2013/29

Obligation to wear uniform during breaks does not disqualify those breaks as unpaid "rest breaks" (CZ)

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Summary
This case turns on the distinction (existing also under EU law) between a regular break and a period, not being a regular break ("a reasonable period of time for food and rest"), during which the employee does not work. The distinction was relevant in this case concerning police officers, because, in accordance with Czech law, employees are not entitled to pay during regular breaks but are entitled to pay during "reasonable periods for food and rest", and the police officers considered their breaks to be such reasonable periods. Was the fact that they continued to wear their uniforms and weapons during breaks relevant? The Supreme Court replied in the negative.

Facts
The plaintiffs in this case were three police officers employed by the municipality of Hradec Králové.

In 2006-2008 the plaintiffs worked 12-hour shifts including two unpaid breaks of 30 minutes each. Thus, they were paid for 11 hours per shift. They claimed payment for the full 12 hours, basing their claim on the distinction under Czech law between, on the one hand, a regular break (for food and rest) and, on the other hand, a "reasonable period of time for rest and food". Czech law in this respect is essentially a transposition of Directive 93/104 as amended by Directive 2000/34 (for the period through 2006) and Directive 2003/88 (for the period from 2 August 2004). The latter Directive provides in Article 4:

"Member States shall take the measures necessary to ensure that, where the working day is longer than six hours, every worker is entitled to a rest break, the details of which, including duration and the terms on which it is granted, shall be laid down [...]"

Articles 17 and 18 allow Member States to derogate from Article 4 in certain situations "on account of the specific characteristics of the activity concerned":

"[...] provided that the workers concerned are afforded equivalent periods of compensatory rest [...]"

The distinction under Czech law between regular breaks and "reasonable periods" for rest and food is basically similar to that between Article 4 "rest breaks" and Article 17/18 "equivalent periods" under EU law. In accordance with the Directive, Czech law provides that an employee may only be granted "reasonable periods for rest and food" instead of regular breaks where the work cannot be interrupted. Moreover such reasonable periods are "included" into work time and thus employees are paid during such periods.

The plaintiffs argued that their two daily breaks could not be seen as regular breaks because they were not allowed to remove their uniforms or their weapons during the break. They brought a claim for back pay.

The court of first instance and the court of appeal rejected their claim, reasoning that the plaintiffs' work did not qualify as work that cannot be interrupted by a regular rest break, even though they continued to wear their uniforms. The plaintiffs appealed to the Supreme Court. Among other things, they argued that the law prohibited them from carrying arms whilst off duty. In other words, given that they had to continue wearing their weapon during breaks, they must have been deemed to be on duty during that time.

Judgment
The Supreme Court affirmed the lower courts' judgments. Although it agreed with the plaintiffs that an employer may not restrict an employee's freedom during breaks, except in certain specific cases regulated by statute (in case of municipal police officers, the obligation to act in specified cases even outside working hours), this merely means that the employee need not perform work during breaks. The fact that the plaintiffs wore their uniforms and weapons during those periods was insufficient to mean they were "reasonable periods", rather than regular breaks. The fact that the plaintiffs had to be prepared to interrupt their breaks in an emergency did not play a role in the Supreme Court's reasoning.

Commentary
This Supreme Court ruling clarifies the conditions under which a break may qualify as a regular rest break rather than as a "reasonable period of time for rest and food". Neither the mere theoretical possibility of an interruption of the break, nor the fact that an employee is under an obligation to wear his uniform during breaks, are such major restrictions on the employee's freedom to enjoy breaks in any manner he sees fit, that they mean the breaks should not be defined as regular breaks. The only case where the break may be considered a "reasonable period" and thus be paid, is where the work complies with the criterion of "work that cannot be interrupted". For any other type of work, the employees are provided with regular breaks.
The court's ruling protects employers of uniformed staff against overtime claims.

Comments from other jurisdictions
Germany (Klaus Thönissen): Under German law the outcome of this case would most likely be the same. The distinction whether a break is a regular "rest break" or just "a reasonable period for food and rest" cannot be made on the basis of what the employee is wearing.
Within the meaning of the German Working Hours Act a "rest break" requires a predetermined particular period of time, in which the employee does not have any duty to work, to be on call or whatsoever. When these requirements are satisfied, that break is considered a rest break and not working time, therefore the employee is not getting paid, unless it was agreed otherwise in either an individual employment contract or a collective bargaining agreement. Besides that, there are no other criteria in order to determine a rest break.
In 2009, the Regional Labour Court of Berlin-Brandenburg pointed out the aforementioned requirements and held that bearing arms during a break – in that case a security guard had no chance to lock up his gun during his rest break – does not preclude the purpose of a rest break and therefore the security guard was not entitled to back pay.

