Current Issues of the Service Relationship of Security Forces Members in the Court of Justice Case Law and the Impact on Public Service Practice

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Abstract

The paper examines selected decisions of the European Court of Justice concerning the dismissal from service of members of the security forces. The article focuses on members' health capacity loss. The paper also highlights related issues such as ordering and reimbursing overtime work and duty readiness. The paper points out how the European Court of Justice case law influences the decision-making activity of service officials in general. The Czech armed corps practice and case law exemplify research issues. The authors place the solution to individual questions in the broader context of legal regulation to enable a more comprehensive understanding. The authors underline the critical attributes on which the service relationship of members of the security forces is conceptually built and controlled. Considering the most significant judgments of the European Court of Justice, the authors pond over the implementation of service relationship principles into European member states' legal and managerial practice. The authors examine the mentioned challenges through desk research and analyses of European and national legal legislation and case law. In conclusion, the authors evaluate the practical service needs of the security forces concerning the medical fitness of their members. Future legislation should consider the demands for physical fitness and psychological resilience, as well as the need for digital literacy of a public servant.

Keywords: *public service relationship, security forces, security force member, dismissal, health capacity, overtime work, duty readiness*.

JEL Classification: K23, K31, K41

1. Introduction

A special mission in the process of implementation of the functions of the state, which are performed in a hierarchical system of the state apparatus by a specific category of individuals, denominates the state service. Civil servants' activities' specific legal status and nature entail the public authority position. That is why the civil service, fundamentally, has a public law nature and has historically been built on the principles of the career system[4]. The service for the state represents a lifelong professional career and permits the institute of the so-called tenure. However, the different civil service regimes show differences both across European Union Member States' legislation and within national legislation. At the same time, they need to be distinguished from the European Union civil service regime. Nevertheless, common (general) standards can also be found in this area. The legislative activities of the European Union (EU) the decisions of the EU courts, significantly affect not only the area of Czech national labour law but also the form of legislation and decision-making in civil service matters.

In the Czech Republic, it is possible to distinguish three subsystems of specific state-employee relations, namely the service relationship of civil servants regulated by Act No. 234/2014 Coll., on Civil Service, the service relationship of members of the security forces regulated by Act No. 361/2003 Coll., on the Service Relationship of Members of Security Forces (from now on referred to as the "Act on Service Relationship"), and the service relationship of professional soldiers enshrined in Act No. 221/1999 Coll., on Professional Soldiers, all as amended.

This paper focuses exclusively on the service relationship of members of security forces, which in the Czech environment include the Police of the Czech Republic, the Fire Rescue Corps of

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[4] Janine Natalya Clark (2013) *Normalisation through (re)integration: returnees and settlers in post-conflict Croatia*, The International Journal of Human Rights, 17:7-8, pp. 707-722, DOI: 10.1080/13642987.2013.813844.

the Czech Republic, the Customs Administration of the Czech Republic, the Prison Service of the Czech Republic, General Inspection of Security Corps, Security Information Service, and Office for Foreign Relations and Information.

Their service relationship does not arise from a contract. However, from a powerful act of a service body, and throughout its course, it differs significantly not only from an employment relationship but as well as in certain aspects also from other state-employee relations. The legal regulation of the service discipline, the possibility of imposing disciplinary rewards and penalties, limited dismissal opportunities, adjustment of service leave, holiday entitlements, particular claims upon service termination, and special provisions on proceedings before service officers reflect the mentioned particularities of this type of public service. However, this characteristic, or the designation of proceedings in matters of service relationship as public (administrative) proceedings, should not lead to the automatic suppression of the "civil" aspect of decision-making. The relationship between the member as an employee and the state as an employer always has standard features[5].

