The working time – various developments of the meaning of working time at the European Union level from a Romanian labor relations' perspective[1]

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Abstract

The working time is defined by the European Directive concerning certain aspects of the organisation of working time. The meaning of 'working time' and applicability of the Directive's requirements was further clarified by the Court of Justice of the European Union in its case law, with respect to various situations such as: working time of the employees who perform work on call, working time of the foresters who are provided with tied accommodation within the range of forest within their purview and qualification of the time spent by workers when travelling from home to work. Over the past years such cases have been more often met in the employment relationships in Romania, especially as regards work on call and mobile employees. Since there are no specific legal provisions to clarify the legal regime applicable to such situations, whether and in which circumstances they represent working time and the corresponding rights and obligations of the respective employees, the study aims to analyse such situations from the perspective of the Romanian labour relations by comparing the European legislation and case law with the Romanian national legislation in view of finding some specific answers useful for the interpretation and application of the Romanian legislation in such specific cases.

Keywords: *working time, rest time, work on call, mobile employee.*

JEL Classification: K31

1. Practical challenges in the organization of working time

The employment relations continuously need to adapt to the current requirements of the society and to the needs of both employers and employees. This necessity appears worldwide and it became lately more visible in the current employment relations in Romania.

The social and personal challenges are important factors for employees to accommodate the personal life, the family duties and the individual needs and wishes with their professional activities. Such elements became essential for the employees in choosing the employer and their workplace, in asking for individual

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arrangements regarding the organization of working time, in their increasing availability to change the jobs, industry or area of activity. For the employers it becomes more complicate to ensure protection of employees while reducing costs to get more efficiency within a more competitive business environment.

Therefore, the legislation has a very important role to ensure equilibrate legal environment which needs to offer flexibility for both employers and employees while granting protection to the employees and a fair competitive environment to the employers.

The protection of the employees' health and safety represents an imperative requirement for all the actors of the employment relations. In the view of both European and national legislation, a distinct and specific modality to ensure protection of the employees' health and safety consists in the limits provided by the law in the area of organization of the working time. These are imperative requirements that cannot be departed from.

However, the employers and employees are facing various situations when it seems that the limits of the working time cannot be observed as per the law due to various reasons:

a) There are cases when work on call must be ensured, due to the specific character of the activity. In such cases, the specific of the activity involves in both public and private sectors, the need to be available for the requests of the clients or of the population that can occur anytime and need immediate action. This is the case of medical emergencies, supply of energy, water, gas, heat, etc. telecommunications (television, telephone, etc.).

On the other side, it is possible that when the employees are available for the needs of the employer's clients or for the needs of the population they are serving no emergency or other requirement occurs and the respective employee does not practically perform his/her work.

Where are the limits between the working time and rest time in such cases? Which are the obligations of the employers and employees, if any, and which are the elements such obligations would depend of?

b) In other cases, the employees have specific duties of continuously looking after an objective: an energy supply distribution centre, a forest, a harvest, a railway passage, an overfall barrage within an area that is far from any city or village and where the employee has an accommodation location provided. The employee is living there 24 hours per day, while the duration of his working time should be limited. Where are the limits between his working time and rest time?

c) In some specific industries or area of activities, the employees are more often required to perform the activity in different work places, at the clients' locations. Due to reducing of costs requirements, the employers are reducing their territorial locations and the need that

their employees travel from a client to another increased. On top of such cases the mobile employees are also brought in the discussion due to the specific of their activity that involves travelling to clients, providers, other business partners, etc.

The distances between the locations they have to travel are longer, the traffic is busier and the durations of such journeys are consequently longer. To what extent the time spent travelling by such employees represent working time? What are the rules that must be observed as regards the rest time, as compared to the professional drivers in carriage activities?

Neither the Romanian legislation nor the European one provides for express rules applicable to such cases. On the other side, the national legal literature has scarcely analysed such situations that are currently more often met in the Romanian labour relations environment[3]. Therefore the present analysis could be found very useful for the practice.

In such cases when legislation does not offer clear solutions for specific practical situations there must be found the fair and correct interpretation of the existing legal provisions. The practitioners often resort to the legislation of the European Union and case law of the European Union Court of Justice that are very useful for such interpretation in the context of Romania's obligations to ensure transposition of the social EU acquis in the national legislation.

