

Controversial regulatory issues related to the working hours of overtime work, rest period, downtime, stand-by duty and on-call duty in Hungarian law in the context of Euro-Atlantic law

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ABSTRACT

In this study, we discuss the European regulation of working time, including the system of the working time banking. First, we review the standards set in Hungary and its application, then the regulations of individual European countries, broken down by country. In addition to the German, Austrian and Greek rules based on the German legal grounds, we also compare the labour law rules of Southern European countries, Scandinavian countries and East-Central Europe. The Anglo-Saxon legislation is also reviewed with its peculiarities.

Keywords: labour law, working time, rest period, employment contract, wage, downtime, stand-by duty.

1 THE BACKGROUND OF THE HUNGARIAN CODIFIED REGULATION

The new Hungarian Labour Code, which entered into force with Act I of 2012, carried over the last amendment rules of the previous Labour Code of 1992, which had been amended several times, in the aspect of working time. Accordingly, the normal working hours are eight hours per day and 40 hours per week, which can be increased to 12 hours per day with special duties or overtime, and as a general rule to 48 hours per week. There were periods when, in the cases determined according to the 1992 Labour Code (such as continuous operation, multiple shifts, seasonal work, stand-by type work, as well as family relationships between employer/factory owner and employee), the normal working hours per day could be increased to 10 hours, and the weekly could be increased to 50, counting 5 working days per week. This has already changed in the old Labour Code, in a way that the normal working hours in a stand-by type position, as well as in the case of a family relationship between the employer/factory owner and the employee, could be daily 12 hours, if the parties agree on this. It is justified to say that when the previous

Labour Code entered into force, overtime on two consecutive days could only be 4 hours in total, and the maximum amount of overtime that could be performed in one week was legally not defined, but even converted, it could not be more than 8 hours per week, and on an annual level by codified law it could not exceed 144 working hours per year, or a maximum of 200 working hours per collective agreement. By the time the Act of 2012 came into effect, the two consecutive daily overtime limit was abolished, the annual overtime limit was increased to 200, and with a collective agreement it was increased to 300. Originally, the Labour Code of 1992 did not include the working time banking. However, when the European community created its 1993 directive on the organization of working time, incorporating unequally flexible working hours, but within a certain period, the possibility of compensating according to the legal definition, i.e. the reference period, which the Labour Act defined as the working time banking, setting it at a period of 4 months, which can be extended to a maximum of 6 months by collective agreement. This means that if a working time banking is applied, the wage supplement for overtime and special duties will not be paid in the following month, but at the end of the working time banking. Act CXVI of 2018 introduced two additional amendments to employer demands, mainly taking into account the interests of the Hungarian plants of the German automobile industry. According to this, the annual maximum amount of overtime work has been raised from the already mentioned 300 hours to 400, with the condition that the employer and the employee agree on this, and that agreement is valid for a period of 6 months. Employees and trade unions rightly consider this harmful, as the employer is at the mercy of the employee. This is because if the employee is reluctant to accept the contractual offer to extend working hours initiated by the employer, he or she can find a reason to terminate the employment contract or to place the employee at other disadvantages.¹ With the other amendment that came into effect with this law, which also ignores employee interests, the maximum working time banking of 6 months was increased to 3 years. This made it possible for the wage supplement to be paid with a 3-year delay, which could easily lead to the danger that in the meantime the company would be liquidated due to bankruptcy and thus the employees would lose their earned wage supplement. For all these reasons, serious demonstrations took place in 2019, which only subsided due to the ban on gatherings due to Covid '19, which, however, did not revive again only because the German car industry refrained from applying it.²

In addition, there are also points of the new Labour Code that are taken over from the previous one, which the employees consider to be harmful. Such is the rest period between two working days, which as a general rule must be 11 hours, but which, based on the previous and new regulations, the employer can unanimously reduce to 8 hours in the case of continuous and multi-shift operation, stand-by duty and on-call duty, or stand-by type work, which is also problematic because in this case even the shortest sleep time is at risk.³ This is also related to the fact that those companies (e.g. railways) where the service and the corresponding rest period are for several days, the continuous 24-hour day off at the

weekend is not issued on a day according to the calendar, but immediately after the last duty period of the week, ignoring the rest period.⁴ The domestic rules for stand-by duty and on-call duty, as well as lower remuneration and longer availability for stand-by type work, are also considered harmful by the employees and the trade unions, as they see that in Western Europe this kind of presence or availability related to the employment relationship is recorded as regular working hours, with a commensurate remuneration.⁵ It is considered particularly harmful that companies are still only willing to pay for the extended duration of briefings and trips to the place of work associated with the termination of company branches as stand-by duty at most.⁶

