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Regulation of Work Breaks in Hungary with a European Perspective

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Abstract. The basis for the review of the Hungarian and European rules of the rest break during the working day was the fact that there was a lawsuit to establish the illegitimacy of termination, in which I represented the plaintiff. The reason for the summary dismissal on the part of the employer was that the employee was playing cards while on a rest break during the working day. In his action, the plaintiff sought a declaration that his employer had unlawfully terminated his employment. By the judgment of the Court of First Instance, the action was dismissed, and the plaintiff was ordered to bear the court costs. By the judgment of the Court of Law proceeding by the plaintiff's appeal, the judgement was reversed, and it ordered the defendant to pay the plaintiff severance pay as well as compensation. The defendant presented an application for review, which was not upheld. After completing the matters of fact, the Court of Appeal correctly stated that, at the time of the inspection, the plaintiff availed himself of a rest break during the working day, which was lawful; moreover, it was not disputed by the defendant. The Court of Appeal rightly concluded that the employer may prohibit the employee from playing cards during breaks in the workplace, but this must be communicated unequivocally to him, and this expectation must be consequently carried out. The Court of Appeal also rightly pointed out that in the case of explicit prohibition of some behaviours, employees must also be informed of the legal consequences, which are applicable in case of infringement of the rule. However, in the present case, this was not established, so that the lawsuit ended with the full recovery of a favourable judgment of the employee plaintiff at the Supreme Court of Justice.

Keywords: working hours, work break, employee, working day, holiday, rest day

1. Historical Overview

The industrial laws of the age of dualism[1] set the duration of working time in a broad framework, according to which it was forbidden to start the day's work before five a.m. and to do work after nine p.m. The break time was half an hour in the morning and in the afternoon, and one hour at noon. In the field of metal ore mining, there were eight working hours a day, in the case of coal mines, this was 12 hours, with a one-hour break.[2] According to the rules of agricultural work,[3] a day labourer's working day lasted 'from sunrise to sunset', with a half-hour break in the morning, an hour at noon, and only in summer an additional half-hour break in the afternoon. At the very end of the 19th century, some changes were made to break time,[4] but in practice these rules were often ignored, and thus the afternoon breaks were not granted.[5] Under the Servants Act,[6] the servant had to be given enough time to rest at night according to the season, but if the servant did not find the rest time sufficient, he or she could resign.

Legislative Decree No. 7 regarding the Labour Code of 1951 regulated the provisions of break time in a comprehensive way among the rules of the rest period and leave (vacation), and then it regulated the rules of break time in a direct way. In general, the text stipulates that the Hungarian People's Republic regulates the right to rest by providing break time, daily rest periods, a weekly rest day, public holidays, and yearly leave. It ensures that workers can preserve their health and ability to work and enjoy the works of socialist culture and the natural beauties of their free homeland during their free time. Ignoring this pathetic motivation and apart from the picturesque content detailed in the last sentence not being really typical of the early fifties, it can be stated that the Labour Code Decree did not omit to regulate the rest period of the workers, nor the break time. With regard to the specifics, the legislator has determined, still in a general way, that a worker is entitled to a break every day given that he or she spends time at work corresponding to his or her daily working hours. The break time is usually half an hour – continues the legislator. It is not clear from the text or, in the absence of a specific decision in case-law, from elsewhere what the definition of 'usually' means, ergo to whom it can be applied, whether the break time may be a little more or less than half an hour, etc. Neither the job nor the time spent at work nor any other point of reference can be discovered, so the 'usually half an hour' clause of this regulation remains in the mist of the former socialist legislation. According to the tight rule of that period, workers whose job

1 Act No VIII of 1872, Act No XVII of 1884.
2 Decree No 82118/1896 of the Ministry of Commerce.
3 Section 103 of Act No XIII of 1876.
4 Section 49 of Act No II of 1898.
5 Lőrincz 1974. 106.
6 Act No XLV of 1907.

was otherwise provided with the opportunity to eat and bathe were not entitled to break time. These jobs were established by the competent ministry.[7] It can be deduced from all this that it was not possible to eat during working hours on all jobs, and the possibility of bathing clearly depended on the position. The organization of break time was regulated by the work schedule. Furthermore, there were no additional regulations on this issue during this period.

