of 24 hours plus the 11 hours' daily rest referred to in Article 3'. It is also apparent from Article 5 that if objective, technical or work organisation conditions so justify, a minimum rest period of 24 hours may be applied. Article 16 of the Working Time Directives lays down a reference period for the application of Article 5 of those directives not exceeding 14 days."[45]

> "The Comune di Torino contended, in response, that, under Article 17(3) of Directive 93/104, derogations from the requirement to provide a weekly rest period in Article 5 of Directive 93/104 can be introduced by collective agreements or agreements concluded between the two sides of industry at national or regional level, provided that the workers concerned are afforded equivalent periods of compensatory rest."[46]

43 C-477/21. Opinion of Advocate General Pitruzzella: IH v MÁV-START Vasúti Személyszállító Zrt. [ECLI:EU:C:2023:140] points 42–44, 47, 56–58 and 80.

44 C-227/09. Antonino Accardo and Others v Comune di Torino [ECLI:EU:C:2010:624].

45 C-227/09. Antonino Accardo and Others v Comune di Torino [ECLI:EU:C:2010:624] points 10–11.

46 C-227/09. Antonino Accardo and Others v Comune di Torino [ECLI:EU:C:2010:624] point 25.

It is worth mentioning that regarding rest periods ensured by Articles 3 and 5 of the WTD the word "plus" is used,[47] which in my view, clearly implies their independence. Therefore, the judgment mentions the daily and weekly rest periods as two different, legal institutions independent from each other emphasising that the employees deserve both of them under the WTD. This means that both types of the rest period must be ensured by all means at least on the minimum level prescribed in the WTD.

In judgment C-306/16,[48] the CJEU regarding the method of ensuring daily and weekly rest periods, states the following:

> "Article 5 of Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organisation of working time, as amended by Directive 2000/34/EC of the European Parliament and of the Council of 22 June 2000 and the first paragraph of Article 5 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 must be interpreted as not requiring the minimum uninterrupted weekly rest period of 24 hours to which a worker is entitled to be provided no later than the day following a period of six consecutive working days, but requires that rest period to be provided within each seven-day period."[49]

In my opinion, this statement, referring to the legal nature of Article 5 of the WTD, is important since it can strengthen the coherence of the guiding interpretation. The issue of the timing and allocation of weekly rest periods, which also arose in the MÁV-START case, is linked to the idea that the seven-day periods should be considered, i.e. the continuous weekly rest period under the WTD should be allocated within each seven-day period. Consequently, the method of work schedule does not influence this obligation of the employer, namely, the CJEU confirms that this strict obligation on the employer is regardless of the work schedule.

Judgment C-588/18 includes an important statement specifically with regard to Article 5 of the WTD[50] as follows. In any case, the setting of minimum health and safety requirements represents essential criteria for rest periods under the WTD, including Paragraph (2) of Article 31 of the CFREU. This judgment also definitely states that the right to daily rest and the right to weekly rest periods are two different employee rights and the employees are entitled to both of them in any case under

47 The wording emphasises that employees are entitled to the weekly rest period in addition to the daily rest periods, meaning that the total amount of rest time is increased for the given period.

48 C-306/16. António Fernando Maio Marques da Rosa v Varzim Sol – Turismo, Jogo e Animação, SA [ECLI:EU:C:2017:844].

49 C-306/16. António Fernando Maio Marques da Rosa v Varzim Sol – Turismo, Jogo e Animação, SA [ECLI:EU:C:2017:844] Conclusion.

50 C-588/18. Federación de Trabajadores Independientes de Comercio (Fetico) and Others v Grupo de Empresas DIA S.A. and Twins Alimentación S.A. [ECLI:EU:C:2020:420].

the WTD. The CJEU strengthens all this with its earlier consequent judgments,[51] emphasising the speciality that, though the WTD sets only minimum requirements, the level of protection cannot be reduced on the level of the MSs. It is important to emphasise, of course, the margin of manoeuvre which the judgment also gives to the MSs – and also to the employers –, although the special EU law concept and the consistent conceptual differentiation represent major constraints in this area. All this is supported by Paragraph (2) of Article 31 of the CFREU cited above several times which confirms and upholds the "essence" of jurisprudence under Articles 3 and 5 of the WTD. Both in the MÁV-START judgment and in the present study the fundamental right in EU law to fair and just working conditions is mentioned as a decisive aspect[52] of which Paragraph (2) undoubtedly covers the rules of work and rest periods, and thus also Articles 3 and 5. It should be noted that since the legal interpretation and jurisprudence of the MSs, also with taking into account the CFREU, cannot undermine the essence of Articles 3 and 5 of the WTD. Consequently, in my opinion, the CJEU implicitly also strengthens the necessity of the analysed conceptual distinction in this way.

5. Conclusion

Overall, it is true that fair and just working conditions cannot be ignored, since as a fundamental right in the CFREU, every person performing subordinate work has the right to it. The regulation of working time and rest periods plays a crucial role in this regard, and protecting these rights through traditional labour law methods and standards is still essential. I think these remarks, together with the argumentation below, can confirm the hypothesis presented in the beginning as follows.

Confirmation and strict conceptual separation of the concept of daily and weekly rest period fit into the essence of the earlier case law as well as fundamental rights issue raised by Paragraph (2) of Article 31 of the CFREU coherently fits into the line of the examined judgments. In my opinion, it is certainly practical and forward-looking in the longer term that CJEU in the MÁV-START judgment made another attempt on the one hand, to raise the level of protection of the fundamental social interests of the employees, and on the other hand, to unify the most important EU labour law (social policy) concepts. All this is supported by the aim of the WTD and the teleological interpretation of certain regulations. However, some uncertainty of the interpretation of Paragraph (5) of the preamble and Article 17 of the WTD should be pointed in case the employees are accessed to the minimum – or even more – rest time, but not in a necessarily transparent way and not under the entitlement of the WTD.

---

51 See in this sense: C-428/09. Union syndicale Solidaires Isère v Premier ministre and Others [ECLI:EU:C:2010:612] point 42 and Conclusion.

52 Blanke op. cit. 364–366.

I think that the desired future guidelines would focus on keeping the delicate balance without losing sight of the original aim of rest periods regulation, but being necessarily flexible at the same time, that both the legislative and employers' side – possibly the social partners – would accept the essence of these rules as well as the new principles stated by the EU judicial interpretation. This balance could strengthen the today desired labour law resilience of which regulation of working time and rest periods is a decisive part.

Regarding the employees' legal protection, working time regulation plays a key role and it can be justified by the legal interpretation of the CJEU and by the enforcement of fundamental right aspects stated in the CFREU. Special attention should be paid to guaranteeing rest periods, since they can be linked to several employees' rights of fundamental importance. Furthermore, interpreting the content and the legal nature of the rest periods', it is necessary to take into consideration the principles worked out in the CJEU case law, which are largely based on the traditional labour law standards of the WTD.