The present study is based on the research of the relevant case law developed by the European Union Court of Justice which has interpreted some of the provisions of the Directive 93/104/EC concerning certain aspects of the organization of working time[4] and, subsequently, Directive 2003/88/EC repealing and replacing the former directive[5] (Working Time Directives).

The research was made by identifying the Court's solutions, the analysis developed by the Court, the arguments grounding the interpretation issued and possible solutions which may be applied in Romania, having into consideration the legal provisions of both European and Romanian legislation in force.

2. Applicable legislation and European Union Court of Justice case law

Organization of working time is regulated at the level of the European Union through Directive 2003/88/EC concerning certain aspects of the organization of working time (repealing and replacing the former directive in this area, Directive 93/104/EC). Such legislation was transposed into the Romanian

[3] Ion Traian Ștefănescu, *Tratat teoretic si practic de drept al muncii*, Universul Juridic Publishing House, Bucharest, 2014, p. 572-573; Raluca Dimitriu, *Consideraţii în legătură cu flexibilizarea timpului de muncă al salariaţilor*, "Law" Review no. 7/2008, p. 123-125.

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

[5] 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 L 299, 18.11.2003, p. 9–19.

legislation through the Romanian Labour Code, Law nr. 53/2003[6], republished, as subsequently amended and supplemented.

According to the preamble of the Directive 2003/88/EC, its provisions were adopted on grounds of the provisions of the Treaty establishing the European Community stating that "that the Community is to support and complement the activities of the Member States with a view to improving the working environment to protect workers' health and safety". The preamble also states that "the improvement of workers' safety, hygiene and health at work is an objective which should not be subordinated to purely economic considerations" and that "all workers should have adequate rest periods". According to Article 1.1 „this Directive lays down minimum safety and health requirements for the organisation of working time". The objective of the European legislation to protect the employees' health and safety at work by establishment of specific rules with respect to working time and rest time is obvious.

The Directive defines the 'working time' as "any period during which the worker is working, at the employer's disposal and carrying out his activity or duties, in accordance with national laws and/or practice". On the other side, the 'rest time' is defined as "any period which is not working time".

According to the Romanian Labour Code, "the working time represents any period during which the worker is working, at the employer's disposal and carrying out his duties and attributions, in accordance with the individual employment contract, applicable collective labour agreement and/or legislation in force", while "the rest time represents any period which is not working time".

As mentioned, there are no specific provisions to support the interpretation and application of the legislation to the cases described above, but some specific case law was developed by the European Union Court of Justice which has interpreted some of the provisions of the Directives.

Since Romania had the obligation to transpose the European legislation in the area of labour relations, such European case law is very useful for the interpretation of the Romanian legislation in force and therefore we have analysed below the main findings of the Court.

The Court has constantly stated that:

1. The various requirements provided by the directives concerning certain aspects of the organization of working time regarding maximum working time and minimum rest periods "constitute rules of EU social law of particular importance from which every worker must benefit as a minimum requirement necessary to ensure protection of his safety and health[7]".

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[6] Law no. 53/2003, The Labour Code, republished in OJ 345, 18.05.2011.

[7] See C-14/04, Judgment of the Court of Justice of European Union of 1 December 2005 - *Dellas and Others*, paragraph 49, the document is available on line at http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62004CJ0014, last time accessed on 16th November 2016, C-258/10, Order of the Court of Justice of the European Union of 4 May 2011 - *Grigore*, paragraph 41, the document is available on line at http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1479043044848&uri=CELEX:62010CB0258, last time accessed on 16th

2. the concepts of 'working time' and 'rest period' within the meaning of the same directives "constitute concepts of EU law which must be defined in accordance with objective characteristics, by reference to the scheme and purpose of that directives, which is intended to improve workers' living and working conditions. Only such an autonomous interpretation is capable of securing full effectiveness for that directive and uniform application of those concepts in all the Member States[8]".
3. Article of the directives providing for definitions "is not one of the provisions from which the directive allows derogations[9]".
4. The said directives define the 'working time' as "any period during which the worker is at work, at the employer's disposal and carrying out his activity or duties, in accordance with national laws and/or practices". The Court stated that this "concept is placed in opposition to rest periods, the two being mutually exclusive" and there is no "intermediate category" between working time and rest period[10].