The Labour Code regulated by law,[8] which replaced the first Labour Code, and then the Implementing Decree[9] attached to it more than a decade later also provided for break time. According to the regulations of the law, the worker must be provided with the opportunity to eat (break time) by interrupting working hours. If, due to a three- or multi-shift or uninterrupted operation a break cannot be granted by interrupting working hours, the employment rule may provide for a break of up to 20 minutes a day within the working hours. According to the implementing decree, there is no break time for workers who, by reason of their duties, may eat at any time during working hours or whose job wholly or partly is of a standby type or whose regular daily working hours do not exceed six hours. A break time may not be granted on those working days on which working time does not exceed four hours. The duration of the break time is twenty minutes a day unless the employment rule provided for a longer period. For every three and a half hours of uninterrupted overtime performed, a half-hour break was provided. The collective agreement could derogate from this provision. The implementing decree did not specify in whose favour the derogation was granted. The detailed rules of break time are laid down in the collective agreement. As part of this, it regulates the remuneration of break time. Other breaks in connection with work were governed by special provisions.

In the time following the regime change, the drafting of a new labour code became topical, which reflected a completely new approach. It becomes immediately apparent when reviewing the text that the new law[10] no longer mentions 'worker' but 'employee' among the subjects of the employment relationship. Dogmatically, the rules of break time have been placed again in the normative system of working time and rest time by the legislature. Working time was defined as the duration from the commencement until the end of the period prescribed for working, covering also any preparatory and finishing activities related to working. Unless otherwise provided or agreed, the duration of a break, with the exception of stand-by jobs, was not included in the working time. The text of the Labour Code had, of course, to be constantly amended in connection

7 See the decision reported under 24453/1951. BM HIG (Belügyi Közlöny XI. 4.), provision point 2.

8 Act No II of 1967.

9 Decree on the implementation of the Labour Code No 48/1979 (XII.1.).

10 Act No XXII of 1992 on the Labour Code.

with the harmonization of EU law, as it had to be compliant with EU law by the time of accession. In this context, the Working Time Directive also had to be transposed into the domestic legal environment.[11] The problems of the regulation in connection with on-call duty have reached the point where a decision of the Constitutional Court has been made.[12]

With regard to break time, the 1992 Labour Code stipulates that if the daily working time or the duration of overtime work performed exceeds six hours, then after each additional three hours of work, with the interruption of work, the employee shall be entitled to at least twenty minutes but not more than a one-hour-long break time, of which at least twenty minutes shall be taken uninterruptedly. If, during the daily working hours, the employee is entitled to break time more than once, their combined duration may not exceed one hour.

With regard to this regulation, collective agreements for employees working as navigators, flight attendants, and aviation engineers or engaged in providing ground handling services to passengers and aircraft, employees working in travel-intensive jobs in the domestic or international carriage of passengers and goods by road, carriers and traffic controllers working in a local public transport system for the carriage of passengers or in a scheduled intercity transport system inside a fifty-kilometre radius, travelling workers and traffic controllers working in the carriage of passengers by rail and in the carriage of goods by rail may derogate from the provisions. In addition, working time limits of up to one year and up to fifty-two weeks may be set. Among the different provisions for young workers,[13] there are deviations from the general ones, according to which if the daily working time of a young worker exceeds four and a half hours, he or she should be granted a break of at least thirty minutes.

2. Daily Working Time and Rest Periods in the System of Provisions in Force

The Labour Code, which was adopted in 2011 but regulated by Act I of 2012,[14] clearly states in the system of its conceptual network that working time shall

11 With regard to Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organization of working time, and related judgments of the European Court of Justice and the resolution of the European Commission amended Act XXII of 1992 on the Labour Code and other laws transposing the Working Time Directive.

