Reports of Cases

OPINION OF ADVOCATE GENERAL
PITRUZZELLA
Delivered on 13 October 2022 [1]

Case C-477/21

IH
v
MÁV-START Vasúti Személyszállító Zrt.

(Request for a preliminary ruling from the Miskolci Törvényszék (Miskolc Regional Court, Hungary))

(Reference for a preliminary ruling – Protection of the safety and health of workers – Right to limitation of maximum working hours and to daily and weekly rest periods – Daily and weekly rest – Method of calculation and arrangements for granting)

1. In order to ensure that the health and safety of workers in the workplace is fully and effectively protected, EU law lays down minimum daily and weekly rest periods. Is it necessary for the Member States to make it compulsory for employers always to grant a daily rest period within the meaning of Article 3 of Directive 2003/88/EC, [2] or is it sufficient, pursuant to Article 5, for a weekly rest period to be ensured if it is equal to or greater than the sum of the hours specified in that directive for the daily and weekly rest period? If national law or the applicable collective agreement provide for a 'weekly rest period' longer than the minimum provided for in the directive, is the Member State nevertheless required to ensure a daily rest period? Must a daily rest period be granted even if no working time has been scheduled for the worker during the following 24 hours? Must a daily rest period necessarily precede a weekly rest period?

2. In this Opinion, I will set out the reasons why I consider that EU law requires the Member States to grant workers a daily rest period as an autonomous right independent of the weekly rest period, even if a (weekly) 'rest period' longer than the minimum standards laid down by the directive is granted.

[1] Original language: Italian.

[2] Directive 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).

I. Regulatory environment

A. European Union law

3. According to recitals 4 and 5 of Directive 2003/88:

'(4) The improvement of workers' safety, hygiene and health at work is an objective which should not be subordinated to purely economic considerations.

(5) All workers should have adequate rest periods. The concept of "rest" must be expressed in units of time, i.e. in days, hours and/or fractions thereof. [EU] workers must be granted minimum daily, weekly and annual periods of rest and adequate breaks It is also necessary in this context to place a maximum limit on weekly working hours.'

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

'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 the directive, entitled 'Weekly rest period', provides that:

'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 Directive 2003/88, 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.'

B. Hungarian law

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

'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 the Labour Code states:

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

9. Subsequent Article 106 of the Labour Code states, in paragraphs 1 and 3, that:

‘(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 1 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’.

10. Article 68/A(4) of the Vasúti közlekedésről szóló 2005. évi CLXXXIII. törvény (Law CLXXXIII of 2005 on rail transport) (*Magyar Közlöny* 2005/172) provides that:

‘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. Article 68/B(1) of that law states that:

‘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’.

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

13. Under Article 47(1) of that collective agreement, train drivers are entitled to 2 days’ weekly rest, granted in such a way that there are at least 48 hours of uninterrupted rest between 2 shifts.

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, an uninterrupted rest period of at least 42 hours per week. In that case, a worker must be granted an average weekly rest period of at least 48 hours, taking as a reference the working time roster.

II. Facts, the main proceedings, and the questions referred for a preliminary ruling

15. IH (the ‘worker’) is employed by MÁV-START (the ‘employer’) as a locomotive driver and works exclusively in Hungary at the MÁV-START operations centre in Miskolc.

16. The employment relationship between worker and employer is governed by law and the collective agreement concluded between the employer and the trade unions. The worker is employed by the employer according to a monthly working time roster which does not set specific weekly rest days but establishes, for all drivers, a weekly rest period based on a weekly reference period.

17. Pursuant to the collective agreement, the employer granted the worker a daily rest period of 12 hours between two shifts, which he was allowed to spend at his place of residence, to which 'standard travelling time', that is to say the time needed to travel to and from work, was added. As regards the weekly rest period, if the employer could not guarantee the worker a continuous weekly rest of 48 hours in a particular week, he was nevertheless guaranteed an uninterrupted rest period of at least 42 hours, so as to ensure that he benefited from an average weekly rest period of at least 48 hours on the working time roster.

18. It is apparent from the file that the worker could not claim a daily rest period or standard travel time either before or after the weekly rest period or leave. Indeed, the employer did not grant the worker a daily rest period when it granted him a weekly rest allocation or a period of leave, that is to say either at the beginning or at the end of such periods.

