



[Pagina iniziale](#) > [Formulario di ricerca](#) > [Elenco dei risultati](#) > **Documenti**



[Avvia la stampa](#)

Lingua del documento :

ECLI:EU:C:2023:140

Provisional text

JUDGMENT OF THE COURT (Second Chamber)

2 March 2023 (\*)

(Reference for a preliminary ruling – Social policy – Protection of the safety and health of workers – Organisation of working time – Article 31(2) of the Charter of Fundamental Rights of the European Union – Directive 2003/88/EC – Articles 3 and 5 – Daily rest and weekly rest – National legislation providing for a minimum weekly rest period of 42 hours – Obligation to grant daily rest – Rules for granting)

In Case C-477/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the Miskolci Törvényszék (Miskolc Regional Court, Hungary), made by decision of 28 June 2021, received at the Court on 3 August 2021, in the proceedings

**IH**

**v**

**MÁV-START Vasúti Személyszállító Zrt.,**

THE COURT (Second Chamber),

composed of A. Prechal, President of the Chamber, M.L. Arastey Sahún (Rapporteur), F. Biltgen, N. Wahl and J. Passer, Judges,

Advocate General: G. Pitruzzella,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– IH, by L. Tóth, ügyvéd,

- MÁV-START Vasúti Személyszállító Zrt., by S. Szabó and I. Tóthné Pelle, ügyvédek,
- the Hungarian Government, by Zs. Biró-Tóth and M.Z. Fehér, acting as Agents,
- the European Commission, by D. Recchia and K. Talabér-Ritz, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 13 October 2022,

gives the following

## **Judgment**

1 This request for a preliminary ruling concerns the interpretation of Articles 3 and 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 (OJ 2003 L 299, p. 9), read in the light of Article 31(2) of the Charter of Fundamental Rights of the European Union ('the Charter').

2 The request has been made in proceedings between IH and his employer, MÁV-START Vasúti Személyszállító Zrt. ('MÁV-START'), concerning the granting of daily rest periods when weekly rest periods are granted.

## **Legal context**

### ***European Union law***

3 In accordance with Article 1(1) of Directive 2003/88, that directive 'lays down minimum safety and health requirements for the organisation of working time'.

4 Article 3 of that directive, entitled 'Daily rest', provides:

'Member States shall take the measures necessary to ensure that every worker is entitled to a minimum daily rest period of 11 consecutive hours per 24-hour period.'

5 Article 5 of Directive 2003/88, entitled 'Weekly rest period', provides:

'Member States shall 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.'

If objective, technical or work organisation conditions so justify, a minimum rest period of 24 hours may be applied.'

6 Under Article 15 of that directive, entitled 'More favourable provisions':

'This Directive shall not affect Member States' right to apply or introduce laws, regulations or administrative provisions more favourable to the protection of the safety and health of workers or to facilitate or permit the application of collective agreements or agreements concluded between the two sides of industry which are more favourable to the protection of the safety and health of workers.'

### ***Hungarian law***

### *The Labour Code*

7 Article 104(1) of the a munka törvénykönyvéről szóló 2012. évi I. törvény (Law No I of 2012 establishing the Labour Code) (*Magyar Közlöny* 2012/2.; ‘the Labour Code’) provides:

‘A rest period of at least 11 consecutive hours must be granted between the end of one working day and the beginning of the following working day (“daily rest period”).’

8 Article 105(1) of that code provides:

‘Two days of rest per week (weekly rest days) shall be granted. Weekly rest days may also be distributed in a variable manner.’

9 Article 106 of that code states:

‘1. In lieu of weekly rest days, a worker may be granted an uninterrupted weekly rest period of at least 48 hours per week.

...

3. Where rostering is variable, a worker may be granted, in lieu of the weekly rest period provided for in paragraph 1 and subject to the application *mutatis mutandis* of paragraph 2, an uninterrupted weekly rest period of at least 40 hours, including one calendar day. A worker must be granted an average weekly rest period of at least 48 hours, taking as a reference the working time roster or the accounting period.’

### *Law No CLXXXIII of 2005 on rail transport*

10 Article 68/A(4) of the a vasúti közlekedésről szóló 2005. évi CLXXXIII. törvény (Law No CLXXXIII of 2005 on rail transport) (*Magyar Közlöny* 2005/172.) provides:

‘By way of derogation from paragraphs 1 to 3, the provisions of Article 68/B(1) ... shall also apply to drivers of railway vehicles who are not considered to be mobile railway workers performing cross-border interoperability services.’

11 Section 68/B(1) of that law provides:

‘In the case of mobile railway workers performing cross-border interoperability services, the daily rest period in residence must be at least 12 consecutive hours per 24-hour period.’