12 The Constitutional Court ruled in its decision No 72/2006(XII.15.) AB the method of regulation related to healthcare as constitutional and therefore annulled the relevant provisions of Government Decree No 233/2000(XII.23.) on the implementation of Act No 33/1992 on the Legal Status of Public Servants in the health sector.

13 It was inserted in the previous Labour Code by Section 15 of Act No XVI of 2001.

14 Published: 6 January 2012.

mean the duration from the commencement until the end of the period prescribed for working, covering also any preparatory and finishing activities. 'Preparatory or finishing activities' are taken to mean operations comprising a function of the worker's job by nature that is ordinarily carried out without being subject to special instructions.

The daily working time in full-time jobs is eight hours, which, based on an agreement between the parties, may be increased to not more than twelve hours daily if the employee works in a stand-by job or is a relative of the employer or the owner. The owner is also defined by the Labour Code as someone who, in the light of these provisions, is the member of the business association holding more than twenty-five per cent of the votes in the company's decision-making body.[15] The daily working time applicable for a specific full-time job may be reduced by agreement of the parties, which is called part-time work.

The employer may define the working time of an employee in terms of the 'banking' of working time or working hours as well, which shall be arranged based on daily working time and the standard work pattern. In this context, the public holidays falling on working days according to the standard work pattern shall be ignored. In determining the working time, the duration of absence shall be ignored, or it shall be taken into consideration as the working time defined by the schedule for the given working day. In the absence of a work schedule, the duration of leave shall be calculated based on the daily working time whether ignored or taken into consideration. Where working time is defined within the framework of working time banking, the beginning and ending date shall be specified in writing and shall be made public.

The finding according to which the coexistence of working time and rest time is conceptually ruled out is entirely exact.[16] With regard to the rest period, the Labour Code, as a general rule, names daily rest periods, weekly rest days, and weekly rest periods. The daily rest period shall be afforded to the employees as an uninterrupted period of at least eleven hours after the conclusion of daily work and before the beginning of the next day's work, weekly rest days are two days a week, and the weekly rest period shall be in lieu of weekly rest days, an uninterrupted weekly rest period of at least forty-eight hours each week. Compared to the old Labour Code, this is an innovation because the weekly rest period and the weekly rest day have not been separated before.[17]

15 All this was necessary because for a long time it was the practice to elect an employee as a member of a (micro-) partnership, who had a nominal, few percent voting right, so as a quasi-owner there was no obstacle to working regular overtime without overtime pay and working without compensation even on days of repose. This was intended to be abolished by the Labour Code when under a 25% voting right it did not consider a member of the company as the owner for the purpose of calculating working time.

16 Zaccaria 2013. 136.

17 In more detail, see Novák 2013. 10–13.

Conceptually, therefore, working time is the time required to work, while all the other is rest time.[18] The time required for work, i.e. working time, is considered to be when the employee performs work or is available.[19]

2.1. Regulation of Break Time

Break time is located in the matrix of working time and rest time. According to the Labour Code, working time shall not cover break time, with the exception of stand-by jobs, and travel time from the employee's home or place of residence to the place where work is in fact carried out as well as from the place of work to the employee's home or place of residence. According to the law, working time shall mean the duration from the commencement until the end of the period prescribed for working. During the period prescribed for working, the employee is obliged not only to be available but also to work; he or she is available at that time specifically to carry out the work for the entire duration of it. Consequently, periods during which the employee only fulfils the duty of availability but does not perform actual work are not considered as working time (e.g. on-call and stand-by duty). However, for the purpose of applying certain working time rules, these periods should also be treated as working time.[20] Preparatory or finishing activities are taken to mean operations comprising a function of the worker's job by nature that is ordinarily carried out without being subject to special instructions. It does not include changing and bathing time before or after work unless the change is necessary for occupational safety and takes a longer time. According to the law, a break time is not considered working time if the employee works in a non-stand-by job. During break time, the employee is released from his or her obligation to be available and to work, basically in order to be able to eat.