2 THE HUNGARIAN REGULATION IN THE LIGHT OF THE EUROPEAN COMMUNITY (UNION)

The European Centre of Enterprises with Public Participation and of Enterprises of General Economic Interest (CEEP) and the Union of Industrial and Employers' Confederations of Europe (UNICE) wanted to increase the maximum working time of 48 hours per week established in Council Directive 93/104/EC to 60 hours per week with the support of the European Commission, against which the European Trade Union Confederation (ETUC) protested. It was then that the amendment of the Hungarian Labour Code of 1992, affecting the topics already mentioned above (continuous, multi-shift operation, etc.), temporarily raised the maximum daily working time to 10 hours.⁷ In the end, a compromise was reached in Directive 2000/34/EC that made it possible to set the maximum weekly working hours at 58 hours for a period of 2 years, and then at 52 hours thereafter. However, the maximum working time of 48 hours per week must be restored within 5 years from the entry into force of the directive. As the 5 years began to pass, UNICE and CEEP tried to finalize the maximum of 58 hours per week of working time, but because of pressure from the ETUC, it was not accepted as a general rule in the new directive. Article 6 of the new Directive 2003/88/EC, which is still in force, defined the average weekly working time at 48 hours, including overtime. However, it gives the possibility that family members, medical institutions, energy providers and public transport companies, as well as industries in which work cannot be interrupted on technical grounds, furthermore in the fields of tourism and agriculture, the maximum of 48 hours per week can be exceeded by law, or by collective agreement in the case of other pressing economic or technical reasons or by agreement with the employee to the extent that it can be equalized to an average of 48 hours per week within the maximum reference time defined in 4 months. This is not exactly a lucky definition, but a rather complicated one regarding the maximum of working time that can be increased by agreement. Therefore, there is no maximum amount set for the increase of working time by agreement with the employee.

Apart from this, however, Article 16 of the directive, which regulates the reference periods, states that in the basic case, i.e. in the case of determining the working time in 6 x 8-hour days and a 24-hour rest day, the reference period is 14 days, which means that, as a general rule, the working hours together with overtime and special duties must be averaged for days and the wages must be paid together with overtime supplements. In Hungary, this directive does not apply, because in the absence of a working time banking, wages are paid monthly, taking into account overtime and special duties. On the other hand, if a working time banking is applied, it should not exceed 4 months in Hungary either, since Article 16 (2) states that if the maximum weekly working time is taken into account (Article 5), the reference period is defined as 4 months, which can be extended to 6 months in the already mentioned cases, but not to 3 years, as was done in the latest Hungarian amending act.

Article 3 of the directive establishes the daily rest period as 11 consecutive hours per 24-hour period. Therefore, shortening it to 8 hours according to the Hungarian rule is not in accordance with the directive. In comparison, Article 5, which regulates the weekly rest period, states that the weekly rest period is 24 consecutive hours, and the employee is also entitled to the 11-hour rest period before that. Since the continuous rest period usually falls on Sunday in Western European states, the working hours on Saturday are, as a main rule, shorter than 8 hours, due to the 11-hour rest period. Taking "A contrario" into account, in Hungary the contiguous 24-hour "rest day" must be issued together with the 11-hour rest period after the end of the weekend work.⁸

Regarding stand-by duty, stand-by type work and on-call duty, the European Court of Justice has ruled in three cases that if the employee is at the workplace for one of these qualities, it should be considered normal working hours. Prior to these three cases, in Western European states - as well as in Hungary and other Central European countries - longer "availability" than the legal working hours and lower wages were established. That is why the employees and their organizations sued the employers. In these three cases, the European General Court ruled that on-call duty, which includes being on stand-by at the workplace, must be considered regular working hours, and therefore its directive and national legal limitations must also be applied to on-call duty. However, it was not stated in any of the judgments that the wage must be determined according to this.