Luxembourg (Michel Molitor): Under Luxembourg law, the difference between a "rest break" and an "equivalent period of compensatory rest" is clearly regulated. As a matter of fact, an "equivalent period of compensatory rest" only concerns a certain kind of employee.
A "rest break" applies to all employees and must be granted after six

hours of work. The "rest break" may or may not be remunerated and its duration depends on and should be adapted to the nature of the employee's activity. During such breaks, the employee does not have any obligation to work or to stay at the workplace and the law does not provide for any exceptions. On the other hand, an "equivalent period of compensatory rest" is only applicable to "mobile employees", i.e. employees who are travelling or flying personnel employed by an undertaking carrying out transport services of passengers or goods by road, air or sea. These kinds of employees are entitled to a "rest break" in the same way as any other employee, and, in certain specific cases, also to an "equivalent period of compensatory rest". But for this latter kind of rest, the employee must remain at the employer's disposal in case of emergency.

By contrast with Czech law, Luxembourg law makes a clear difference between "rest break" and "equivalent period of compensatory rest", so that even if an employee has the benefit of an "equivalent period of compensatory rest", they are also entitled to a "rest break". Thus, Luxembourg law places clearly defined borders between "working time", "rest breaks" and "equivalent periods of compensatory rest".

The Netherlands (Peter Vas Nunes): The ECJ has ruled several times on issues regarding employees who are on call following their normal working day: see *Simap* (2000, case C-303/98), *CIG* (2001, case C-241/99), *Jaeger* (2003, case C-151/02) and *Pfeiffer* (2004, case C-397/01). To my knowledge it has not yet ruled on the difference between a "rest break" and an "equivalent period of compensatory rest". However, the ECJ did rule that "working time" and "rest period" are mutually exclusive. In other words, if any period qualifies as working time within the meaning of Directive 2003/88, that period cannot be a rest period and vice-versa. Perhaps the same applies to breaks.

It may be noted that Article 4 of Directive 2003/88 leaves it up to Member States to determine "duration and terms" of rest breaks. Dutch law provides that a worker is entitled to a rest break lasting no less than 30 minutes after 5.5 hours of work, a rest break being defined as a period during which the worker "has no obligation to work at all". However, the law does allow a worker to be on call for unforeseen events during breaks, even when this obligates the employee to be in or near the place of work during breaks. I am not certain how this relates to Directive 2003/88.

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Before which court(s) must a union bring a collective claim? (RO)

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Summary

Romanian law allows employees to bring a claim against their employer in the court of the employees' place of residence or work. Until recently, some courts held that, where a trade union brings a claim on behalf of several members, it must do so in the courts where each of those members resides or works. Other courts allowed a trade union in such a situation to proceed before one single court, namely that of the union's own registered office. The Supreme Court has ruled in favour of the latter doctrine.

Facts

In order to ensure consistent interpretation and application of the law by all courts, the General Prosecutor in Civil Matters in the Supreme Court ('High Court of Cassation and Justice') asked the Supreme Court to rule on a question of law which has been applied in different ways by the courts. In relation to which court has jurisdiction in actions brought by a trade union on behalf of its members, some courts have said that the competent court is the one where the plaintiff (employee) re-sides, while others have held that the competent court is the one where the trade union is registered.

The right of a trade union to take court action on behalf of its members was formerly regulated by Trade Union Act No. 54/2003 and is currently regulated by the Act on Social Dialogue No. 62/2011, which stipulates in Article 28(2) that "trade unions shall be entitled to take actions under the law, including actions in courts on behalf of their members, under a written mandate from the members". Neither the former nor the current law is clear on which court has jurisdiction when such action is taken.

By the Romanian Labour Code, claims on labour law issues must be filed before the courts that are competent, based on the place of residence or registered office of the claimant. Thereby it differs, in favour of the plaintiff (usually the employee), both from the system of Regulation 44/2001 ('Brussels I') and from the general rules of Romanian civil procedure, which stipulate that the competent courts are those of the place of residence or the registered office of the defendant. Alternatively, an employment-related claim may be filed, according to the Act on Social Dialogue, before the court which is competent, based on the workplace of the claimant (i.e. the employee), but this is rarely done.

Some courts hold that the registered address of the trade union must be taken into account when determining which court has competence, including cases where some members of the trade union reside within the area of competence of one court, whilst others reside within another. Other courts hold that where a trade union participates in a court case, it does so in its capacity as representative of its members, on behalf and in the name of the relevant individual. In the view of these courts, the legal provisions concerning jurisdiction in such cases refer to the members of the trade union and holders of the rights claimed, not to their representative. Therefore, the competent court is the court where the employee resides, and not the court with jurisdiction where the trade union has its registered address.