19. The worker brought an action against the employer before the Miskolci Törvényszék (Miskolc Regional Court, Hungary; 'the referring court') seeking payment of the differences in earnings allegedly unpaid. The action brought by the worker is based on the assumption that he is entitled to a daily rest period immediately before or after his weekly rest periods or any periods of leave.

20. By contrast, the employer contends that a daily rest period must be granted between two successive work periods within the same 24-hour period.

21. First, the referring court refers to judgment No 12 of 22 June 2020 of the Alkotmánybíróság (Constitutional Court, Hungary) in which that court held that the interpretation of the Kúria (Supreme Court, Hungary), according to which the daily rest and weekly rest period may be granted in a single period, was not compatible with Article XVII(4) of the Magyarország Alaptörvénye (Basic Law of Hungary), which guarantees the right of every worker to daily and weekly rest periods, on the ground that those rights are to be regarded as autonomous since they have different purposes. The referring court considers, however, that the interpretation of the Constitutional Court, since it concerned a case relating to health workers, is not applicable to the present case, which concerns train drivers.

22. Secondly, the referring court also observes that the collective agreement applicable in the present case departs, in a manner favourable to workers, from the rules of the directive and the Labour Code relating to daily and weekly rest periods. The daily rest period is fixed at 12 hours, which, moreover, may be spent entirely at the worker's place of residence, on account of standardised travel times.

23. As regards weekly rest, the referring court states that the Hungarian translation of Directive 2003/88 differs slightly from the wording of that directive in German, English and French, in particular in so far as the Hungarian version defines the concept of 'weekly rest period', within the meaning of Article 5 of that directive, 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'), also the 11 hours' daily rest laid down in Article 3 of that directive. The German, English and French-language versions use the words 'zuzüglich', 'plus', and 's'ajoutent' rather than 'cui si sommano'.

24. Therefore, the referring court asks what the concept of 'weekly rest' must be, that is to say whether, after the minimum uninterrupted rest period of 24 hours, the daily rest period (of 11 hours) must still be granted, or whether the period of 24 hours and that of 11 hours should be added together and, on that basis, a worker is entitled to a minimum weekly rest period of 35

consecutive hours. Furthermore, 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 one period of work and the beginning of the next) or, more generally, between the end of one working day and the beginning of the next working day, even if the latter begins several days later.

25. In those circumstances the Miskolci Törvényszék (Miskolc Regional Court) decided to stay the proceedings and 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 [of Fundamental Rights of the European Union ('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) Otherwise, 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 the 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?'

III. Legal analysis

A. Preliminary observations

26. The questions referred by the referring court lead to a closer examination of the relationship between the right to a daily rest period and the right to a weekly rest period, as conferred on workers by Directive 2003/88. In particular, the referring court asks the Court of Justice whether, for the purposes of Directive 2003/88, the daily rest period may be said to be already included in

the concept of weekly rest period or whether, on the contrary, it must be interpreted as meaning that, in addition to the weekly rest period (of at least 24 hours), a daily rest period (of at least 11 hours) must also be granted.

27. It should, in my view, be observed at the outset that in order to answer the aforementioned questions two different approaches to interpretation could be adopted.

28. On the one hand, it could be argued that the objective pursued by the directive is for a worker to be guaranteed an overall rest time within a week, appropriate for the purposes of protecting his or her safety and health, regardless of the separate provision of a daily rest period. It should, therefore, be ensured that, within a working week, the worker is guaranteed a minimum rest time of 35 hours (24 hours of weekly rest and 11 hours of daily rest), with no formal distinction being drawn between weekly rest and daily rest. This is the argument put forward by the employer [3] and, in essence, also by the Hungarian Government. [4]

29. On the other hand, it could be submitted that a worker must enjoy a minimum rest period which is the sum of two different periods of time and based on two different legal arrangements with corresponding independent and autonomous rights: the daily rest period and the weekly rest period. This is irrespective of the sum of hours resulting from the two types of rest, since the Member States and the parties to a collective agreement are free to set a number of hours even greater than that (the minimum) guaranteed by the directive.

