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# *REFLECTIONS ON WORKING TIME - AN ESSENTIAL ELEMENT OF THE INDIVIDUAL EMPLOYMENT CONTRACT*

**C.C.Nenu**

**Carmen-Constantina Nenu**
Faculty of Law and Administrative Sciences, Department of Law and Public Adminstration
University of Pitesti, Pitesti, Romania
*Correspondence: Carmen-Constantina Nenu, University of Pitesti, 1 Tg din Vale St., Pitesti, Romania
E-mail: carmennenu2006@yahoo.com

**Abstract**

*Conducting work within a specified number of hours and according to a certain program is a defining feature of the individual labour contract, one of the criteria for differentiating it from civil or commercial legal relationships with a similar object. Considering these characteristics of the employment contract, it is particularly important to analyze the legal framework to determine whether the current statutory regulation of international and European level is respected by the national law. It is equally important to identify the main lines of action, so as to create a balance between capital positions represented by the employer and labour represented by the employee, within the individual employment relationship.*

**Keywords**: **work program, legal relationship, balance, labour intensity, labour relations**

## Introduction

*In the execution of the individual employment contract, the employee is obliged to work a number of hours , daily, weekly or monthly, according to a schedule established unilaterally by the employer or conventionally, compliance with which constitutes the core of labour discipline.*

*Labour legislation should reflect the need to ensure a better balance between the interests of both the employer and the employee, that is, between the aim of the first to continuously streamline operations and increase productivity and purpose of the latter to rebuild their own capacity to work and pay attention to the personal side of life, simultaneously with professional development. Based on this objective, both internationally and at European Union level and also at the level of each member state special attention shall be given to matching working time and rest time, in order to create working conditions that must provide workers genuine opportunities to achieve professional and personal development.*

## International regulation of working time

The International Labour Organization has paid particular attention to working time, considering it an essential element of the employment relationship, whose duration produces consequences on the personal and professional development of the individual engaged in a dependent activity. The particular importance placed on working time by the International Labour Organization is reflected in the very considerations this body's Constitution. According to them, "there are employment circumstances involving injustice, misery and hardship for a large number of people, "requiring" urgent improvement of these conditions, for example, in the regulation of working time, in setting a maximum duration of the day and of the working week

..."[1]. . The subsidiary principle is that human life is not just about work and that every human being should enjoy effective protection against excessive physical and mental fatigue and should be able to feel good and to have social and family life. Limiting working time and recognition of the right to rest appear, to the highest level, in international instruments universally valued. Thus, Article 24 of the Universal Declaration of Human Rights recognizes that all people have the right to rest and to leisure time and to a reasonable limitation of working hours and periodic paid holidays. This principle is recognized by Article 7 d) of the International Covenant on Economic, Social and Cultural rights referring to rest, to reasonable limitation of working hours and to periodic paid holidays.

The International Labour Organization adopted several legal instruments, their way being open by Convention 1/1919 on labour duration, which, on its adoption, corresponded the social and economic reality of the time.

The purpose of the international normative regulation of working hours is to ensure the effective protection of workers in the context of increased flexibility of labour relations. The international regulation of working time is a body of normative legal instruments aimed at providing the necessary framework for decent work, ensuring workers respect for their values in their family, social and spiritual life. However, the legal regulation must also respond the need for flexibility of labor relations, so employers would better organize their work and be competitive in an economy increasingly globalized.

Following the impact studies conducted by the International Labour Organization, the result was, on the one hand , the need to maintain minimum standards on working time and, on the other hand , the need to revise existing ones so that they would respond the best interests of employers and workers alike. Given these results, at the 93rd Conference of the International Labour Organization, which took place in 2005, the Report on the study of conventions relating to the regulation of working time was presented, which included recommendations on how to approach this international legal institution. The recommendation referred to the need to adopt a unique new legal instrument on working time and related issues of weekly rest and paid annual leave, which would consider the following additional items[2] :

a. to provide effective protection of workers, so that working time should not affect their health and safety;

b. to maintain a reasonable balance between work and family;

c. to ensure that the new instrument should not lead to a reduction in the level of protection offered by existing tools;

d to provide more flexible forms of organization of working time than those in the conventions examined. This might be done by extending the authorized daily work within the limits determined and with sufficient breaks to help raise decent working conditions;

e. to fill an important gap of Conventions 1-30 , which do not set a precise limit of the total number of overtime hours that can be performed during a given period, within the permanent or temporary derogations provided by the Convention[3].