   Consequently, to answer whether in a certain situation a specific period of time represents 'working time' it should be examined whether or not the elements of the concept of 'working time' are present during the time spent by the employee and, therefore, whether that time must be regarded as working time or as a rest period.

3. On call employees

One of the main issues subject to the Court's judgement was the situation of the employees who perform work on call. The Court has ruled[11] that "the time spent on call by doctors in primary health care teams must be regarded in its entirety as working time, and where appropriate as overtime if they are required to be at the health centre. If they must merely be contactable at all times when on call,

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November 2016, and C-266/114, Judgment of the Court of Justice of the European Union of 10 September 2015 - *Tyco*, paragraph 24, the document is available on line at http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX :62014CJ0266, last time accessed on 16th November 2016.

[8] See C-14/04, *Dellas and Others*, paragraphs 44 and 45, C-437/05, Order of the Court of Justice of the European Union of 11 January 2007 - *Vorel*, paragraph 26, the document is available on line at http://eur-lex.europa.eu/legal-content/EN/TXT/? uri=CELEX:62005CO0437, last time accessed on 16th November 2016, C-258/10, *Grigore*, paragraph 44, and C-266/114, *Tyco*, paragraph 27.

[9] See C-258/10, *Grigore*, paragraph 45, and C-266/114, *Tyco*, paragraph 28.

[10] See C-151/02, Judgement of the Court of Justice of the European Union of 9 September 2003 - *Jaeger*, paragraph 48, the document is available on line at http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62002CJ0151&from=EN, last time accessed on 16th November 2016, C-14/04, *Dellas and Others*, paragraph 42, 43, C-437/05, *Vorel*, paragraph 24, 25, *Grigore*, C-258/10, paragraph 42, 43, and C-266/114, *Tyco*, paragraph 25, 26.

[11] Case C-303/98, Judgment of the Court of Justice of the European Union of 3 October 2000 - Sindicato de Médicos de Asistencia Pública (Simap) v Conselleria de Sanidad y Consumo de la Generalidad Valenciana, the document is available on line at http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:61998CJ0303, last time accessed on 16th November 2016.

the Court ascertained that only time linked to the actual provision of primary health care services must be regarded as working time".

The Tribunal Superior de Justicia de la Comunidad Valenciana, Spain, has submitted to the Court a reference for a preliminary ruling[12] asking for the interpretation of Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work ('Health and Safety Directive') and Directive 93/104/EC concerning certain aspects of the organisation of working time ('Working Time Directive'), in the context of some specific national regulations regarding the working time of the staff forming part of primary care teams.

In Spain, Article 6 of Royal Decree No 137/84 of 11 January 1984 provides that:

"1. The working time of staff forming part of primary care teams shall be 40 hours a week, without prejudice to work which they may be required to undertake as a result of being on call, such staff being obliged to respond to requests for home visits and urgent requests, in accordance with the provisions of the statutory staff regulations applicable to medical and auxiliary health staff employed by the social security authorities and the rules for the implementation thereof ...

2. In rural districts, care shall be provided for specified periods in the morning and afternoon at the health centre, local surgeries and at home, whether on an ordinary basis or by way of emergency.

Shift-work arrangements shall be made between members of teams in order to provide urgent assistance on a rotational basis, the services being centralised at the health centre every day of the week."

There are also additional regulations in place approved on grounds of agreement of the representative social partners stating that the maximum number of hours of duty on call shall be 425 per year, while in the case of primary care teams in rural districts, which are considered as inevitably on call in excess of the limit of 425 hours per year, the maximum shall be 850 hours per year.

The action brought in front of the national court was based on the allegation that under the above mentioned national provisions "doctors who work in primary care teams are required to work without the benefit of any time-limit and without the duration of their work being subject to any daily, weekly, monthly or annual limits; moreover, the normal working period is followed by a period of duty on call, followed, in turn, by the normal working period for the next day, and that work pattern is applied in the manner required by the Conselleria de Sanidad y Consumo de la Generalidad Valenciana, on the basis of requirements which are

[12] The Tribunal Superior de Justicia de la Comunidad Valenciana, Spain, has submitted to the Court a reference for a preliminary ruling in the proceedings pending before that court between Sindicato de Médicos de Asistencia Pública (Simap)and Conselleria de Sanidad y Consumo de la Generalidad Valenciana, on the interpretation of Council Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work (OJ 1989 L 183, p. 1) and Council Directive 93/104/EC concerning certain aspects of the organisation of working time (OJ 1993 L 307, p. 18).

determined unilaterally". In fact, "a doctor in a primary care team is obliged to work for an uninterrupted period of 31 hours, without night rest, whenever the programme for the week or the month so provides, sometimes at the rate of one day in every two; he must make his own eating arrangements; he must go out on house calls during the night, when there is no public transport, alone and without any security arrangements, travelling as best he can."