If the scheduled daily working time or the duration of overtime work performed exceeds six hours, twenty minutes of break time and if it exceeds nine hours, an additional twenty-five minutes of break time shall be provided. The duration of overtime work performed must be included in the scheduled daily working time. Break time provided to employees by agreement of the parties or in the collective agreement may not exceed 60 minutes. During break time, work must be interrupted. Break time is to be provided after not less than three and before not more than six hours of work. The employer is entitled to schedule break times in several lots. In this case, derogation from the above-mentioned rules is allowed; however, the duration of the break provided within the timeframe must be at least twenty minutes. It can be stated that compared to the previous Labour Code, the law simplifies the regulation of break time. The agreement of the parties

18 Radnay 2003. 17.
19 Prugberger 2004. 22.
20 See: e.g. Section 97(5) point b) of the Labour Code.

or the collective agreement may differ in favour of the employee, thus providing for the granting of a rest break during the working day. Compared to the previous ones, the law clearly defines the employer's obligation to provide break time in accordance with the purpose of the break. If the scheduled daily working time or the duration of overtime work performed exceeds six hours, 20 minutes of break time and if it exceeds nine hours, an additional 25 minutes of break time shall be provided, i.e. a break of 45 minutes must be given to the employee, with the interruption of work. Alternatively, by way of contract or collective agreement, the employer and the employee may provide for a longer break time, but not more than 60 minutes. At least 20 minutes of the break time must be uninterrupted and shall be provided after not less than three and before not more than six hours of work; if the break time is longer than 20 minutes, the remaining part may be provided at any time, in several lots. Break time is not part of working time, nor is it remunerated, except in the case of an employee in a stand-by job.[21]

According to the practice followed by the Curia[22] (the Supreme Court of Hungary), the record of working and rest time must be such that a clear conclusion can be drawn from it regarding the observance of the provisions of the law; changes in the schedule of working time must be properly documented in the record of working time. Work on a rest day other than the stated working time schedule is considered overtime work.

It is not necessary to provide an employee with flexible working arrangements with break time separately.[23]

2.2. International Outlook

According to the explanatory memorandum of the law, the Hungarian regulation has become more transparent, but its extent still does not reach the duration specified in the German *Arbeitzesitgesetz*, which in my opinion is more forward-looking than the domestic regulation because it determines the amount of the break time not in 20 but in 30 minutes.[24] The Hungarian regulations do not contradict the previous EU directive,[25] nor the current

21 Section 86(3) point a) of the Labour Code.

22 Decision reported under BH.2013. 226.

23 Pál 2012. 198.

24 According to § 4 of the German ArbZG: „Die Arbeit ist durch im voraus feststehende Ruhepausen von mindestens 30 Minuten bei einer Arbeitszeit von mehr als sechs bis zu neun Stunden und 45 Minuten bei einer Arbeitszeit von mehr als neun Stunden insgesamt zu unterbrechen. Die Ruhepausen nach Satz 1 können in Zeitabschnitte von jeweils mindestens 15 Minuten aufgeteilt werden. Länger als sechs Stunden hintereinander dürfen Arbeitnehmer nicht ohne Ruhepause beschäftigt werden."

25 Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organization of working time. OJ L 307, 13.12.1993. 18–24.

one,[26] the first of which stipulating that after six hours of uninterrupted work and then after another three hours, a break of at least 20 minutes must be provided, while the latter does not specify the minimum rate of break time.[27] The Austrian legislation, which has obviously taken over the German provision of a 30-minute break, goes further and also allows it to be used in two 15-minute blocks if the employee's interests so require.[28]

The essence of the English regulation is completely the same as the Hungarian regulation.[29] In Italy, under the authority of Book 5 of *Codice Civile*, *Collegato Lavoro*[30] regulates break time, which provides for a break every six hours, but the extent varies from sector to sector. According to the Dutch Act on Working Time (abbreviated ATB in Dutch), a 30-minute break can be taken after five and a half hours, or – as in the Austrian rules – twice in 15-minute periods. In the Netherlands, after 10 hours of work, there is an additional 45-minute break.[31] In Denmark, where women work 35 hours a week and men 41 hours, break times are also 30-minute long, but the legal text explicitly states that an employee is entitled to go home or have lunch with colleagues during this time. In companies that have a restaurant, employees can eat there, but they also have the option to eat their own food brought from home.[32] The provisions of the French *Code du travail* also provide the employee with a 20-minute break after six hours of work, with the possibility

26 Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organization of working time. OJ L 299, 18.11.2003. 9–19.

