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REPUBLIC OF HUNGARY
National ILO Council
Ministry of Employment and Labour

REPORT

**for the period 1 June 2000 to 10 May 2003 prepared by the Government of the
Republic of Hungary in accordance with Article 22 of the Constitution of the
International Labour Organisation on the measures taken to give effect to the
provisions of the**

WEEKLY REST (INDUSTRY) CONVENTION, 1921 (No. 14)

(ratification registered: 8 June 1956)

Budapest, September 2003

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I Changes since the last report

The legislative environment presented in the previous reports of the Government concerning weekly rest in industry changed considerably in the period 2001-2002. Act XIX of 2002 entering in effect in 1 September 2002, amended the Labor Code. The text of the new legislation is found in § 124 and 124/A of the Labour Code.

The amendment resulted in a full re-regulation of the provisions regarding the weekly resting period. The purpose of the provisions was to ensure that the majority of employees have a day-off on each Sunday, and have two resting days each week.

a) The general rule is that an employee is entitled to two days of rest per week, of which one must be a Sunday. The law allows for two types of departures from that: on the one hand, the employee may be granted a set amount of resting time instead of a working day, on the other, the resting day may be granted, diverting again from the general rule, in an aggregate fashion.

Thus, if the *framework for work time* arrangement is being adhered to, the employee may be granted a minimum of 48 hours of uninterrupted resting time per week which must include a Sunday.

The new regulations provide more accurately and in more detail than in the previous legislation the options and restrictions of the employer related to granting the resting days if the framework for work time arrangement is being observed, in accordance with the following:

If the framework for work time arrangement is being followed, then the employee may be given, instead of the resting days, a period of uninterrupted resting time equivalent to at least 48 hours per week

- at an employer or in a position that must be kept in operation also on Sundays such being the nature of the business,

- in positions of a readiness character,
 - in uninterrupted work schemes, or
 - work schemes with three or more shifts, and
 - in the case of an employee performing seasonal work,
- in which case the resting time must include a Sunday at least once a month.

The law ensures further options of departures to employers to promote flexible working time organisation when framework for work time is being followed by granting to the employee at least 40 hours per week of uninterrupted resting time that must include a calendar day, and a Sunday at least once a month.

b) The law provides the following on the subject of granting aggregate resting days:

When applying framework for work time, the resting day **may be granted on a partly or fully aggregate basis**

- every two weeks, and
- up to once a month subject to the provisions of the collective or any other agreement between the parties involved.

Departures from under that provision are possible based on the collective agreement. In such cases the resting day may be granted on a partly or fully aggregate basis for up to six weeks

- if framework for work time is being applied,
- in positions of a readiness character,
- in uninterrupted work schemes, or
- work schemes with three or more shifts, and
- in the case of an employee performing seasonal work.

The aggregate resting days may be granted only on the basis of the collective agreement, i.e. the employer and the employee may not agree on the full or partial aggregation of six month's resting time, such agreement cannot replace the relevant provisions in the collective agreement.

c) The new provisions contain no further restrictive elements:

- The period of aggregating resting time may not exceed the duration of the framework for work time being applied. One day of resting time must be statutorily granted after six days of work. The collective agreement may provide exemptions from the latter in the case of employees working several shifts, working in an uninterrupted arrangement, or in an uninterrupted position, or those performing seasonal work.
- The weekly resting day shall not be aggregated if the employee is employed among conditions harmful to his health.
- There are restrictions on aggregation of working time in the case of a female employee from the date she is diagnosed pregnant until the child reaches one year of age, or until the child reaches one year of age in the

case of a lone father. In the case of such employees aggregate resting days may only be aggregated with their own consent.

Employees may be instructed to work in a normal arrangement on a Sunday only in the following cases:

- in the organisation or in positions of employers that must be in operation even on such days, or
- in the case of employees in positions of a readiness character, working three or more shifts, working in an uninterrupted arrangement, or in an uninterrupted position, or those performing seasonal work, or
- when framework for work time is being applied.

If the employee performs work on a Sunday, except for those working uninterrupted, or in three or more shifts or seasonal workers, he/she may not be instructed to work regular working hours on the Saturday immediately preceding it.

For the amended text of the Labour Code, which includes the list of exemptions provided in para (1) of Article 6 of the Convention, see attachment 1.

II Response to the questions posed by the Committee of Experts

1. To para 1 of Article 4 of the Convention:

Departures include positions of a readiness character, uninterrupted work, work in three or more shifts or seasonal work. (Due to the amendment applied meanwhile, the foregoing is no longer provided by para (4) of § 124 of the Labour Code, but para (7), and the departure is reserved not only for cases of seasonal work).

As aggregating resting time is not merely a rule of work organisation, it does not result in the reduction of the number of working days on an annual average.