### *The collective agreement*

12 Under Article 46(1) of the collective agreement concluded between MÁV-START and the trade unions (‘the collective agreement’), train drivers must be entitled to a daily rest period of 12 hours (rest period in residence), which runs from their arrival at their place of residence and ends with their departure from their place of residence to their workplace (travel time).

13 In accordance with Article 47(1) of that collective agreement, train drivers are entitled to two days’ weekly rest, which must be taken in such a way that an uninterrupted rest period of at least 48 hours separates two periods of work.

14 Article 47(4) of that agreement provides that, pursuant to Article 106 of the Labour Code, train drivers may be granted, in lieu of the rest days provided for in paragraph 1 of that article, an uninterrupted rest period of at least 42 hours per week. In that case, a worker must be entitled to an average weekly rest period of at least 48 hours, taking as a reference the working time roster.

### **The dispute in the main proceedings and the questions referred for a preliminary ruling**

15 IH is employed by MÁV-START as a train driver. His workplace is the MÁV-START operations centre in Miskolc (Hungary). IH carries out his work exclusively in Hungary.

16 IH is subject to the collective agreement. His employment is part of the monthly working time roster with no weekly rest days, but a weekly rest allocation granted by the employer based on a weekly reference period.

17 In accordance with the collective agreement, MÁV-START granted IH, between two periods of work, a daily rest period at his place of residence of 12 hours, to which was added standardised travel time of two thirty-minute periods.

18 Furthermore, once a week, MÁV-START granted him a weekly rest period of at least 48 consecutive hours. Where, for a particular week, it was not possible to grant such a rest period, MÁV-START granted IH an uninterrupted rest period of at least 42 hours so that he could benefit from an average weekly rest period of at least 48 hours, taking as a reference the monthly working time roster.

19 However, when IH was granted the weekly rest period, as was also the case when he took leave, he was not granted a daily rest period or travel time.

20 IH brought an action before the referring court, the Miskolci Törvényszék (Miskolc Regional Court, Hungary), in order to obtain payment of unpaid wages, claiming that he was entitled to the daily rest period immediately before or after his weekly rest periods or period of leave.

21 Before that court, MÁV-START maintains that the daily rest period must be granted between two successive periods of work within the same 24-hour period, and not when no new period of work is scheduled, for example when a weekly rest period or leave is granted. In its view, that is justified by the purpose of the daily rest period, which is to enable the worker to regain his or her strength between two periods of work. In addition, during each seven-day period, it is necessary to provide a longer weekly rest period that replaces the daily rest period.

22 The referring court notes that, pursuant to the powers conferred by Directive 2003/88 and the Labour Code, the collective agreement derogates from the rules on daily rest and weekly rest periods in a manner favourable to workers.

23 The daily rest period is 12 hours, which thus exceeds the minimum of 11 hours provided for in Article 3 of Directive 2003/88 and may, moreover, be spent in full by the worker at his or her place of residence, owing to standardised travel time.

24 As regards weekly rest periods, the referring court states that the Hungarian-language version of Article 5 of Directive 2003/88 is slightly different from the English, German and French-language versions, in particular in so far as the Hungarian-language version defines the concept of ‘weekly rest period’, for the purposes of Article 5, in such a way that every worker must be entitled, during each seven-day period, to a minimum uninterrupted rest period of 24 hours ‘and, in addition’

(*‘továbbá’*), the 11 hours’ daily rest period referred to in Article 3 of that directive. The English, German and French-language versions, for their part, use the terms ‘plus’, ‘*zusätzlich*’ and ‘*s’ajoutent*’, respectively, instead of ‘in addition to’.

25 That court therefore asks whether the concept of ‘weekly rest period’ should be interpreted as meaning that, either after the minimum uninterrupted rest period of 24 hours it is still necessary to grant the 11-hour minimum daily rest period, or, as it tends to consider, the period of 24 hours and that of 11 hours are added together to make up the minimum weekly rest period, in such a way that the worker must be entitled, in total, to a minimum weekly rest period of 35 consecutive hours.

26 In that regard, the referring court notes that the Hungarian legislation sets the duration of the weekly rest period at 48 hours, with a minimum of 42 hours, and that the concept of the ‘weekly rest period’ as used in the Labour Code and in the collective agreement makes no reference to the daily rest period or to its duration.

27 Lastly, the referring court asks whether the daily rest period must be granted between the end of the day’s work in question and the beginning of the following day’s work (or, on the same day, between the end of a period of work and the beginning of the next period of work) or, more generally, between the end of one working day and the beginning of the following working day, even if the latter starts several days later.