27 On the possible effects of this on the latter acceding states, see: Prugberger 2011. 546.

28 According to § 11 Section 1 of the Austrian AZG: „Beträgt die Gesamtdauer der Tagesarbeitszeit mehr als sechs Stunden, so ist die Arbeitszeit durch eine Ruhepause von mindestens einer halben Stunde zu unterbrechen. Wenn es im Interesse der Arbeitnehmer des Betriebes gelegen oder aus betrieblichen Gründen notwendig ist, können anstelle einer halbstündigen Ruhepause zwei Ruhepausen von je einer Viertelstunde oder drei Ruhepausen von je zehn Minuten gewährt werden. Eine andere Teilung der Ruhepause kann aus diesen Gründen durch Betriebsvereinbarung, in Betrieben, in denen kein Betriebsrat errichtet ist, durch das Arbeitsinspektorat, zugelassen werden. Ein Teil der Ruhepause muß mindestens zehn Minuten betragen."

29 Workers have the right to one uninterrupted 20-minute rest break during their working day if they work more than six hours a day. The break does not have to be paid – it depends on their employment contract.

30 Legge 4 novembre 2010, n. 183 Deleghe al Governo in materia di lavori usuranti, di riorganizzazione di enti, di congedi, aspettative e permessi, di ammortizzatori sociali, di servizi per l'impiego, di incentivi all'occupazione, di apprendistato, di occupazione femminile, nonche' misure contro il lavoro sommerso e disposizioni in tema di lavoro pubblico e di controversie di lavoro. (10G0209) (GU Serie Generale n.262 del 09-11-2010 – Suppl. Ordinario n. 243).

31 „Als u langer dan 5,5 uur werkt, heeft u recht op minimaal 30 minuten pauze. U mag de pauze splitsen in 2 keer een kwartier. Als u langer dan 10 uur werkt, heeft u recht op 45 minuten pauze. De pauze mag worden gesplitst in meer pauzes van minimaal een kwartier. In uw cao kunnen andere regels staan. Zoals geen, minder of kortere pauzes."

32 Employment contracts. http://europa.eu/youreurope/business/staff/employment/index_en.htm (accessed on: 20.04.2021).

that the collective agreement may deviate from this.[33] French labour law also allows a five-minute smoking break four times.[34]

3. Closing Remarks. Judicial Practice

Basically, the Hungarian regulation on break time is the same as the Western European regulation, the reason for which is to be found in the directive. Although the legal text does not stipulate what an employee can or cannot do during the period of a break time, it has happened that an employee who played cards during a legally taken break from work was terminated by the employer with immediate effect. In the proceedings at first instance, the employee's action was dismissed by the Court of Justice, while in the proceedings at the second instance, the General Court reversed the judgment rendered in the first instance and found that the dismissal was unlawful. Given that the lawsuit had already been adjudicated by the Curia in the review proceedings,[35] its findings were as follows: If the applicant was able to spend his rest period during that time, it is irrelevant what duties he was still required to perform during the shift. It was necessary to examine what was the applicant able to spend his time with during the break, which was not disputed and was part of his working time, and whether the defendant prohibited playing cards during that period. According to the Curia, the appellate court was right to conclude that the employer may prohibit the employee from playing cards during rest time in the workplace, but this must be made clear to him, and the expectation must be consistently enforced. The employer claimed that a written prospectus had been set up prohibiting playing cards, but it could not be established with judicial certainty, in particular that its contents were available to all employees, including the applicant. It has not been established how long the prohibition notice was issued and whether it was still in force during the litigation period. The appellate court also rightly pointed out that in the event of an explicit prohibition of a conduct, employees must also be informed of the legal consequences applicable in the event of a breach of the rule. However, that was not the case here. Nor could it be established with judicial certainty that the employer had monitored the implementation of the regulation