Within its preliminary ruling, the Court has stated that an activity such as that of doctors in primary health care teams falls within the scope of the Directive 89/391/ EEC on the introduction of measures to encourage improvements in the safety and health of workers at work and of Directive 93/104/EC concerning certain aspects of the organization of working time.[13]

With respect to the concept of working time, the Court has stated that time spent on call by doctors in primary health care teams must be regarded in its entirety as working time, and where appropriate as overtime, within the meaning of Directive 93/104, if they are required to be present at the health centre, while only time linked to the actual provision of primary care services must be regarded as working time if they must merely be contactable at all times when on call.

To decide this way, the Court has relied on the elements of definition of 'working time' and the fact that the working time is placed in opposition to rest periods, "the two being mutually exclusive".

It stated that "the characteristic features of working time (*n.n.* any period during which the worker is working, at the employer's disposal and carrying out his activity or duties) are present in the case of time spent on call by doctors in primary care teams where their presence at the health centre is required. It is not disputed

[13] Working Time Directive defines its scope first by referring expressly to Health and Safety Directive and, second, by providing for a number of exceptions in relation to certain specified activities. Therefore, in order to determine whether an activity such as that of doctors in primary care teams falls within the scope of Working Time Directive, it is necessary first to consider whether that activity comes within the scope of the Health and Safety Directive. The Health and Safety Directive applies to all sectors of activity, both public and private, including industrial, agricultural, commercial, administrative, service, educational, cultural and leisure activities and it does not apply where characteristics peculiar to certain specific public service activities, such as the armed forces or the police, or to certain specific activities in the civil protection services inevitably conflict with it. Since doctors in primary care teams perform their activities in a context which links them to the public sector, it is necessary to consider whether such activities come within the scope of the exclusion mentioned in the foregoing paragraph. Such exceptions to the scope of the Health and Safety Directive must be interpreted restrictively. Consequently, it is clear that, under normal circumstances, the activity of primary care teams cannot be assimilated to such activities and the activity of primary care teams falls therefore within the scope of the Health and Safety Directive. Further, it is necessary to consider whether such an activity comes within the scope of any of the exceptions provided for within Working Time Directive. According to the Directive's provisions, only the activities of doctors in training come within the exceptions to the scope of that directive. See paragraphs 29 to 41 of Judgment of the Court of Justice of the European Union of 3 October 2000 - Sindicato de Médicos de Asistencia Pública (Simap) v Conselleria de Sanidad y Consumo de la Generalidad Valenciana, the document is available on line at http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:61998CJ0303, last time accessed on 16th November 2016.

that during periods of duty on call under those rules, the first two conditions are fulfilled. Moreover, even if the activity actually performed varies according to the circumstances, the fact that such doctors are obliged to be present and available at the workplace with a view to providing their professional services means that they are carrying out their duties in that instance."

The situation was considered as different where doctors in primary care teams are contactable on call at all times without having the obligation to be present at the health centre. "Even if they are at the disposal of their employer, in that it must be possible to contact them, in that situation doctors may manage their time with fewer constraints and pursue their own interests. In those circumstances, only time linked to the actual provision of primary care services must be regarded as working time within the meaning of Directive 93/104."

Taking into consideration that the Romanian Labour Code has fully transposed the definition of the 'working time' and 'rest time' laid down by the Directive concerning certain aspects of the organization of working time and that there are no other national legal provisions regarding the organization of working time of the on call employees the interpretation given by the Court is fully applicable.

However, since no exceptions are provided from the rules applicable to the limits of working time and rest time, maximum duration of the working time, performance of overtime, night work, etc. the rules provided by the Romanian Labour Code are fully applicable for on call work, except for such cases when derogations are allowed by specific legislation (on call work for doctors in medical establishments, Ro: '*gărzile*') and with the observance of the Directive's provisions allowing derogations from its imperative rules.