30. The choice of one or the other approach should be made through an interpretation of the reference provisions based not only on their literal meaning, but also on the context in which they are set and the purposes of the rules of which they form part. [5] I will analyse those aspects in the paragraphs devoted to the analysis of the questions referred.

31. As regards the questions referred, the first three can, in my view, be examined together because they concern the same legal question, that is to say whether the daily rest period is in addition to the weekly rest period or included therein. In the fourth question, on the other hand, the referring court asks the Court whether Article 3 of Directive 2003/88, read in conjunction with Article 31(2) of the Charter, must be interpreted as meaning that a worker is entitled to a minimum rest period to be granted during a 24-hour period even if, for any reason, he or she does not have to work in the following 24 hours. Although logically connected to the fourth question, the fifth question referred for a preliminary ruling raises a question which is independent of it: the referring court asks the Court to clarify whether Articles 3 and 5 of Directive 2003/88, read in conjunction with Article 31(2) of the Charter, must be interpreted as meaning that the daily rest period must be granted prior to the weekly rest period. With regard to this final question, I have doubts as to its admissibility: the referring court has not, in my view, stated adequate reasons for its relevance to the main proceedings.

32. In order to answer the questions referred, I consider it useful to clarify, first of all, the scope of Directive 2003/88 in the context of EU social law in the light of the Court's case-law thereon; it will then be necessary to determine, on the basis of that examination, whether EU law, and in

[3] Observations of the defendant in the main proceedings, paragraph 23.

[4] Observations of the Hungarian Government, paragraph 13. I note that on an issue of considerable systematic importance such as the relationship between a worker's right to a daily rest period and a weekly rest period, no Member State, with the exception of the Hungarian Government, submitted observations in the present case. I consider that it may be deduced from this that the legislation of the other Member States is broadly in line with Directive 2003/88, as interpreted by the Court thus far.

[5] See, to that effect, judgment of 2 March 2017, *J.D.* (C-4/16, EU:C:2017:153, paragraphs 23 and 25), and judgment of 11 May 2017, *Krijgsman* (C-302/16, EU:C:2017:359, paragraph 24 and the case-law cited).

particular that directive, which confers considerable discretion on the Member States, requires an employer to grant a daily rest period which must be autonomous and independent of the weekly rest period, or whether the provision of a 'weekly rest period' exceeding the minimum requirements of the directive (35 hours as the sum of 11 hours of daily rest and 24 hours of weekly rest) can be said to be in conformity with EU rules.

B. Directive 2003/88: objectives, and discretion enjoyed by the Member States

33. The objective of the Directive 2003/88 is 'to lay down minimum requirements intended to improve the living and working conditions of workers through approximation of national provisions concerning, in particular, the duration of working time' and it makes clear that 'that harmonisation at European Union level in relation to the organisation of working time is intended to guarantee better protection of the safety and health of workers by ensuring that they are entitled to minimum rest periods – particularly daily and weekly – as well as adequate breaks, and by providing for a ceiling on the duration of the working week'.[6]

34. That directive essentially serves to protect the worker, who is known to be the weaker party within the contractual relationship with the employer.[7] The provisions of that directive implement Article 31 of the Charter, which, after recognising, in paragraph 1, that 'every worker has the right to working conditions which respect his or her health, safety and dignity', provides, in paragraph 2, that 'every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave'.

35. The close link between the provisions of Directive 2003/88 and those of the Charter was recently confirmed by a judgment of the Grand Chamber of the Court which reiterated precisely that the right of every worker to a limitation of maximum working hours and to daily and weekly rest periods constitutes a rule of EU social law of particular importance, and that the provisions of Directive 2003/88, in particular Articles 3, 5 and 6, give specific form to that fundamental right and must, therefore, be interpreted in the light of the latter.[8]

36. As confirmed by a reading of both Article 3 and Article 5 – which contain no reference to the national law of the Member States – the terms 'daily rest' and 'weekly rest' constitute autonomous concepts of EU law and, consequently, must be interpreted uniformly at EU level, independently of the specificities adopted in the laws of the various Member States.[9] I will return to this in the part devoted to the analysis of the first three questions referred.