As a result of the amendments, resting time as time different from the language of Article 2 of the Convention, may only be specified through the collective agreement based on para (7) of § 124. As collective agreements may be concluded by the employer, or a representative organisation of employers, and the trade union, in the event that Article 2 is being departed from, consultation required by para 1 of Article 4 must be conducted in every case.

2. To para 1 of Article 6 of the Convention:

The list of departures from the provisions of Article 2 based on Article 4 is reflected in our answers to questions I and II (see also attachment 1). Instead of listing all cases, the legal regulation provides the categories of cases that belong here.

3. To part I of the reporting form

The statutory provisions described in I above include the amendments resulting from the integration of the relevant points of the Aquis Communautaire into the Labour Code.

4. To part III of the reporting form

Subparagraph f) of para (1) of § 3 of Act LXXV of 1996 on Labour Inspection (hereinafter Met) provides that labour inspection extends on controlling compliance with legislation or provisions of the collective agreement concerning working time, resting time, extraordinary work performance, and holidays. In accordance with that provision, the occupational safety and labour inspectors of the county (capital city) Inspectorates of the National Inspectorate for Labour and Occupational Safety have the authority to check compliance with applicable legislation. In accordance with para (2) of § 3 of the Met, the inspection is conducted by the inspector in his/her official duty in the cases listed, or triggered by a report of the party whose right is being infringed or whose interest is being harmed by the case reported.

In accordance with para (1) of § 8 of the Met the inspector, or the head of the competent county (capital city) inspectorate conducts the inspection in line with Act IV of 1957 on the General rules of public administration procedures. This allows for an appeal against a public administration resolution at second instance issued by the inspectorate, and the courts of justice may overrule that resolution.

Apart from the above, in accordance with paras (1)-(3) of § 199 of the Labour Code the employee may instigate litigation, in order to exercise a right arising from the employment relationship, and the trade union and the works council (works representative) may instigate litigation in order to give effect to its requirements arising from the above legislation, the collective agreement, or the works council agreement as provided by the present piece of legislation.

The employer is likewise entitled – unless otherwise provided by the Labour Code – to instigate a labour dispute in an attempt to give effect to his/her requirements related to the employment relationship.

Labour disputes shall be settled by the courts of justice.

5. To part IV of the reporting form

We attach two judgments reached by the Supreme Court in the subject at hand (attachment 2).

6. To part V of the reporting form

Compliance with provisions concerning working time, resting time, extraordinary work performance, and holidays or provisions of the Act or those established by the collective agreement shall be inspected by labour inspectors on the basis of para (2) of § 3 of the Met as their official duty. The civil servants of the county inspectorates have *public administration jurisdiction* and *contravention jurisdiction*.

Statistical information concerning the types of cases and measures related to the Convention for the past three years and up to May 10 of the current year is presented in attachment 3. The individual cases are concluded with a resolution, or with the imposition of a fine, the latter being a public administration or a contravention fine. In the event that the resolution of the county inspectorate at first instance is appealed against, the second instance public administration body, higher

in rank than the latter, will investigate, whose decision, in turn, may be appealed against at the court of justice.

The National Inspectorate for Labour and Occupational Safety conducted a targeted investigation in the period 17 March 2003 – 31 May with an objective related to the implementation to Convention 14. Inspectorates inspected the sites of 3,227 employers during the period 1 September 2002 – 28 February 2003. The total number of employees inspected equalled 70,667, of which employers were guilty of some kind of contravention in 27,044 cases.

- As regards contraventions against Convention 132 involving employers employing more than 1000 persons, provisions concerning framework for work time have been infringed upon in 6,180 cases. There were 5,660 persons not receiving any notification concerning the beginning and the end of the framework for work time, 4,385 persons had their right to resting time infringed upon, and in 3,101 cases the employer failed to communicate the working time table. Employers contravened the regulations in 2,191 cases with regard to weekly working time, and 1,262 times with regard to daily working time.

The targeted investigation eventually resulted in issuing 1,455 public administration resolutions obliging employers to discontinue the irregularity; labour fines were imposed in 1,030 cases, the fine sum amounting to 211,453,000 Ft. On-the-spot (contravention) fine was imposed in 96 cases in a sum of 2,116,000 Ft

Regulations concerning work on Sunday were investigated by 153 inspectors on 6 October 2002 in the framework of an inspection campaign. The campaign focussed primarily on the extent to which regulations in force from 1 September 2002 onward on resting days, resting time, extraordinary work performance, and ordinary work on a Sunday, all under the heading of Sunday work, were complied with.

The short period following the effective date of the new regulations may have contributed to the fact that 57% of the employers were found to be in breach of some contravention relevant to the inspection campaign. These contraventions concerned 25% of the employees involved in the inspection.