Despite this, the two Western European states concerned, Spain and Germany, first stated the principle of paying wages proportional to normal working hours in these cases with a Supreme Court ruling, and then by enshrining in legislation, which was also accepted by the other Western European states.⁹ In parallel with this, healthcare workers in Hungary also filed a lawsuit against two hospitals (Győr and Szolnok County Hospital) in order to get paid the full salary instead of the 40% on-call fee and the 20% stand-by fee. The Hungarian Supreme Court of that time stated that, since the European Curia did not take a position regarding wages, the remuneration of 20 and 40% for stand-by duty and on-call duty

does not violate EU law. The Hungarian Court also accepted this legal interpretation, which, however, becomes debatable, since the European Court of Justice, upon the liquidation of the company's branches, considers the travel of the employees living at the location of the branches to the company headquarters in connection with work as normal working time, after which the corresponding wage is due. Although the Hungarian legal literature reported on this years before, the Hungarian legislation seems not to want to take note of it.¹⁰

3 THE CODIFIED LAW REGULATIONS OF THE LEGAL SYSTEMS OF INDIVIDUAL STATES

We start our legal comparative study with the countries belonging to the Germanic legal system, first of all with *Germany*, since the German automobile industry has a need for the working time liberalization presented and analysed so far to be implemented by the Hungarian legislator. In Germany, regulations regarding working time and rest time, including overtime (Überstunden), are contained in the Working Time Act, the *Arbeitszeitgesetz*. According to this law, the working time is 8 hours per day and 48 hours per week. In contrast, however, the national and provincial sectoral collective agreements stipulate much less. In heavy industry, the sectoral collective agreements stipulate an average of 37.8 hours per week, while in light industry 38.8 hours. The situation is even more favourable in the metal industry, where the sectoral collective agreement stipulates a working time of 35 hours per week. In addition, overtime is possible, which can be a maximum of 2 hours per day, but cannot exceed an average of 8 hours per day within 6 months or 24 weeks. Accordingly, the working time banking (Referenzzeit) is 6 months, or 24 weeks within a calendar year. After overtime, similar to Hungarian law, according to collective agreements and agreements with employees, 50% of the average salary is due, 100% or time off compensation is due for the weekly rest day or public holiday, but in this case 50% of the average salary is included too.¹¹

A similar regulation is also in force in *Greece*, as German jurisprudence played a significant role in the labour law codification there. The maximum working time here is also 8 hours per day and a maximum of 48 hours per week, calculated with a 6-day work week. Collective agreements, however, establish weekly working hours as a general rule of 40 hours. The 8-hour daily working time may be increased by 2 hours, but the working time, including overtime, may not exceed 45 hours per week. The working time can be flexible by plus or minus 2 hours, and the average of 10 or 45 hours per week must be reached within 4 months. Accordingly, the working time banking (referenzperiod) is 4 months. After overtime, a 25% supplement or time off is due.¹²

In *Austria*, similar to German labour law, working time and rest time are also regulated by a separate law, the "*Arbeitszeitgesetz*", according to Section 9, the working time is 8 hours per day and 40

hours per week, based on 5 working days. With overtime, the working time cannot, as a general rule, exceed 50 hours per week, but in exceptional cases it can also be 60 hours per week. The working time banking is a maximum of one year, during which the average monthly working time cannot exceed 60 hours. The overtime supplement and the compensation for time off are similar to the German legal arrangement.¹³

According to the *Dutch Law on working time (Arbeidstijdenwet)*, the weekly working time based on 5 working days is 40 hours, and the daily working time is correspondingly 8 hours. On the other hand, overtime and the working time reference period are regulated indirectly and liberally by Dutch labour law. Within 4 months after working for the same employee for a period of one year, the employer may propose that the working hours specified in the employment contract be increased or decreased for the following year based on actual work. The employee can initiative this within one month, instead of 4. This adjustment of working hours to actual work is regulated by the Work Adjustment Act (*Wet aanpassing arbeidusur*). The working hours are primarily determined by the works council through an agreement with the employer for the entire factory, taking into account the adjustment of the working hours to the work actually performed each year with the employees, if this is deemed necessary by the employer or the employee.¹⁴