6 See judgment of 14 May 2019, *CCOO* (C-55/18, EU:C:2019:402, paragraph 37 and the case-law cited); see also to that effect, inter alia, judgments of 9 November 2017, *Maio Marques da Rosa* (C-306/16, EU:C:2017:844, paragraph 45); of 10 September 2015, *Federación de Servicios Privados del sindicato Comisiones obreras* (C-266/14, EU:C:2015:578, paragraph 23); of 26 June 2001, *BECTU* (C-173/99, EU:C:2001:356, paragraph 37); and of 20 November 2018, *Sindicatul Familia Constanța and Others* (C-147/17, EU:C:2018:926, paragraph 39).

7 In that regard, see judgment of 14 May 2019, *CCOO* (C-55/18, EU:C:2019:402, paragraphs 44 and 45 and the case-law cited): 'the worker must be regarded as the weaker party in the employment relationship and … it is therefore necessary to prevent the employer from being in a position to impose a restriction of his rights on him'. In addition, it was noted that, 'on account of that position of weakness, a worker may be dissuaded from explicitly claiming his rights vis-à-vis his employer where, in particular, doing so may expose him to measures taken by the employer likely to affect the employment relationship in a manner detrimental to that worker'.

8 Judgment of 14 May 2019, *CCOO* (C-55/18, EU:C:2019:402, paragraph 30 and 31).

9 See judgment of 9 November 2017, *Maio Marques da Rosa* (C-306/16, EU:C:2017:844, paragraph 38 and the case-law cited).

37. Significant consequences flow from the need to interpret the provisions of the directive in the light of its protective purpose, both in terms of the inalienable nature of the rights which workers enjoy thereunder and the restriction of the Member States' discretion in applying the provisions contained therein.

38. First, both rights, namely the right to daily rest and the right to weekly rest, must, because of their close relationship to primary and fundamental rights, be regarded as inalienable such that workers cannot surrender them, because they serve to protect the right to health and safety at the workplace. [10] It follows that the national legislature, and ultimately the employer, must grant and ensure those rights, with no possibility of derogation other than those expressly provided for in the directive itself.

39. Secondly, and as is particularly important for the purposes of this case, it is apparent precisely from Directive 2003/88, in particular recital 15, that it provides Member States with a degree of flexibility in the implementation of the provisions of that directive. However, as is expressly clear from that recital and as the Court has made clear, the Member States are in any event bound by a precise obligation as to the result to be achieved that is not coupled with any condition regarding the application of the rules laid down by Directive 2003/88. [11] It is for them to take all appropriate measures, whether general or particular, to ensure the fulfilment of that obligation and, in essence, to ensure that each of the minimum requirements regarding the limitation of working time laid down by the directive is observed. [12]

40. By reference to the general scheme of the directive, the grant of minimum daily and weekly rest periods and the limitation on the duration of average weekly working time contributes substantially to ensuring the effectiveness of the rights laid down in the directive which, as the Court has reiterated, [13] is for the Member States to ensure in full. [14]

C. The questions referred

1. The first, second and third questions referred for a preliminary ruling

41. As I have said, I will analyse the first three questions together since they concern the same legal question. The first two questions partially overlap, whilst the third is logically dependent on the first two.

42. By its first two questions, the referring court asks whether Article 5 of Directive 2003/88, read in conjunction with Article 31(2) of the Charter, must be interpreted as meaning that the daily rest period laid down in Article 3 of the directive forms part of the weekly rest period or whether, instead, Article 5 lays down only the minimum duration of weekly rest, which must be at least 35 consecutive hours. By its third question, the referring court asks, in essence, whether Article 5 of

[10] It therefore follows that the above rights do not form part of the nucleus of rights that are strictly contractual, which the worker may decide to waive in exchange for additional remuneration or some other benefit, but form part of the nucleus of fundamental rights, recognised in primary legislation of constitutional or equivalent status, which do not solely concern the contractual relationship between employer and worker, but rather the worker as a person.

[11] See judgment of 11 April 2019, *Syndicat des cadres de la sécurité intérieure*, (C-254/18, EU:C:2019:318, paragraph 33).

[12] For the purposes of this Opinion, I have taken into consideration Articles 3, 4, 5 and 6 of the Directive: 'the Member States shall take the measures necessary to ensure that …'

[13] Judgment of 14 May 2019, *CCOO* (C-55/18, EU:C:2019:402, paragraph 42).