The aspect mentioned above seems to be crucial for the assessment of the question of whether Article 6(1) of the Convention for the Protection of Human Rights and Fundamental Freedoms (starting now referred to as the "Convention")[6] Furthermore, the resulting requirements (in particular, (1.) impartiality and independence of the deciding authority, (2.) right to a fair trial, and (3.) right to a reasonable length of the proceedings) does or does not apply to decision-making or proceedings in matters of service relationship. The question raised has **undergone** an exciting development in the case law of the European Court of Human Rights (ECHR). The applicability of Article 6(1) of the Convention to disputes between civil servants concerning their recruitment, career advancement, or termination of service, or assessing whether such disputes are to be resolved under the "civil rights and obligations" procedure, was already addressed by the ECHR at the turn of 1999 and 2000 in the *Pellegrin v. France* and *Frydlender v. France* judgments,[7] wherein the court concluded that where a party to a dispute concerning the conditions for the establishment, duration, or termination of service directly participates in the exercise of public authority and the performance of functions intended to protect the general interests of the state, the respective article of the Convention is not applicable, even if the dispute between those employees and the state raises questions of an economic nature. However, this position was reassessed a few years later in the judgment of the Grand Chamber of the ECHR in *Vilho Eskelinen and Others v. Finland*,[8] wherein the ECHR formulated an opposite view, stating that the procedure in matters of service relationship falls in principle within the scope of Article 6(1) of the Convention in the context of the interpretation of the concept of "civil rights and obligations", except for situations in which the national legislator explicitly excludes those issues from judicial review and at the same time demonstrates an objective legitimate interest in such exclusion. The applicability of Article 6(1) of the Convention to proceedings in matters of service relationship was subsequently confirmed, for example, by the judgments of the ECHR in *Fiume v. Italy.*[9] (proceedings for the promotion of a customs official) or in *Cudak v. Lithuania*[10] (compensatory dispute for the termination of service relationship of an employee of the Polish Embassy in Lithuania).

Concerning the assessment of the applicability of Article 6(1) of the Convention from the point of view of the interpretation of the term "criminal charges" to the so-called disciplinary

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[5] For some particular issues see James Crawford & Amelia Keene (2020), *Interpretation of the human rights treaties by the International Court of Justice*, The International Journal of Human Rights, 24:7, 935-956, DOI: 10.1080/13642987.2019.1600509; and Vesna Buterin, Marinko Škare & Denis Buterin (2017) *Macroeconomic model of institutional reforms' influence on economic growth of the new EU members and the Republic of Croatia*, Economic Research-Ekonomska Istraživanja, 30:1, 1572-1593, DOI: 10.1080/ 1331677X.2017.1355260.

[6] https://www.echr.coe.int/documents/convention_eng.pdf. Available online at: https://www.echr.coe.int/Pages/ home.aspx?p =case law&c=. Accessed 4 May 2023.

[7] Judgment of the European Court of Human Rights of 8 December 1999 in Pellegrin v. France; judgment of the same court of 27 June 2000 in Frydlender v. France. Available online at: https://www.echr.coe.int/Pages/home.aspx?p=caselaw&c=. Accessed 4 May 2023.

[8] Judgment of the European Court of Human Rights of 19 April 2007 in *Vilho Eskelinen and Others v. Finland*. Available online at: https://www.echr.coe.int/Pages/home.aspx?p=caselaw&c=. Accessed 4 May 2023.

[9] Judgment of the European Court of Human Rights of 30 June 2009 in *Fiume v. Italy*. Available online at: https://www.echr.coe.int/ Pages/home.aspx?p=caselaw&c=. Accessed 4 May 2023.

[10] Judgment of the European Court of Human Rights of 23 March 2010 in *Cudak v. Lithuania*. Available online at: https://www.echr. coe.int/Pages/home.aspx?p=caselaw&c=. Accessed 4 May 2023.

proceedings, which forms a specific type of administrative, criminal proceedings, or proceedings in matters of service relationship, it is possible to rely, once again, primarily on the European judicial case law.

It is known from its content that the so-called “Engel criteria", first formulated in the judgment of that court in 1976 in the case of Engel and Others v. the Netherlands, are used to determine whether an administrative offence is subject to a criminal charge according to Article 6 of the Convention.[11] The most frequently mentioned in this context are the judgments in Öztürk v. Germany, Ziliberberg v. Moldova, Jussila v. Finland, Matyjek v. Poland, Zolotukhin v. Russia, Lauko v. Slovakia, Kadubec v. Slovakia. These judgments show that meeting just one of these Engel criteria suffices for a specific administrative offence under the criminal charge under Article 6 of the Convention.[12]

Therefore, when applying Article 6 of the Convention to proceedings in the matters of service relationship, the requirements arising from the right to a fair trial differ in their scope when dealing with so-called “disciplinary” or “personnel” matters.