28 In those circumstances the Miskolci Törvényszék (Miskolc Regional Court, Hungary) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

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

(2) ... must Article 5 of Directive [2003/88], read in conjunction with Article 31(2) of the Charter, be interpreted as meaning that, in accordance with the objective pursued by [that] directive, the aforementioned article lays down only the minimum duration of the weekly rest period, which is to say that the weekly rest period must be at least 35 consecutive hours’ long, provided that there are no objective, technical or work organisation conditions which preclude this?’

(3) Must Article 5 of Directive [2003/88], read in conjunction with Article 31(2) of the Charter, be interpreted as meaning that, where the law of the Member State and the applicable collective agreement provide for the grant of a continuous weekly rest period of at least 42 hours, it is compulsory, following work which has been performed on the working day prior to the weekly rest period, also to grant the 12-hour daily rest period guaranteed along with it under the relevant legislation of that Member State and the applicable collective agreement, provided that there are no objective, technical or work organisation conditions which preclude this?’

(4) Must Article 3 of Directive [2003/88], read in conjunction with Article 31(2) of the Charter, be interpreted as meaning that a worker is entitled to a minimum rest period which must be granted within the course of 24 hours even if, for any reason, he or she does not have to work in the following 24 hours?’

(5) If the [fourth question] is answered in the affirmative, must Articles 3 and 5 of Directive [2003/88], read in conjunction with Article 31(2) of the Charter, be interpreted as meaning that the daily rest period must be granted prior to the weekly rest period?’

## Consideration of the questions referred

### *The first and second questions*

29 By its first and second questions, which it is appropriate to consider together, the referring court asks, in essence, whether Article 5 of Directive 2003/88, read in the light of Article 31(2) of the Charter, must be interpreted as meaning that the daily rest period provided for in Article 3 of that directive forms part of the weekly rest period referred to in Article 5 or whether Article 5 lays down only the minimum duration of that weekly rest period.

30 As a preliminary point, it must be recalled that, by establishing the right of every worker to daily and weekly rest periods, Directive 2003/88 gives specific form to the fundamental right expressly enshrined in Article 31(2) of the Charter and must, therefore, be interpreted in the light of that Article 31(2). It follows in particular that the provisions of Directive 2003/88 may not be interpreted restrictively to the detriment of the rights that workers derive from it (see, to that effect, judgment of 9 March 2021, *Radiotelevizija Slovenija (Period of stand-by time in a remote location)*, C-344/19, EU:C:2021:182, paragraph 27 and the case-law cited).

31 In those circumstances it is necessary, in order to answer the questions referred, to interpret the latter directive having regard to the importance of the fundamental right of every worker to daily and weekly rest periods (see, to that effect, judgment of 14 May 2019, *CCOO*, C-55/18, EU:C:2019:402, paragraph 33).

32 It also must be recalled that the aim of Directive 2003/88 is to lay down minimum requirements intended to improve the living and working conditions of workers through approximation of national rules concerning, in particular, the duration of working time. That harmonisation at EU level in relation to the organisation of working time is intended to guarantee better protection of the health and safety of workers by ensuring that they are entitled to minimum rest periods particularly daily and weekly (see, to that effect, judgment of 4 June 2020, *Fetico And Others* C-588/18, EU:C:2020:420, paragraphs 26 and 27 and the case-law cited).

33 Thus, the Member States are required, under Articles 3 and 5 of Directive 2003/88, to take the measures necessary to ensure that every worker is entitled to a minimum daily rest period of 11 consecutive hours per 24-hour period and, during each seven-day period, to a minimum uninterrupted rest period of 24 hours plus the 11 hours' daily rest referred to in Article 3 (judgment of 14 May 2019, *CCOO*, C-55/18, EU:C:2019:402, paragraph 38 and the case-law cited).

34 In order to ensure that Directive 2003/88 is fully effective, Member States must ensure that those minimum rest periods are observed (judgment of 14 May 2019, *CCOO*, C-55/18, EU:C:2019:402, paragraph 40).

35 Thus, having regard to the essential objective pursued by Directive 2003/88, which is to ensure the effective protection of the living and working conditions of workers and better protection of their safety and health, Member States are required to ensure that the effectiveness of those rights is guaranteed in full, by ensuring that workers actually benefit from the minimum daily and weekly rest periods laid down in that directive. It follows that the arrangements made by the Member States to implement the requirements of Directive 2003/88 must not be liable to render the rights enshrined in Article 31(2) of the Charter and Articles 3 and 5 of that directive meaningless (see, to that effect, judgment of 14 May 2019, *CCOO*, C-55/18, EU:C:2019:402, paragraphs 42 and 43).