Supplement 1

The Labour Code (§ 124 (1)) provides that the employee is entitled to two resting days per week, one of which must be a Sunday.

(2) As different from para (1) above, if the framework for work time principle is being applied, the employee may also be granted uninterrupted working time of at least forty eight hours per week instead of the resting days, based on his/her working time table. Such resting periods must include a Sunday.

(3) If framework for work time is being applied, then the employee may be given, instead of the resting days, a period of uninterrupted resting time equivalent to at least 48 hours per week

- a) at an employer or in a position that must be kept in operation also on Sundays such being the nature of the business,
- b) in positions of a readiness character,
- c) in uninterrupted work schemes, or
- d) work schemes with three or more shifts, and
- e) in the case of an employee performing seasonal work,

in which case the resting time must include a Sunday at least once a month.

(4) If framework for work time is being applied, then the employee may be given, instead of the resting days as per para (1) above, uninterrupted resting time of at least 40 hours per week based on his/her working time table, which must include a full calendar day and a Sunday at least once a month. If the *min. 40 hours per week* resting time arrangement is being applied, then the employee must be granted at least 48 hours of resting time per week over the entire period of the framework for work time.

(5) If framework for work time is being applied, the resting day may be granted on a partly or fully aggregate basis

- a) every two weeks, or
- b) based on the collective agreement or an agreement of the parties involved, once every month.

(6) If framework for work time is being applied, the resting day may be granted on a partly or fully aggregate basis up to once every six months if the collective agreement allows for such an option,

- a) in positions of a readiness character,
- b) in uninterrupted work schemes, or
- c) for those working three or more shifts, and
- d) in the case of an employee performing seasonal work.

(7) In the event that paras (5)-(6) apply, the period of resting time aggregation may not exceed the period of the framework for work time applied. One resting day must be granted after six days of work. The collective agreement may allow for exemptions from under the previous rule in the case of employees working several shifts, working in uninterrupted work schemes or uninterrupted positions, or those performing seasonal work.

(8) subparagraph c) of para (5) of § 127 provides that the weekly resting day shall not be aggregated if the employee is employed among conditions harmful to health as listed in legislation.

(9) subparagraph a)-b) of para (5) of § 127 provides that a female employee from the date she is diagnosed pregnant until the child reaches one year of age, or until the child reaches one year of age in the case of a lone father. In the case of such employees aggregate resting days may only be aggregated with their own consent.

§ 124/A (1) Work according to an ordinary working hours may be performed only

a) at an employer or in a position that must be kept in operation also on Sundays such being the nature of the business,

b) in positions of a readiness character, in uninterrupted work schemes, or those with three or more shifts, and in the case of an employee performing seasonal work, and

c) in cases specified in paras (5)-(6) of § 124.

(2) As regards subparagraph a) of para (1) above, para (2) of § 125 must be applied appropriately.

(3) If subparagraphs a)-c) of para (1) are applied, at least one resting day (resting time) per month must be granted on a Sunday. One resting day (or equivalent resting time) must be statutorily granted after six days of work. The collective agreement may provide exemptions from the latter in the case of employees working several shifts, working in an uninterrupted arrangement, or in an uninterrupted position, or those performing seasonal work.

(4) In the event that the employee performs work on a Sunday, except for employees working in an uninterrupted arrangement, working three or more shifts, or those performing seasonal work, may not be instructed to perform work in regular working hours on the Saturday immediately preceding that Sunday.

CONSULTATIONS WITH ORGANISATIONS OF EMPLOYERS AND WORKERS

The tripartite National ILO Council consulted this Report on its session of 25 September 2003 and unanimously adopted the content of the Report.

The National ILO Council is a consultative national forum for social dialogue. Its function is to conduct tripartite consultations as provided by Convention No. 144 on tripartite consultations (International Labour Standards), to promote national measures related to the activity of the International Labour Organisation, to perform other functions defined in the Statutes of the Council. Employer and employee members and deputy members of the National ILO Council are delegated from the following national interest representation organisations:

Employers' organisations:

Union of Agrarian Employers

National Federation of General Consumer Co-operatives

National Association of Industrial Corporations

National Federation of Traders' and Caterers

Confederation of Hungarian Employers and Industrialists
Hungarian Industrial Association
Hungarian Confederation of Utility Companies
National Federation of Agricultural Co-operators and Producers
National Association of Entrepreneurs and Employers

Workers' organisations:

National Federation of Autonomous Trade Unions
Trade Union Group of Intellectuals
Democratic League of Independent Trade Unions
National Confederation of Hungarian Trade Unions
National Federation of Workers' Councils
Co-operation Forum of Trade Unions