33 „Le Code du travail (article L 3121-33) impose un temps de pause minimum égal à 20 minutes dès lors que le temps de travail atteint 6h par jour. C'est un temps de pause minimal: une convention collective ou un accord collectif peut notamment prévoir des temps de pause d'une durée supérieure, particulièrement en ce qui concerne la pause déjeuner (voir plus bas). En revanche, aucune disposition conventionnelle ne peut prévoir un temps de pause inférieur à 20 minutes."

34 „Il peut tout à fait fractionner cette durée (exemple: une pause de 10 minutes le matin et une pause de 10 minutes l'après midi, ou 4 pauses de 5 minutes pour fumer des cigarettes)."

35 Reported under Mfv. I.10.266/2016.

that had been imposed (prohibition on playing cards). The applicant based his claim for compensation for the wrongful termination of the legal relationship on Section 82(2) of the Labour Code and also submitted a claim for severance pay on the basis of Section 3. Pursuant to Section 82(1) and 82(2) of the Labour Code, the employer is obliged to compensate for the damage caused in connection with the wrongful termination of the employment relationship. Compensation claimed for the income foregone may not exceed the amount of the employee's 12-month absence pay. As a legal consequence of the wrongful termination of the legal relationship, the actual damage can be enforced, which rule also applies to the lost income. The law placed the legal consequences of the wrongful termination by the employer on a compensation basis, wherefore the employee has an obligation to mitigate the damage compared to the previous regulation. There is no need to reimburse the part of the income that arose from the failure to fulfil that obligation. Upon wrongful termination of employment, the employer who caused the damage must prove that the employee has not fulfilled his/her obligation to mitigate damage.[36] Consequently, if the employer does not invoke the employee's obligation to mitigate damage in the labour lawsuit and does not make a motion for proof, then its fulfilment cannot be examined ex officio, so the court must judge the income foregone by disregarding the mitigation obligation. The applicant sought compensation for the loss of income in his claim, proved the lack of recovered income, and the defendant claimed, even in his application for review, that the employee had not fulfilled his obligation to mitigate damage. Consequently, the trial courts made a correct decision in accordance with Section 82(2) of the Labour Code, when based on the available data established a compensation equal to the absence fee.[37]

References

LŐRINCZ, E. 1974. *A munkaviszonyok szabályozása Magyarországon a kapitalizmus kezdetétől az első világháború végéig 1840–1918*. Budapest.

NOVÁK, Z. S. 2013. A pihenőnap mint a pihenőidő halála? *Gazdaság és Jog* 2013/3.

PÁL, L. 2012. A munka- és pihenőidő. In: *Az új Munka Törvénykönyvének magyarázata*. Budapest.

PRUGBERGER, T. 2004. A munka-, a pihenőidő és a szabadság magyar szabályainak és gyakorlatának az Európai Unió normáival fennálló ütközéséről és kiküszöbölési szükségességéről. *Jogtudományi Közlöny* 2004/4.

36 See judgment reported in EBH.2015.M.23.

37 Labour Principles Resolution No. 2/2017.

2011. A munkaidő, a pihenő idő és a szabadság várható új magyar jogi szabályozásának kérdéséhez. *Jogtudományi Közlöny* 2011/11.

RADNAY, J. 2003. A munkaidő és pihenőidő. *Gazdaság és Jog* 2003/12.

ZACCARIA, M. L. 2013. Fogalmi változások a munkaidő kapcsán az új munka törvénykönyvében. *Miskolci Jogi Szemle* 2013/1.

*** http://europa.eu/youreurope/business/staff/employment/index_en.htm. (accessed on: 23.09.2016).