Examining the countries belonging to Francophone-Latin legal systems, in the case of *France*, according to the *Code du travail (Labour Code)*, the weekly working time is 35 hours, which can be 38 hours with overtime. The monthly working time without overtime is maximized at 157.67 hours. Overtime and/or work on the weekly rest day can only be 3 hours per week, taking into account the basic working hours of 8 hours per day and 35 hours per week. The maximum time for overtime and special duties is 48 hours per week, but only 44 hours if overtime is worked for 12 consecutive weeks. A reference time, i.e. a working time banking, can be used, the maximum duration of which can be 12 weeks. Within this, the average working time of 38 hours per week supplemented by overtime must be equalized, but the average of 8 hours per day and 35 hours per week, as well as the 220 hours per year, cannot be exceeded in the annual average. However, the parties have the opportunity to agree on a higher working time quota than these legal requirements. In this case, the annual working time may be higher than 1607 hours. Accordingly, in France, the reference period has two divisions, a shorter and a longer period, where the overtime limit applies to the shorter period, while with the longer period the basic working time has to be fulfilled.¹⁵

In *Belgium*, based on the working time of 8 hours per day, the working time including overtime can be 9, maybe 10, and exceptionally 11 hours per day. In the latter case, however, only if it is not possible to stop due to material spoilage or the need for continuous machine operation. In Belgian labour law, the reference period was not introduced as of yet.¹⁶

In *Luxembourg*, working hours are 8 hours per day and 40 hours per week. With overtime, working time can be increased to 10 hours per day, to 48 hours per week. The reference period, i.e. the working time banking, can last for 4 weeks, the employer must inform the employee of its application before its introduction. This also means a similar plus-minus shift of working time within the reference period (glechene Arbeitszeit), which was already mentioned in the Dutch solution.¹⁷

Among the Latin countries, in the case of *Spain*, the "Estatuto de los trabajadores", i.e. Article 34 of the employee regulations, regulates the working hours, according to which the working time is 8 hours per day and 40 hours per week, calculated with 5 working days. Overtime and its duration are regulated by collective agreement in Spain, however, overtime cannot exceed 80 hours per calendar year. A reference period can also be used here, the maximum length of which is 4 months. During this period, the average of 40 hours of overtime work per week must be fulfilled. Overtime in excess of this must be compensated either with time off or with overtime supplement.¹⁸

In *Portugal*, according to the *Codico do trabalho*, working hours are 8 hours per day and 40 hours per week, based on a 5-day working week. With overtime, the weekly working time can be increased to 48 hours. There is working time banking, i.e. a reference period, the longest duration of which is 12 months. If, after the end of the working hours, the settlement shows more than 40 working hours, the employee is entitled to either time off or supplement after the extra hours, according to the employee's choice.¹⁹ *Italian* regulation is very similar to Spanish and Portuguese. Here too, the daily working hours are 8 hours, and the weekly working hours are 40 hours, calculated with a 5-day week. As a general rule, the working time banking is one month, and with regard to seasonal work, as well as multiple shifts and continuously operating companies, it is one year.²⁰

According to the *Norwegian* Labour Code (*Arbeidsmijowen*), which belongs to the Scandinavian legal system, the weekly working time is 36-38 hours. The sectoral and company collective agreements establish the actual weekly working hours between these two numbers, which, according to legal literature, amounts to an average of 37.5 hours per week. This is similar to the German practice. According to articles 10-11 of the *Arbeidsmijloven*, the working time banking with a collective agreement can be a maximum of 52 weeks. However, the labour authority can establish a lower working time banking in its territory, provided that it cannot exceed 26 weeks. The scope of overtime is usually regulated by collective agreements. However, according to the labour law, the daily working time, including overtime, cannot exceed 10 hours, and the weekly working time cannot exceed 54 hours. The labour authority can determine the scope of overtime more narrowly than this legal upper limit. In this case, the daily working time, including overtime, cannot exceed 13 hours per day and 48 hours per week.²¹ In *Denmark*, Decree 219/2002 establishes weekly working hours at 37 hours. In addition, it only stipulates that 11 hours of rest time must be provided to the employee between two working days. Danish law does not recognize a

reference period.²² Taking these two pivotal rules into account, working hours are regulated by national and regional sectoral and company collective agreements. The *Swedish* working time regulations lie between these two.