On the other side, the legislation is not sufficient to determine the obligations of both employers and employees in case of on call work. While for the on call employees who must be present at work during the period when they are on call the situation is simpler as they are during their working time (benefitting of the corresponding remuneration for all such duration) and all their obligations are applicable according to the individual employment contract, internal rules and policies, etc., the situation is more complicated for the employees who must merely be contactable when on call. For example, when on call the latter employees may not answer to the phone and the application of any disciplinary sanction would be debatable and with high risk to be cancelled by the court if the on call work and the employee's obligations when on call and, eventually, related compensation, are not regulated in details by employment contracts and internal rules and policies.

4. Employees continuously looking after an objective

Another case was raised to the Court's attention as a preliminary question by a Romanian national court and it was referring to the situation of foresters[14].

[14] Case C-258/10, Order of the Court of Justice of European Union of 4 May 2011 - Nicuşor Grigore v Regia Naţională a Pădurilor Romsilva — Direcţia Silvică Bucureşti, the document is available

The Tribunal Dâmbovița, Romania, has submitted to the Court a reference for a preliminary ruling[15] asking for the interpretation of Article 2.1 and article 6 of Directive 2003/88/EC concerning certain aspects of the organisation of working time, within one litigation between Mr. Grigore, forester, and his employer Regia Națională a Pădurilor Romsilva with respect to the meaning of 'working time' as regards forest ranger duties performed by him within a section of forest and remuneration owed to him for such duties.

According to the Romanian legislation, the breach of legal provisions regarding the obligation to look after some specific goods determines the liability of the employees. The legislation applicable to foresters states that such employees are liable for the modality they perform their forester ranger duties, that they are obliged to be the forest guard and permanently watch over the forest surface in their custody and that they are liable for any damages they did not ascertain within a minutes of ascertaining offences and criminal deeds. According to the applicable collective labour agreement, the working program of foresters is flexible and it will comply with the normal duration of working time provided by the legislation in force.

Mr. Grigore has sustained that the 'working time' includes the period during which the forester has the legal and contractual obligation to permanently watch over the forest surface in their custody. The obligation to permanently watch over the forest is in breach of Articles 2 and 6 of the Directive 2003/88/EC. The national court has ascertained that according to the national legislation a forester must carry out his attributions 24 hours per day, 7 days per week, and he does not receive any remuneration other than the one corresponding to a working program of 8 hours per day, while his liability is permanently and continuously applicable.

In this case, the Court has ruled that "a period during which a forest ranger, whose daily working time, as stipulated in his employment contract, is eight hours, is required to carry out wardenship duties in a section of forest, making him liable to disciplinary action, the payment of compensation and civil or criminal sanctions, as the case may be, for any damage ascertained in the area under his control, regardless of the time when the damage occurs, constitutes 'working time' within the meaning of that provision only if the nature and extent of the wardenship obligation on that forest ranger and the system of liability applicable to him require his physical presence at the place of work and if, during that period, he must be available to his employer. It is for the national court to undertake the factual and legal checks necessary, in particular as regards the applicable national law, in order to assess whether that is the situation in the matter before it."

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on line at http://eur-lex.europa.eu/legal-content/EN /TXT/?qid= 1479043044848&uri=CELEX :62010CB0258, last time accessed on 16th November 2016.

[15] The document is available on line at http://curia.europa.eu/juris/document/document_ print.jsf;jsessionid= 9ea7d2dc30db0f746 1975de84952935ae91661cb8f34.e34KaxiLc3qMb40R ch0SaxuLbhr0?doclang=RO&text=&pageIndex=0&part=1&mode=lst&docid=81756&occ=first &dir=&cid=393348, last time accessed on 16th November 2016.

In addition, the Court has stated that this classification as 'working time' "does not depend on the provision of staff accommodation within the section of forest under the control of the forest ranger concerned provided that that provision does not imply that he is required to be physically present in the place determined by the employer and available there to his employer in order to be able to take appropriate action if necessary. It is for the national court to undertake the checks necessary in order to assess whether that is the situation in the matter before it".

The Court has underlined that in order to determine whether a period when the employee is present at work represents ,working time' depends on the employee's obligation to be at his employer's disposal. The employee should be obliged to be physically present at the place indicated by the employer and to be at his employer's disposal in order to immediately perform the corresponding activities, if needed.