In general, Article 6(1) of the Convention provides to the parties to proceedings in matters of service relationship a certain minimum common procedural standard in the form of individual subcategories of the "rights to hear and be heard in the proceedings", i.e., in particular, the right to become acquainted and to comment on the matter, to make proposals, to raise objections, to submit evidence, to become acquainted with the documents for the decision and to comment on them, as well as on the method of their identification, and the corresponding obligations of the service officer, in particular, the obligation to respond to the objections or proposals raised and the obligation to justify their decision. Simply put, it is a question of actively allowing the party to participate in the proceedings' outcome. It is, of course, necessary to consider whether the proceedings have been initiated based on a request or the initiative of the security forces. In Article 6(2) and (3), the Convention then formulates a "super-standard in criminal law" for the consideration of disciplinary cases, in the form of the right to be informed promptly and effectively of the nature and grounds of the accusation, the right to prepare a defence, and the right to defend oneself or through legal assistance, with the corresponding obligation of a civil servant to inform the accused of individual acts in good time and to proceed in the proceedings in such a way that the party can realistically and effectively exercise their procedural rights.[13]

The indicated procedural standards, logically, entail increased requirements for the organisational, technical, and personnel support of the relevant administrative agenda, directly impacting the quality of decision-making. In this context, in the working environment of the security forces in the Czech Republic, it is increasingly often discussed that the conclusions of judicial review so far force the officials to procedural procedures not required in the past.

Currently issues related to proceedings of the “personnel” nature come forward, following the judgments of the European Court of Justice (ECJ) discussed below, because when they have become known, they have encouraged many members of the staff and law firms to increased activity, which has resulted in a large number of court disputes.

For these reasons, the aim is to present selected decisions of the ECJ concerning the institution of dismissal from the service of members of the security forces due to loss of medical fitness and issues related to the ordering and reimbursement of overtime and on-call time as these directly concern the existential interests of members.

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[11] Judgment of the European Court of Human Rights of 8 June 1976 in Engel and others *v. the Netherlands.* Available online at: https://www.echr.coe.int/Pages/home.aspx?p=caselaw&c=. Accessed 4 May 2023.

[12] Sovová, O., Fiala, Z. Influence of the European Case - Law on the Legislation and Assessment of Administrative Offences in the Czech Republic. p. 193 – 199. In *SGEM 2018 Conference Proceedings. Social Sciences and Art.* Vol. 5, Issue 1. Bulgaria, Sofia. STEF92 Technology Ltd.

[13] Bricknell M, Horne S. *Personal view: security sector health systems and global health*. BMJ Mil Health. 2023 May;169(e1): e64-e67. doi: 10.1136/bmjmilitary-2020-001607. Epub 2020 Sep 30. PMID: 32999086; PMCID: PMC10176418. See for a specific view Margaret Bourdeaux, Vanessa Kerry, Christian Haggenmiller and Karlheinz Nickel, *A cross-case comparative analysis of international security forces' impacts on health systems in conflict-affected and fragile states*, Bourdeaux et al. Conflict and Health (2015) 9:14, pp. 2-16, DOI 10.1186/s13031-015-0040-y.

2. Loss of medical capacity due to loss (deterioration) of hearing

In its judgment of 15 July 2021 in the case XX vs. Tartu Vangla,[14] the European Court of Justice dealt with a reference for a preliminary ruling concerning the interpretation of the Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (from now on referred to as the "Directive")[15] in the context of a dispute between him and the prison in Tartu, Estonia. The subject of the dispute was the decision of the prison director to release a Prison Service member due to failure to meet the requirements for auditory acuity.