[14] See, to that effect, judgment of 7 September 2006, *Commission* v *United Kingdom* (C-484/04, EU:C:2006:526, paragraph 40 and the case-law cited).

the above directive, read in conjunction with Article 31(2) of the Charter, must be interpreted as meaning that, where national legislation and the applicable collective agreement provide for the grant of a minimum weekly rest period of 42 consecutive 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 by national legislation and the collective agreement.

43. The referring court raises these questions because, although in the Labour Code the arrangements of daily rest and weekly rest are to be found in two different provisions, within the article devoted to the 'weekly rest period' (in principle of 48 hours but, in the case of variable working time, of at least 40 hours, which becomes 42 under the collective agreement concluded between the employer and the trade unions) there is no reference to the daily rest period or the duration thereof.

44. There are various arguments relating, in essence, to the literal and schematic interpretation criteria and the nature of daily and weekly rest as autonomous concepts of EU law which support the view that the right to daily rest cannot be absorbed into the right to weekly rest.

45. According to settled case-law,[15] in interpreting a provision of EU law, account must be taken not only of the terms of that provision, but also its context and the purposes of the rules of which it forms part.

46. On the basis of its wording, it is Article 5 of Directive 2003/88 itself that provides that Member States are to 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.*'[16] However, that article does not specify when that minimum rest period must take place, thus leaving Member States with discretion as to the choice. This interpretation is supported by the various language versions – in German, English and Portuguese – which provide that the minimum uninterrupted rest period is granted 'per' each seven-day period. The other language versions of that article are closer to the French language version, which states that the weekly rest period must be granted 'during' each seven-day period.[17]

47. This argument is also supported by a systematic analysis of the other provisions of Directive 2003/88 and appears consistent with the purposes of the directive as set out above. In particular, it follows from recitals 1, 4, 7 and 8 and Article 1 of the aforementioned directive that the purpose of the directive is to lay down minimum requirements for the improvement of the living and working conditions of workers through the approximation of national rules concerning the organisation of working time. This highlights the scope and importance of the directive within the system of EU social law. It would, therefore, be contradictory to absorb the right to daily rest into the right to weekly rest, as that would be contrary to the objective of protecting the health and safety of workers. This is also confirmed by Article 15 of Directive 2003/88, under which the Member States are authorised 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*.

15 See, to that effect, judgment of 12 May 2022, *Luso Temp* (C-426/20, EU:C:2022:373, paragraph 29 and the case-law cited).

16 Emphasis added.

17 See judgment of 9 November 2017, *Maio Marques da Rosa* (C-306/16, EU:C:2017:844, paragraphs 40 and 41).

48. Therefore, in answer to the questions raised by the referring court, Directive 2003/88 must be interpreted 'having regard to the importance of the fundamental right of every worker to a limitation on the maximum number of working hours and to daily and weekly rest periods'. [18]

49. As has also been argued by the worker [19] and the Commission [20] and as may be inferred from an analysis of the provisions concerned on the basis of the above interpretative criteria, the concepts of 'daily rest' and 'weekly rest' are autonomous concepts of EU law which must, therefore, be defined in accordance with objective characteristics relating to the scheme and objectives of Directive 2003/88. Daily rest and weekly rest pursue different objectives and therefore constitute autonomous rights.

50. The purpose of the daily rest period is to allow workers to rest for several hours – at least 11 – during a 24-hour period. More specifically, the Court has already stated that the hours of rest must be consecutive and directly follow a period of work. [21]

51. Weekly rest, on the other hand, has the function of allowing the worker to rest – for at least 24 hours – within a reference period of seven days, the expression 'reference period' being understood as the time within which a minimum period of rest must be granted. [22]

52. On the basis of a literal and schematic interpretation in the terms set out above, and in order for the effectiveness of the rights conferred on workers by Directive 2003/88 to be fully guaranteed in compliance with the principles recalled in the preceding paragraphs, I consider that that directive itself requires the Member States to ensure observance of each of the minimum requirements laid down in Directive 2003/88. [23]

53. Therefore, the daily rest period cannot be included in the weekly rest period or allocated to the weekly rest period, contrary to what the employer contends. [24]

54. The employer's argument is that given the purpose of the daily rest period, namely to allow the worker to regain strength between two periods of work, it can only be granted if a new period of work is scheduled within 24 hours of the end of a particular period of work.