A flexible employment contract aims to ensure a free allocation of working time provided that the normal duration of the working time is observed. However, in a situation like the one subject to the Court's attention it may also be relevant the fact that the forester is the only one person in charge with the permanently watch over the forest, with no other possibility to organize the work in shifts and no other alternative modality to ensure permanently watch over the forest.

Consequently, considering the definition of 'working time', the national court should check the compatibility of the national legislation with the Directive and even in case the national legislation is compliant with the Directive to check whether the modality of its implementation, including the legal regime of liability applicable to the foresters, may lead to results incompatible with the Directive.

Such situations are often met in Romanian labour relations not only in case of foresters, but also in case of some specific activities involving the presence of the employees in the territory, when the obligation to take care of a specific objective has permanent character and there is no possibility to ensure work in shifts. In such cases, the employer provides sometimes the employee with an accommodation, not only for him but also for his family in order to ensure watching over the objective all the time, including during his 'rest time'. However, since the rest time is the free time of the employee, during that time the employee cannot be obliged to perform its activity and cannot be held liable for any consequence of not performing the respective activity. In these cases the limits between working time and rest time should also determine the extension of the respective employees' obligations to look over the objective and related rights in their responsibility over each period of 24 hours, and the existence of such obligations and related-liability should determine the identification of the duration of working time.

5. Employees traveling between home and work. Mobile employees

Recently, in relation with the travelling of employees from home to work, the Court has stated[16] that in circumstances such as those in which workers do not have a fixed or habitual place of work, the time spent by those workers travelling each day between their homes and the premises of the first and last customers designated by their employer constitutes 'working time', within the meaning of the Directive.

This request for a preliminary ruling was made for the interpretation of the 'working time' as defined by the Directive 2003/88/EC within the course of a national litigation occurred because the employer refused to consider the time spent by the employees on daily travel between their homes and the premises of the first and last customers designated by their employer as 'working time'.

The Spanish law does not provide for specific rules on such particular aspect and its provisions are in compliance with the Directive's requirements[17]. However, it may be born in mind for the purpose of the analysis that according to the Spanish law "working time shall be calculated in such a way that a worker is present at his place of work both at the beginning and at the end of the working day".

In the case subject to the Court's attention, the employer's business involves installing and maintaining in the majority of Spanish provinces security systems which enable intrusions to be detected and burglaries to be prevented. The employees (technicians) install and maintain security equipment in private homes and on industrial and commercial premises located within the geographical area assigned to them. Such geographical area consists of all or part of the province in which they work and sometimes more than one province. The employees use company vehicles to travel in view of performing their activities.

Before 2011, the employees arrived at the regional office they were belonging to in order to pick up the vehicle and receive the list of customers to be visited and the task list and in the evening they returned to leave the vehicle at these offices. The employer counted the daily working time from the moment the employees left the regional office with the car and list of customers and tasks until the employees returned to the office to leave the car.

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[16] Case C-266/114, Judgment of the Court of Justice of the European Union of 10 September 2015 - Federación de Servicios Privados del sindicato Comisiones obreras (CC.OO.) v Tyco Integrated Security SL and Tyco Integrated Fire & Security Corporation Servicios SA, the document is available on line at http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62014CJ0266, last time accessed on 16th November 2016.

[17] The Court notes that according to the Spanish Workers' Statute, the working hours shall be as specified in collective agreements or employment contracts, normal working hours shall average no more than 40 hours per week of actual work, calculated on an annual basis and there must be at least 12 hours between the end of one working day and the beginning of the following working day. Normal working hours shall not exceed nine hours of actual work per day unless a different pattern of daily working hours applies by virtue of a collective agreement or, failing that, by agreement between the employer and the representatives of the workers, subject in all cases to the requirement for a rest period between working days.

In 2011, when the employer closed its regional offices it assigned all its employees to the central office in Madrid. After this moment, the employees are daily leaving their homes to the places where they are to carry out the installation or maintenance of security systems. They use the same vehicle to return home at the end of the day. Sometimes the distances are rather long (more than 100 kilometres) while in some cases the volume of the traffic is very busy so that the time spent travelling between home and customers is counted in hours. The respective employees receive on their phone on the eve of their working day the task list for the following day identifying the various premises that they are required to visit and the times of their customer appointments. The employer does not count as working time the time spent travelling between home and customers. The daily working time is counted starting from the moment the employee arrives at the premises of the first customer of the day and ends when those employees leave the premises of the last customer.