The Directive referred to in Article 1 aims to establish a general framework for fighting discrimination based on religion or belief, disability, age, or sexual orientation in employment and occupation, to implement the principle of equal treatment in the Member States. The principle of equal treatment means the absence of direct or indirect discrimination on any grounds referred to in Article 1.

Similarly, to the Czech Republic, the legislation in Estonia also lays down, through a sub-legal regulation, rules concerning the health requirements of the members of the prison service and their medical examination, as well as requirements concerning the content and form of the medical opinion in Regulation No. 12 of the Government of the Republic of Estonia of 22 January 2013 (from now on referred to as the "Regulation of the Estonian Government"). Article 4 of the Regulation of the Estonian Government sets exact limits on the possible hearing loss of a member during a medical examination, similar to the Decree on Medical Fitness in Annex 1 for members of the security forces in the Czech Republic. It is not without interest that the Czech legislation is even stricter than the Estonian one. For example, according to the Estonian regulation, "the hearing level of a prison service member must be sufficient to communicate on the phone and hear the alarm and radio signals. At a medical examination, the hearing loss of a member of the prison service in the ear with better hearing shall not exceed 30 dB at a frequency of 500 to 2 000 Hz and 40 dB at a frequency of 3,000 to 4,000 Hz and in the ear with worse hearing 40 dB at a frequency of 500 to 2,000 Hz and 60 dB at a frequency of 3,000 to 4,000 Hz." [16]Whereas, according to the Czech regulation, at a loss of 20 to 35 dB in both ears (by audiometric examination of average loss in air conduction from the average of frequencies 500, 1,000, and 2,000 Hz), there are classification marks D per column I, C to D per column II, and A to C per column III.

The applicant (dismissed member) brought an action seeking a declaration of the unlawfulness of the dismissal and the award of damages, claiming that the Regulation of the Estonian Government introduced discrimination based on disability. However, the court dismissed the action because the requirement concerning the minimum auditory perception threshold laid down by the Regulation of the Estonian Government was a necessary and justified measure to ensure the capacity of prison service members to perform all their tasks. In the context of the appeal lodged by the applicant, the Tartu Court of Appeal annulled the judgment under appeal, finding that the decision on release was unlawful and, simultaneously, holding that the Tartu prison was obliged to pay damages to the applicant. At the same time, that court decided to initiate judicial proceedings to review the constitutionality of those provisions of the Regulation of the Estonian Government before the Supreme Court of Estonia. The Minister of Justice, like the prison in Tartu, argued that the Regulation of the Estonian Government was following the Estonian Constitution and that the need to ensure the safety of individuals and public order justified the minimum thresholds for auditory perception, as well as the prohibition of the use of hearing aids to meet these requirements.

The Supreme Court stated that ensuring the operability and proper functioning of the police prison or rescue service is a legitimate objective that may justify different treatment. However, it is also necessary to determine whether national legislation has established this requirement as

[14] Available online at: https://curia.europa.eu/caselaw. Accessed 4 May 2023.
[15] Available online at: https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32000L0078. Accessed 4 May 2023.
[16] See Review of the Constitutionality of Annex 1 to the Government of the Republic Regulation No. 12 of 22 January 2013 on "The health requirements for a prison officer and the procedure for medical examination, and the substantive and formal requirements for a health certificate". Available online at: https://www.riigikohus.ee/en/constitutional-judgment-5-19-29. Accessed 4 May 2023.

proportionate to the objective pursued. Because both the Directive and the ECJ's case law did not allow clear conclusions to be drawn, the Supreme Court stayed the proceedings. It referred a question to the ECJ for a preliminary ruling as to whether the provisions relating to the interpretation of Articles 2(2) and 4(1) of the Directive should be interpreted as precluding the national legislation providing that hearing loss below the required standard was an absolute contraindication to the continued employment of a member of the prison service, while not allowing compensatory aids to be used in assessing compliance with the requirements for hearing acuity.