55. In support of its claims, the employer [25] recalls the 'Interpretative Communication [on Directive 2003/88/EC]', [26] contending that it is clear from that document that Article 5 of the directive should be interpreted as requiring only an uninterrupted rest period of 35 hours per seven-day period, with no distinction between weekly and daily rest periods; the latter is therefore included in that reference period. Consequently, the Hungarian legislation providing for a weekly rest period of 48 hours, with no reference to daily rest, complies with the directive.

18 Judgment of 14 May 2019, *CCOO* (C-55/18, EU:C:2019:402, paragraph 33).

19 Observations of the applicant in the main proceedings, p. 3, fourth paragraph.

20 Observations of the Commission, point 46.

21 Judgment of 9 September 2003, *Jaeger* (C-151/02, EU:C:2003:437, paragraph 95).

22 See judgment of 9 November 2017, *Maio Marques da Rosa* (C-306/16, EU:C:2017:844, paragraph 42).

23 See judgment of 11 April 2019, *Syndicat des cadres de la sécurité intérieure*, (C-254/18, EU:C:2019:318, paragraph 33).

24 Observations of the defendant in the main proceedings, paragraph 23.

25 Observations of the defendant in the main proceedings, paragraphs 30 to 32.

26 Interpretative Communication on Directive 2003/88/EC of 4 November 2003 of the European Parliament and of the Council concerning certain aspects of the organisation of working time (OJ 2017 C 165, p. 1).

56. In my view, to accept that argument, which is based on a misinterpretation of the content of the documents referred to above, would be tantamount to disregarding what is laid down in Article 5 of Directive 2003/88, under which the daily rest is to be *in addition to* weekly rest. I consider that, in the documents referred to above, the Commission has simply carried out a mathematical operation (added the minimum daily rest period of 11 hours to the weekly rest period of 24 hours) from which it is absolutely not possible to deduce that the right to daily rest must not be granted if the weekly rest period is more favourable than that indicated in the directive.

57. In that respect, I reiterate that the directive lays down minimum and not maximum standards. Indeed, Article 15 of the directive authorises the Member States to apply or introduce provisions more favourable to the protection of the safety and health of workers or to promote or permit the application of collective agreements or agreements concluded between the two sides of industry which are more favourable to that protection.

58. Member States may provide for longer rest periods, *provided that the minimum requirements laid down in the directive are complied with*. Therefore, in practice, Member States may provide for daily rest periods of more than 11 consecutive hours as well as weekly rest periods of more than 24 hours per seven-day period, but this does not mean that it is lawful not to grant the right to daily rest where the weekly rest period is more favourable than that provided for in the European legislation.

59. However, in the case currently before the Court, it will be for the national court to assess the compatibility of the Hungarian legislation with EU law since, as the Commission asserts,[27] any additional rights provided for by the Member States fall outside the scope of the directive, and thus EU law, in that they constitute the exercise of national competences,[28] and, therefore, of national jurisdiction.

2. The fourth question referred for a preliminary ruling

60. By its fourth question, the referring court asks whether Article 3 of Directive 2003/88, read in conjunction with Article 31(2) of the Charter, must be interpreted as meaning that a worker is entitled to a minimum daily rest period to be granted during each 24-hour period, even if he or she does not have to work, for any reason, during the following 24 hours.

61. The referring court's question stems from the fact that the employer did not usually grant the employee a daily rest period unless a new period of work was scheduled for directly thereafter. The reason for this is that, according to the employer, the intrinsic purpose of the daily rest period is precisely to allow the worker to recover his or her strength within two periods of work; therefore, if no period of work was scheduled in the following hours, there was no reason to grant the daily rest period.

62. In this regard, the Court has already stated that 'in order to ensure the effective protection of the safety and health of the worker provision must as a general rule be made for *a period of work* regularly *to alternate with a rest period*.[29] In order to be able to rest effectively, the worker must be *able to remove himself from his working environment for a specific number of hours which must not*

[27] Observations of the Commission, paragraph 51.

[28] See judgment of 19 November 2019, *TSN and AKT* (C-609/17 and C-610/17, EU:C:2019:981, paragraphs 34 and 35).