For the two states belonging to the European Anglo-Saxon legal system, the United Kingdom and Ireland, the daily working time is 8 hours, and the weekly working time based on 6 working days is 48 hours. In addition, UK labour law recognizes the working time banking, which as a general rule can be 17 weeks, and in the case of certain jobs or work activities, it can be 26 weeks. Based on the agreement of the employer and the employee, the reference time frame can be set higher than this, but it cannot exceed 52 weeks. However, the employee is entitled to terminate such an agreement at any time. (With an agreement similar to this, it is also possible in Hungarian law to exceed the working time limits laid down in the Labour Code, however, the employee can only terminate after 6 months).²³

In *Irish* labour law, according to the Working Time Act, the daily and weekly working hours are also 8 and 48 hours, which, however, cannot be exceeded by any agreement in contrast to the English. Similar to English law, Irish law strictly stipulates that employees must be given 11 hours of rest between two working days, and 24 consecutive hours off after 6 days of work. If an employee works during his weekly rest period or on a public holiday, and performs overtime -- also similar to British law -- the employer must compensate for this either with wage supplement or with time off.²⁴

In the case of the Visegrád Four, which became members of the European Union in 2004 and Romania, we will begin the presentation of the legal arrangement of working time with the Czech Republic. In the *Czech Republic*, pursuant to Section 79 of the Codex Pracy (Labour Code), the weekly working time is, as a general rule, a maximum of 40 hours, but for those who work two or more shifts, only 38.75 hours based on a 5-day working week. The working time banking is applied in a special way by the Czech law. The "working time account" was introduced, which means that only 80% of the wage for a 5-day workweek is accounted for and paid, and the remaining 20% is paid after the end of the 4-6 month working time banking agreed with the employee or defined in the collective agreement. Overtime may not exceed 8 hours per week and 150 hours per year. These limits can be deviated from by separate agreement. However, even in the case of such an agreement, overtime cannot exceed 416 hours per year.²⁵ (It seems that the Hungarian government is trying to implement this solution by amending the Labour Code, initially in an "ex lege" manner, but now also with an agreement with the employer due to the high level of trade union opposition.).

The *Slovak* kodex pracy, similarly to the Czech legal arrangement, sets the daily working hours at 8 and the weekly at 40 hours, also with a 5-day working week. The exception to this is healthcare, where weekly working hours can be a maximum of 56 hours. Overtime is capped at 3 hours per week and 150 hours per year by the kodex pracy, however, in certain sectors and jobs, overtime can be set at a maximum

of 250 hours. Another limitation in the case of overtime is that the daily working time, including overtime, cannot exceed 12 hours, and the accounting reference period cannot, as a general rule, be longer than 4 weeks, with the exception of some sectors and jobs, where the working time banking can be extended to a maximum of 4 months.²⁶

In *Poland*, the codex prace also sets the daily working time at 8 hours and the weekly working time at 40 hours, based on 5 working days. It is familiar with the reference period, the length of which, as a general rule, can be a maximum of 4 months. As a general rule, Polish labour law rejects overtime, and in some sectors and jobs, such as seasonal and agricultural work, it is allowed to be used, the reference and accounting period of which can only exceptionally be 12 months.²⁷

Finally, with regard to *Romania*, the "codul labor", that is the Romanian Labour Code, determines the daily and weekly working hours and the number of working days per week in a similar way to the previously mentioned ones. The specific determination of daily, weekly, monthly, and even longer periods of working hours is handled flexibly by the "codul labor", within the framework of which a reference period of up to 3 months can be stipulated. In the case of "ex lege" overtime, 75% of the wage worked is paid as a supplement, which can be replaced by time off commensurate with the overtime. In the case of working on public holidays and weekly rest days, as well as during rest periods, the wage supplement is 100%, but at the request of the employee, it can be halved with time off in case of a time off request.²⁸

4 SUMMARY

In summary, by projecting this legal comparison onto the current Hungarian working time regulation amendment plan, it can first be established that, with the exception of a few countries, including the Central European countries that have recently become EU members, overtime work abroad is significantly more favourable for employees than under the Hungarian regulations. The weekly limit of overtime can be found in most national laws, which was eliminated from Hungarian labour law a long time ago. In addition, the reference period is on average shorter than the Hungarian working time banking. The alternatives provided by the laws ensure greater opportunities for choice and agreement for both employees and employers.

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