The ECJ concluded that (i.) the Regulation of the Estonian Government established a difference in treatment directly based on disability pursuant to Article 2(2)(a) of the Directive, (ii.) by reason of the nature of the tasks of the prison staff member and the conditions under which they are performed, the requirement that his hearing acuity should comply with the minimum auditory perception threshold laid down by the national legislation could be regarded as a "genuine and determining occupational requirement" as per Article 4(1) in the pursuit of the profession of prison staff member, and (iii.) by setting minimum auditory perception thresholds, non-compliance with which constitutes an absolute medical impediment to the exercise of the duties of a prison officer, without allowing it to be ascertained whether that officer is capable of fulfilling his or her duties, where appropriate, after the adoption of reasonable accommodation measures, the Regulation of the Estonian Government appeared to have imposed a requirement going beyond what was necessary to attain the objectives pursued by that regulation, which was for the referring court to ascertain.

In the light of the preceding, the answer to the question referred to is that Article 2(2)(a), Article 4(1), and Article 5 of the Directive must be interpreted as precluding national legislation which imposes an absolute bar to the continued employment of a prison officer whose auditory acuity does not meet the minimum standards of sound perception prescribed by that legislation, without allowing it to be ascertained whether that officer is capable of fulfilling those duties, where appropriate after the adoption of reasonable accommodation measures for Article 5 of the Directive.

3. Breaks in service *vs*. on-call time and their reimbursement

For the topic of breaks in service, the provisions of Article 2 of Directive 2003/88/EC of the European Parliament and the Council of 4 November 200317 concerning certain aspects of the organisation of working time defines "working time" as any period during which the worker is working, at the employer's disposal and carrying out his activity or duties, following national laws and practice; the "rest period" means any period which is not working time. Article 4, in particular, refers to the concept of breaks: 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 in collective agreements or agreements between the two sides of industry or, failing that, by national legislation.

Concerning this Directive, the ECJ decided on several cases. Concerning the Czech practical application, the judgment of the ECJ of 9 September 2021 in case C-107/19 illustrates it.[18] Although this is a "purely" labour law dispute, the conclusions of this case can also be applied to the service of members of the security forces and have been repeatedly argued, appropriately, in the applications submitted by members of the security forces.

The subject of the decision was the case of a former employee (designated as "XR") of the Prague Public Transit Company, employed by this organisation as a firefighter between 2005 and 2008. XR worked in shifts, with one shift including two breaks of 30 minutes for eating and rest. While taking these breaks, XR had the opportunity, for instance, to go to the canteen, but he had to have a radio with him in case of an emergency and had to be able to leave within two minutes. The period of breaks thus spent was not part of his working time and was therefore not reimbursed. The reimbursement was made only in the case of a call for intervention. XR challenged the non-payment

[17] Available online at: https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32003L0088. Accessed 4 May 2023.
[18] The judgment of the ECJ of 9 September 2021 in case C-107/19. Available online at: https://curia.europa.eu/caselaw. Accessed 4 May 2023.

of his breaks and demanded payment of this time, which he considered to be working time.

In the present case, the Czech court referred the following questions to the ECJ for a preliminary ruling: (1) Shall the period of rest during which the employee must be available to the employer in the event of an emergency within two minutes be regarded as "working time" under Article 2 of Directive [2003/88]? (2) Is the assessment referred to in the [first] question affected by the fact that the interruption in the event of an emergency occurs only accidentally and unpredictably, or how often such an interruption occurs? (3) Is the court of first instance, which decides after its decision has been annulled by the superior court and returned to further proceedings in the case, where the superior court has expressed a legal opinion that is binding for the court of first instance, entitled not to respect this binding legal opinion if it is contrary to EU law? The first and second questions were examined jointly by the Court of Justice of the European Union. At first, it stated that if the worker was taking a break, but his substitutability was not ensured, and he was on the radio during the entire duration of the break and ready to leave for intervention immediately, he was on standby. Furthermore, the court stated that even if a worker does not perform any activity for his employer, it does not always have to be a rest period.