However, the national court notes that a different category of employees, namely the mobile workers in the road transport sector, benefit of a different legal regime as in their case the national law took the view that their vehicle is the workplace and consequently the travelling time is considered to be working time.

Given this context, the national court has referred to the Court the following question: "Must Article 2 of Directive 2003/88 be interpreted as meaning that the time spent travelling at the beginning and end of the day by a worker who is not assigned to a fixed place of work but is required to travel every day from home to the premises of a different customer of the employer and to return home from the premises of another, different, customer (following a route or list that is determined for the worker by the employer the previous day), at all times within a geographical area that is more or less extensive, in the conditions of the main proceedings as described in the background to this question, constitutes 'working time' as that concept is defined in Article 2 of the directive or, conversely, must it be regarded as a 'rest period'?"

Within its judgement, the Court has noted the Advocate General opinion that "the journeys of the workers, who are employed in a job such as that at issue in the main proceedings, to go to the customers designated by their employer, is a necessary means of providing those workers' technical services to those customers". In this specific case the nature of the journeys has not changed since the abolition of the regional offices but only the departure point has changed.

In order to issue the ruling, the Court has analysed the elements of the definition of 'working time' as mentioned by the Directive 2003/88/EC. First of all, it assessed that during the time spent travelling between home and customers, the workers in question must be regarded as carrying out their activity or duties.

As regards the second element of the definition, according to which the worker must be at the employer's disposal during that time, the Court notes that "the decisive factor is that the worker is required to be physically present at the place determined by the employer and to be available to the employer in order to be able to provide the appropriate services immediately in case of need". Thus, the

respective worker must find himself in a situation when he is legally obliged to obey the instructions of his employer and carry out his activity for that employer. In such cases if workers meet major constraints in managing their time and pursuing their own interests this may demonstrate that the period of time in question does not represent working time within the meaning of Directive 2003/88.

In the case at hand, during those journeys between home and clients, the workers act on employer's instructions, while the employer may change the order of the customers or cancel or add an appointment. Thus, workers are not able to use their time freely and pursue their own interests, so that, consequently, they are at their employer's disposal.

According to the third element of the concept of 'working time', the worker must be working during the period in question. The court states that "if a worker who no longer has a fixed place of work is carrying out his duties during his journey to or from a customer, that worker must also be regarded as working during that journey".

In addition, the Court considered that reducing the resting time of workers who do not have a habitual or fixed place of work by excluding from the concept of 'working time' all the time they spend travelling between home and customers would be contrary to the provisions of Directive 2003/88 and noted that "travelling is an integral part of being a worker without a fixed or habitual place of work, the place of work of such workers cannot be reduced to the physical areas of their work on the premises of their employer's customers".

In Romania the mobility of workers is also increasingly. Mobile workers do not have a fix workplace, but they are carrying out their activity in various places. Indeed travelling between clients, between offices and clients and between home and offices or clients is an integral part of their work. In fact their workplace is represented by a specific area. Therefore, when they leave home to the clients they are already working, at the employer's disposal and carrying out their duties and attributions.

6. Conclusions

Although the concepts of 'working time' and 'rest period' constitute concepts of EU social law and have an EU meaning, they have been given by the Romanian legislation the same definitions as the European Working Time Directives gave them. Consequently, the interpretation given by the European Union Court of Justice of Directives' provisions is very relevant for the interpretation and application of the Romanian legislation.

Therefore, in order to identify whether under the Romanian legislation in some specific situations among those described above within the present analysis a certain period of time represents for the employees working time or rest period the existence of all elements of such definitions must be assessed, as the European Union Court of Justice did in all the case law analysed herein.

Moreover, since the national regulation in force is similar with the one applicable at the European Union level, there must be taken into consideration that the two concepts of 'working time' and 'rest period' are placed in opposition, being mutually exclusive as there is no "intermediate category" between working time and rest period. Thus, a specific period of time may represent for the employee either working time or rest period since there is no other category of time. In addition it is of important relevance in any assessment the fact that the main purpose of all these European and national regulations is the protection of employees' health and safety by limiting the duration of working time and ensuring to the employees enough rest period to get real rest and recover work capacity.

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