36 In that regard, it should also be recalled that the worker must be regarded as the weaker party in the employment relationship and that it is, therefore, necessary to prevent the employer from being in a position to impose a restriction of his or her rights on him or her (judgment of 14 May 2019, *CCOO*, C-55/18, EU:C:2019:402, paragraph 44 and the case-law cited).

37 It is in the light of those considerations that the question whether the daily rest period provided for in Article 3 of Directive 2003/88 forms part of the weekly rest period referred to in Article 5 must be examined.

38 In that regard, it should be noted, in the first place, that that directive provides the right to daily rest and the right to weekly rest in two different provisions, namely, in Articles 3 and 5 respectively. That indicates that they are two autonomous rights which, as the Advocate General observed, in essence, in points 49 and 51 of his Opinion, pursue different objectives, consisting, for the daily rest period, in enabling the worker to remove himself or herself from his or her working environment for a specific number of hours which must not only be consecutive but must also directly follow a period of work and, in the case of the weekly rest period, in allowing the worker to rest during each seven-day period.

39 Consequently, workers must be guaranteed the actual enjoyment of each of those rights.

40 In the second place, it should be recalled, as is apparent from the case-law of the Court cited in paragraph 35 above, that the arrangements made by the Member States to implement the requirements of Directive 2003/88 must not be liable to render meaningless the rights enshrined in Article 31(2) of the Charter and in Articles 3 and 5 of that directive. In that regard, it must be found that an interpretation according to which the daily rest period formed part of the weekly rest period would render meaningless the right to daily rest referred to in Article 3 of that directive, by depriving the worker of the actual enjoyment of the daily rest period provided for in that provision, where he or she is entitled to a weekly rest period.

41 In that regard, it must be stated that the first paragraph of Article 5 of Directive 2003/88 does not merely lay down, as a whole, a minimum period for the right to weekly rest, but is careful to state that in addition to that period a period in respect of the right to daily rest must be recognised, thus emphasising the autonomous nature of those two rights. That confirms that the right to weekly rest is not intended to include, as the case may be, the period corresponding to the right to daily rest, but must be recognised in addition to that right.

42 Moreover, in order to ensure that the rights conferred on workers by Directive 2003/88 are fully effective, Member States are under an obligation to guarantee that each of the minimum requirements laid down by the directive is observed (judgment of 11 April 2019, *Syndicat des cadres de la sécurité intérieure*, C-254/18, EU:C:2019:318, paragraph 33).

43 It follows that the daily rest period, provided for in Article 3 of Directive 2003/88, is in addition not to the 24 hours of rest referred to in Article 5 of that directive so as to form a total weekly rest period of at least 35 hours, but in addition to the weekly rest period, which is autonomous and separate, of at least 24 hours provided for in that provision.

44 It follows from all the foregoing considerations that Article 5 of Directive 2003/88, read in the light of Article 31(2) of the Charter, must be interpreted as meaning that the daily rest period provided for in Article 3 of that directive does not form part of the weekly rest period referred to in Article 5 of that directive, but is additional to it.

### *The third question*

45 By its third question, the referring court asks, in essence, whether Articles 3 and 5 of Directive 2003/88, read in the light of Article 31(2) of the Charter, must be interpreted as meaning that, where national legislation provides for a weekly rest period exceeding 35 consecutive hours, the worker must be granted, in addition to that period, the daily rest period as guaranteed by Article 3 of that directive.

46 In the order for reference, that court observes, first, that the national legislation at issue in the main proceedings uses the concept of ‘weekly rest period’, which it sets, in principle, at 48 hours, and which may not be less than 42 hours, and, second, that that legislation does not contain any reference to the daily rest period or to the duration thereof. The ‘weekly rest period’ has a duration that exceeds the 35 hours that result from the addition of the minimum 24-hour rest period provided for in Article 5 of Directive 2003/88 and the minimum 11-hour rest period provided for in Article 3 of that directive.

47 In that regard, it should be noted that Article 5 of Directive 2003/88 does not contain any reference to the national law of the Member States. Therefore, the terms it uses must be regarded as autonomous concepts of EU law and interpreted uniformly throughout the European Union, irrespective of characterisation in the Member States (see, to that effect, judgment of 9 November 2017, *Maio Marques da Rosa*, C-306/16, EU:C:2017:844, paragraph 38 and the case-law cited).

48 It follows that the concept of ‘weekly rest period’ provided for by the national legislation at issue in the main proceedings has no bearing on the interpretation of Article 5 of Directive 2003/88.