[29] Emphasis added.

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 duties.'[30] Therefore, what is relevant for the purposes of granting the rest period is whether or not it was preceded by a period of work and the activity which will be performed after that rest period is entirely irrelevant.

63. In light of this, and as the Commission[31] and the worker[32] have also asserted, I consider that in order to ensure an interpretation of the issue compatible with Directive 2003/88 and the Charter, it must be concluded that the worker must in any event be entitled a daily rest period every 24 hours, even if he or she does not have to work during the following 24 hours.

3. The fifth question referred for a preliminary ruling

64. By its fifth question, about whose admissibility I have already set out my doubts, the referring court asks the Court whether Articles 3 and 5 of Directive 2003/88, read in conjunction with Article 31(2) of the Charter, must be interpreted as meaning that the daily rest period must be granted prior to the weekly rest period.

65. In answering this question, I must first point out that a textual analysis of the provisions referred to above is not decisive. Neither Article 3 nor Article 5 of the Directive provide any useful information since, apart from the obligation to ensure a daily rest period of at least 11 consecutive hours for a 24-hour period and an uninterrupted weekly rest period of 24 hours per each seven-day period, they impose no other conditions for the exercise thereof.

66. Although the wording of the provisions referred to above is of no assistance, it is nevertheless possible to find in Directive 2003/88 some information which is useful in answering the question referred by the referring court. I allude, in particular, to recital 15 of that directive, which leaves a great degree of flexibility to the Member States in applying the provisions, provided that respect for the safety and health of workers is guaranteed. The autonomy conferred on the Member States by the directive led the Court to state in its judgment in *Maio Marquez da Rosa*[33] that the weekly rest period may be provided at any time within each seven-day period.

67. In the absence of specific guidance in the directive, these considerations can also be applied to the daily rest period, with the result that, if respect for the minimum daily rest period is guaranteed, the Member States are free to determine the specific arrangements for implementing it.

68. Therefore, I agree with the Commission[34] that the daily rest period may be granted at the beginning, in the middle or even at the end of a particular 24-hour period, just as it may be granted either before or after the weekly rest period.

69. In essence, since the two arrangements are distinct and autonomous and serve different purposes, there are no reasons of principle or function that limit the autonomy of the Member States in this regard, as they are only bound to respect the minimum standards and principles of worker safety and health which inform the directive as a whole.

[30] Judgment of 9 September 2003, *Jaeger* (C-151/02, EU:C:2003:437, paragraph 95).

[31] Observations of the Commission, paragraphs 56 to 59.

[32] Observations of the applicant in the main proceedings, pp. 5 and 6.

[33] Judgment of 9 November 2017 (C-306/16, EU:C:2017:844, paragraph 44).

[34] Observations of the Commission, paragraphs 60 to 64.

70. In conclusion: the purpose of Directive 2003/88 and its objectives of protecting the safety and health of workers, its place in EU social law and the nature of the fundamental right to rest, in its two components of daily and weekly rest, militate in favour of the lawfulness of national legislation providing for a 'weekly rest period' with rest periods longer than those laid down in that directive. However, this is subject to the condition, first, that national legislation provides for daily and weekly rest as autonomous and separate rights and, secondly, that the minimum standards of rest time laid down in EU legislation are respected.

4. The consequences for the referring court

71. According to the settled case-law of the Court, the system of cooperation established by Article 267 TFEU is based on a clear division of responsibilities between the national courts and the Court of Justice. The reconstruction of the facts of the case and the interpretation of the national rules is a matter for the courts of the Member States.

72. However, the Court does have jurisdiction to provide the national court with all the guidance as to the interpretation of EU law and guidance based on the documents relating to the main proceedings and on the written and oral observations that have been submitted to it, in order to enable the national court to give judgment. [35]

73. As set out above, the referring court asks whether the concept of 'weekly rest period' must be interpreted as meaning that, after the minimum uninterrupted rest period of 24 hours, the 11 hours of daily rest must still be granted, or as meaning that the 24-hour period and the 11-hour period are added together and that, on that basis, the worker is entitled to a minimum weekly rest period of 35 hours. In that regard, the referring court notes that the Hungarian legislation introduces in Article 106 of the 'Labour Code' the concept of a 'weekly rest period' fixed at 48 hours – greater than the minimum of 24 hours provided for by Directive 2003/88 – and includes no reference to the daily rest period and the duration thereof.