## 1. European regulation of working time[4]

[1]Extracted from the overall study of the CEACR Convention (No. 1) reports on the duration of labor (Industry) Convention 1919 (No. 30) on the duraton of labor (trade and office) in 1930. International Labour Conference, 93 edition 2005, report III (Part 1B). Chapter X. Conclusions http://www.untrr.ro/activitate-patronala/comentariile-biroului-international-al-muncii-privind-intrebarile-puse-de-catre-guvernul-romaniei-privind-codul-muncii.html

[2] http://www.untrr.ro/activitate-patronala/comentariile-biroului-international-al-muncii-privind-intrebarile-puse-de-catre-guvernul-romaniei-privind-codul-muncii.html.

[3]Al Athanasiu, *Codul muncii Comment on articles*. Update to Vol I_II, CH Beck Publishing House, Bucharest, 2012, p. X

At European Union level, a relevant expression of the regulation of working hours was the Community Charter of Fundamental Social Rights of Workers[5], in particular its paragraphs 8:19 . The first paragraph, which shows that any employee of the European Community must benefit, at their workplace, from satisfactory conditions of safety and protection of health, and they are entitled to a weekly rest period whose duration Member States will gradually match according to national practices.

In the legal system of the European Union working time was not approached from a classical perspective of labor law, but from the perspective of protecting the security and health of employees. The main reason was the difficulty of regulation of this matter in the European Economic Community Treaty reformed in 1986 by the Single European Act. In this the provision of harmonizing the laws of member states regarding safety and health was first envisaged in Article 118, but was rejected by the notorious opposition of certain countries, like the United Kingdom and Northern Ireland, harmonization of European laws in all other aspects related to labor relations.

In this context, the European Economic Community Council approved the Framework Directive 89/391/EEC on safety and health and, subsequently, Directive 93/104/EC on working time[6] planning was approved, considering that this area contained an extremely important issue affecting the health protection of employees. Currently, this directive is repealed and replaced by Directive 2003/88/EC.

The United Kingdom of Great Britain and Northern Ireland[7] has positioned from the start against the approval of this Directive and even challenged it before the Court of Justice[8], considering that this was a clear violation of the Treaty because it dealt with a matter which was in the classical field of labor law and there was no scientific evidence that this would affect the safety and health of employees as it concerned only the physical risks of the workplace. Court of Justice considered the Community legal norm correct, given the general extensive criteria of occupational health set by the World Health Organization.

The Community Court judgment of 12 November 1996[9] established that there was no prohibition in art. 118 A of the Treaty of the European Economic Community which did not allow the interpretation of the concepts of work environment, safety and health in the sense that it referred to all factors, physical or otherwise, that might affect the health and safety of employees in the their work and, in particular, to some aspects of the planning of the working time. Such an interpretation of the terms "security" and "health" can be based on the preamble of the Constitution of the World Health Organization, body to which all Member States belong, which defines health as " a state of physical, mental and social comfort and not only a disease or condition in which pain is missing. "

On the other hand, the court held that the Community Planning working time did not appear necessarily conceived as an instrument of employment policy. Planning working time

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[4] For details on EU working time regulation see *Relaţii de muncă. Modul de curs,* developed by the Labour Inspectorate, Romania, Labour Inspection and Social Security, Spain, PHARE Project RO-03/IB/SO-01, Oscar Print Publishing House, Bucharest,2005, p.136-139

[5] Moral-political document adopted by the European Council in Strasbourg on 9 December 1989

[6] Directive 93/104/EC as amended by Directive 2000/34/EC, in reality, the regulatory framework working time and rest time, although the title concerned only certain aspects of the organization of working time.

[7] See A. Popescu, *Dreptul internaţional al muncii*, C.H. Beck Publishing House, Bucharest 2006, p. 358-363.

[8] Community case is taken from *Relaţii de muncă. Modul de curs*, published by the Labour Inspectorate, Romania, Labour Inspection and Social Security, Spain, PHARE Project RO-03/IB/SO-01, Oscar Print, Bucharest 2005,p. 137-147.

[9] The United Kingdom of Great Britain and Northern Ireland v Council of the European Union.

may have a favorable influence on the safety and health of employees by ordering minimum rest periods and adequate rest periods and, in addition, studies have shown that long periods of night work are detrimental to the health of employees and can endanger safety at work. Moreover, work organization in a certain pattern must take into account the general principle of suitability of the work to the person. The Community court acknowledged that the matter of working time can be considered both from a classical perspective, as an institution of labor law, and also as an institution of safety and health.

Nevertheless, further on, at the European Union level, the issue of working time is a component of health and safety at work of employees.

Regulation of working time has been an intractable problem, in view of the many specialties and exceptions to general rules for different types of activities. Community legislation has so many and such extensive exceptions that these almost allow deformation of the minimum content of the current Directive 2003/88/EC by special regulations, collective agreements and even individual agreements.