49 That said, it must be recalled that the minimum weekly rest period provided for in that provision is 24 hours uninterrupted. However, Article 15 of that directive allows Member States to apply or introduce provisions more favourable to the protection of the safety and health of workers or to facilitate or permit the application of collective agreements or agreements concluded between the two sides of industry that are more favourable to such protection. Thus, in accordance with the collective agreement applicable to the dispute in the main proceedings, the worker concerned was granted a weekly rest period of at least 42 hours. In such a case, the weekly rest hours thus granted beyond the minimum required in Article 5 of Directive 2003/88 are governed not by that directive but by national law (see, to that effect, judgment of 19 November 2019, *TSN and AKT*, C-609/17 and C-610/17, EU:C:2019:981, paragraphs 34 and 35).

50 However, the fact of laying down more favourable provisions of that kind concerning the weekly rest period than those required as a minimum threshold by Directive 2003/88 cannot deprive the worker of other rights conferred on him or her by that directive, and more particularly of the right to daily rest.

51 As is apparent from the case-law of the Court, the exercise by a Member State of its own competences cannot, nonetheless, have the effect of undermining the minimum protection guaranteed to workers by that directive and, in particular, the actual benefit of the minimum daily rest period provided for in Article 3 of that directive (see, by analogy, judgment of 4 June 2020, *Fetico and Others*, C-588/18, EU:C:2020:420, paragraph 32).

52 Therefore, in order to guarantee workers the actual enjoyment of the right to daily rest enshrined in Article 31(2) of the Charter and Article 3 of Directive 2003/88, that right must be granted irrespective of the length of the weekly rest period provided for by the applicable national legislation.



53 In the light of the foregoing, the answer to the third question is that Articles 3 and 5 of Directive 2003/88, read in the light of Article 31(2) of the Charter, must be interpreted as meaning that, where national legislation provides for a weekly rest period exceeding 35 consecutive hours, the worker must be granted, in addition to that period, the daily rest as guaranteed by Article 3 of that directive.

#### *The fourth and fifth questions*

54 By its fourth and fifth questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 3 of Directive 2003/88, read in the light of Article 31(2) of the Charter, must be interpreted as meaning that, where a worker is granted a weekly rest period, he or she is also entitled to a daily rest period preceding that weekly rest period.

55 It is apparent from the order for reference that, in the present case, MÁV-START granted a daily rest period only if a new period of work was scheduled for within 24 hours of the end of a given period of work. If no new period of work was scheduled, for example when a weekly rest period or leave was granted, MÁV-START considers that there was no longer an obligation to grant the daily rest period.

56 In that regard, it should be recalled that it follows from the case-law of the Court that, in order to be able to rest effectively, the worker must be able to remove himself or herself from his or her working environment for a specific number of hours which must not only be consecutive but must also directly follow a period of work in order to enable him to relax and dispel the fatigue caused by the performance of his or her duties (judgment of 14 October 2010, *Union syndicale Solidaires Isère*, C-428/09, EU:C:2010:612, paragraph 51 and the case-law cited).

57 It follows that, after a period of work, every worker must immediately benefit from a daily rest period, irrespective of whether or not that rest period will be followed by a period of work. In addition, when the daily rest period and the weekly rest period are granted concurrently, the weekly rest period cannot begin to run until the worker has benefited from the daily rest period.

58 In those circumstances, the answer to the fourth and fifth questions is that Article 3 of Directive 2003/88, read in the light of Article 31(2) of the Charter, must be interpreted as meaning that, where a worker is granted a weekly rest period, he or she is also entitled to a daily rest period preceding that weekly rest period.

#### **Costs**

59 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Second Chamber) hereby rules:

**1. 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, read in the light of Article 31(2) of the Charter of Fundamental Rights of the European Union,**

**must be interpreted as meaning that the daily rest period provided for in Article 3 of that directive does not form part of the weekly rest period referred to in Article 5 of that directive, but is additional to it.**

**2. Articles 3 and 5 of Directive 2003/88, read in the light of Article 31(2) of the Charter of Fundamental Rights of the European Union,**

**must be interpreted as meaning that where national legislation provides for a weekly rest period exceeding 35 consecutive hours, the worker must be granted, in addition to that period, the daily rest as guaranteed by Article 3 of that directive.**

**3. Article 3 of Directive 2003/88, read in the light of Article 31(2) of the Charter of Fundamental Rights of the European Union,**

**must be interpreted as meaning that where a worker is granted a weekly rest period, he or she is also entitled to a daily rest period preceding that weekly rest period.**

[Signatures]

---

\* Language of the case: Hungarian.