74. It is not for the Court to examine the substance of national law: according to settled case-law, the Court is empowered only to give rulings on the interpretation or the validity of an EU provision on the basis of the facts which the national court or tribunal puts before it, whilst it falls exclusively to the referring court to interpret national legislation. [36]

75. It should also be recalled that, according to settled case-law of the Court, national courts must, as far as possible, interpret national law in the light of EU law. [37]

76. The principle of interpreting national law in a manner consonant with EU law requires the national authorities to do everything within their power, taking into account all national law and applying the methods of interpretation recognised by that law, in order to ensure the full effectiveness of EU law and to arrive at a solution in conformity with the aim pursued by that law.

[35] Order of the President of the Court of 28 January 2015, *Gimnasio Deportivo San Andrés* (C-688/13, EU:C:2015:46, paragraphs 30 to 32 and the case-law cited). See more recently, for example, judgment of 3 October 2019, *Fonds du Logement de la Région de Bruxelles Capitale* (C-632/18, EU:C:2019:833, paragraphs 48 and 49 and the case-law cited).

[36] See, inter alia, judgment of 10 June 2021, *Ultimo Portfolio Investment (Luxembourg)* (C-303/20, EU:C:2021:479, paragraph 25 and the case-law cited).

[37] See judgments of 19 April 2016, *DI* (C-441/14, EU:C:2016:278, paragraph 32); of 19 September 2019, *Rayonna prokuratura Lom* (C-467/18, EU:C:2019:765, paragraph 60 and the case-law cited); and of 14 October 2020, *KG (Successive assignments in the context of temporary work)* (C-681/18, EU:C:2020:823, paragraph 66).

77. However, that principle is subject to certain limitations. In particular, the obligation on a national court to refer to the content of EU law when interpreting and applying the relevant rules of national law is limited by general principles of law and cannot serve as a basis for an interpretation of national law *contra legem*.

78. Furthermore, as noted earlier, the Court cannot substitute its own assessment for that made by the national court as to whether national law can be interpreted as being in conformity with EU law.

79. On the basis of these principles, it falls to the national court to establish whether workers in Hungary are ensured a weekly rest period which complies with the minimum requirements of Directive 2003/88. In that case, the court may consider that the national legislation and/or the applicable collective agreement are in conformity with EU law, if, even though a single 'weekly rest period' longer than the 35 hours laid down in the directive is provided for (11 hours for daily rest and 24 for weekly rest), the right to daily rest as an autonomous arrangement independent of weekly rest, guaranteed to a degree equal to or greater than the minimum of 11 hours provided for by the directive, is nevertheless respected.

80. I would merely observe that it would appear from reading the file that in the Hungarian legislation (Articles 104, 105 and 106 of the Labour Code) the right to daily rest and the right to weekly rest are autonomous and that the national legislation and the applicable collective agreement together guarantee the worker in the main proceedings better treatment than the minimum standards laid down by the EU legislature.

IV. Conclusion

81. In the light of all the foregoing, I propose that the Court answer the questions referred for a preliminary ruling by the Miskolci Törvényszék (Miskolc Regional Court, Hungary) as follows:

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, read in conjunction with Article 31(2) of the Charter of Fundamental Rights of the European Union,

must be interpreted as not precluding national legislation or collective bargaining which grants workers a weekly rest period greater than the minimum laid down in Directive 2003/88. Any provision in national law for weekly rest periods which are more favourable than those provided for in Directive 2003/88 does not exclude the obligation on the employer to grant the daily rest period at least to the minimum provided for in that directive. Daily rest must be considered to be an autonomous right which cannot be included in the concept of weekly rest.

Article 3 of Directive 2003/88, read in conjunction with Article 31(2) of the Charter,

must be interpreted as meaning that a worker is entitled to the minimum daily rest period to be granted during a 24-hour period, irrespective of the rostering over the following 24 hours.

Member States remain free to determine when to grant a daily rest period, which may be at the beginning, in the middle or even at the end of a particular 24-hour period, and may be granted either before or after the weekly rest period, subject to compliance with the principle of protecting the safety and health of workers.