However, the content of this Directory is very important because it establishes community-based concepts on working time, rest periods, breaks, holidays, night work, time and pace of work, which are applicable to all legal systems of the Member States. Article 13 of Directive sets to the Member States the task to adopt necessary measures to ensure that employers who organize their work in a certain rhythm would consider the general principle of adequacy of labor to the party, primarily in order to alleviate monotonous work and work pace, depending on the type of activity and requirements for safety and health, especially as regards breaks during work.

It is all about the community concepts in the sense given to this phrase by the Court of Justice and, therefore, their meaning and approach present a generally binding. Interpretation of national legislation on working time depends largely on the one previously conducted by the Court of Justice of the EU and this is one of the most important values of Directive 2003/88/EC. It should be noted that consultations are taking place in the labor ministers of the governments of the European Union, aimed at improving the EU regulatory framework on labor time[10], considering the current legal too rigid.

Consequently, action will be taken to harmonize laws on working time with the need for flexibility of labor relations, by introducing permissive legal instruments such as the part time work contract, work at home or work through a temporary employment agency.

**National legal regulation of working time**

Romania ratified Convention 1 on the working time (industry), 1919. However, it did not ratify Convention 30 on the duration of employment (trade and office), 1930 Convention no. 47 on the reduction of working time to 40 hours a week, 1935.

The Labour Code regulates working time and rest time in art. 108-153; the organization of working time, pauses, records of work done by employees are established by internal regulations. Normal duration of employment is on average 8 hours per day and 40 hours per week. However, even the Constitution provides in Article 38 para. 3 that the normal working time is on average less than 8 hours per day. According to art. 111 paragraph 1 Labour Code, the maximum legal working time may not exceed 48 hours per week, including overtime. For employees aged under 18 years working time is 6 hours per day and 30 hours per week, according to art. 109, paragraph 2 of the Labour Code. The same law provides that the distribution of working time is usually uniform, 8 hours per day for 5 days with 2 days of rest, which means that the duration of monthly working time is 21-23 days, about 170 hours.

[10] I.T.Ştefănescu, *Tratat de dreptul muncii*, Wolters Kluwer Publishing House, Bucharest, 2007, p 546, footnot. 1

Any social activity is inconceivable without restoring useful physical and intellectual capacities of working which means, logically, daily, weekly and yearly rest. Rest time is necessarily associated with working time and concepts are complementary. The regulation governing working time, particularly by setting its limits, is one of the legal guarantees of the right to rest, being the expression of the objective necessity to protect labor against its unreasonable use.

Employers may establish specific forms of organization of working time, such as shift, continuous shift, operation program, unequal program activity-specific to maintenance and repair - maintenance and fractionated schedule. The employer has the opportunity to establish individualized programs of work that require flexible organization of working time, with the consent of the employee concerned. In this situation the working time is divided into two segments: a fixed period where all staff are simultaneously at work and a variable, mobile period when the employee chooses arrival and departure, respecting daily work time.

Being connected to the work performed as an essential element of the individual labor contract, the labor code defines the notion of working time as a concept which expresses the amount of labor required to perform the operations or work by a suitably qualified person who works with normal intensity in terms of determined technological and work processes (art. 126). The work time includes productive time, time for breaks imposed in the technology process, required time for breaks under the labor laws.

Employers should establish work rules under which all categories of employees operate, on union agreement, or if applicable, on employee representatives agreement[11].

The rest time of employees is regulated in interdependence with working time and as a result of the requirement to work the right to rest corresponds to it, in order to restore labor force, to protect the integrity and health of workers. Regulation of the right to rest is built on the fundamental idea that this right is not only answering a personal necessity, but it is also an integral part of the protection measures and of guaranteeing the right to work. Hence the severe legal sanction of absolute nullity of any agreement which waives all or part of the right to annual leave.

By rest time one should understand the time required for recovery of physical and intellectual energy spent in the labor process and for satisfying social and cultural-educational needs, the period in which the employees do not perform the work that they perform under the individual employment contract. Rest time takes the following forms: lunch break, the interval between two working days, weekends, public holidays and other days on which according to the law no work is performed and annual leave.

**Conclusion:**

By analyzing normative regulations at international, European and national levels on working time, it appears that it is still an essential element of the employment relationship, enjoying attention from lawmakers, but also the social partners'. Considering the large number of legal relationships in which their work has a dependent character, all institutions involved understand and act in order to ensure the necessary legal framework to protect the rights of employees, to harmonize work and family life, to create the necessary leverage for the economic and social progress of each nation .

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