To distinguish between working hours and rest periods, subsequently, it used the criterion of the obligation to be present at the workplace and readiness to respond immediately to the employer's requirements. These requirements may constitute restrictions that significantly impact the worker's ability to manage his time and pursue his interests, which does not make it possible to consider that time as a rest period but, on the contrary, as working time.[19] Regarding the randomness, unpredictability, and also the rarity of interrupting the breaks with an emergency event, where the worker is obliged to start working, the court stated that the impact of the primary duty to respond immediately, due to which the worker cannot fill his time with actual rest, was still crucial. The court answered the last question so that the principle of the primacy of EU law prevented the District Court for Prague 9 from following the legal opinion of the Court of Appeal if it was not compatible with EU law. In addition to the subject matter of the case, the Court of Justice of the European Union stated, obiter dictum, that since the Directive did not expressly cover the remuneration of employees, which was thereby left to national legislation, there was nothing to prevent that remuneration from being differentiated according to whether the break was interrupted, and work carried out.

The judgment of the CJEU case C-580/19 of 9 March 2021 impacts the practical application in the Czech Republic in the imposition of on-call time can 20 in *RJ v. Stadt Offenbach am Main* and Directive 2003/88/EC of 4 November 2003, on certain aspects of the organisation of working time. Judgment C-580/19 of the CJEU decided on the questions referred for a preliminary ruling by the Vervaltungsgericht Darmstadt (Administrative Court in Darmstadt, Germany):

"(1) Is Article 2 of Directive 2003/88/EC to be interpreted as meaning that periods of on-call duty during which a worker is under an obligation to reach the boundary of the city where his place of employment is located, in uniform and with an operations vehicle, within twenty minutes are to be regarded as working time, even if the employer has not specified any place at which the worker must be physically present, albeit the worker is significantly restricted in the choice of his whereabouts and his ability to pursue his personal and social interests?

(2) If the first question is answered in the affirmative, in a situation such as that described in the first question, is Article 2 of Directive 2003/88/EC to be interpreted as meaning that, in the definition of the concept of working time, account must also be taken of whether, and if so, with what frequency, a call to work is usually to be expected in the course of on-call duties performed elsewhere than at a place determined by the employer?"

As apparent from the judgment mentioned above of the CJEU, the case concerns RJ, a German firefighter from the city of Offenbach am Main, in the service relationship, who, in addition to the regular service, must perform the service of "Beamter vom Einsatzleitdienst" (from now on referred to as "BvE"), an officer in charge of operations, consisting in the obligation to report at the place of

[19] Maiso Fontecha, L., Working time: recent case law of the Court of Justice of the European Union. *ERA Forum 23.* 1–6 (2022). Available online at: https://doi.org/10.1007/s12027-022-00708-7. Accessed 4 May 2023.
[20] Available online at: https://curia.europa.eu/caselaw. Accessed 4 May 2023.

intervention immediately. According to the order of the response unit, during service, the BvE *"(...) shall remain on call and at such place as will permit him or her to comply with the response time of 20 minutes."* In other words, the BvE must constantly be available, have their emergency suit ready, remain within proximity of the operations vehicle provided, respond to incoming phone calls, and in some instances, arrive at the place of intervention or the service station. RJ sought recognition of the BvE service as a working time and payment of the relevant remuneration, which his employer refused in August 2014.

After examining the case, the Grand Chamber of the CJEU concluded in its judgment as follows: "*Article 2(1) 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 must be interpreted as meaning that a period of standby time according to a standby system, during which a worker must be able to reach the town boundary of his or her workplace within a 20 minute response time, in uniform with the service vehicle made available to him or her by his or her employer, using traffic regulations privileges and rights of priority attached to that vehicle, constitutes, in its entirety, 'working time', within the meaning of that provision, solely if it follows from an overall assessment of all the circumstances of the case, in particular the consequences of such a response time and, where appropriate, the average frequency of interventions during that period, that the constraints imposed on that worker during that period are of such a nature as to constrain objectively and very significantly the ability that he or she has to freely manage, during the same period, the time during which his or her professional services are not required and to devote that time to his or her own interests."*

Article 2(1) of Directive 2003/88/EC of 4 November 2003 provides: *"For the purposes of this Directive, the following definitions shall apply: 1. "working time" means 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."*

The Judgment C-580/19 of the CJEU (Grand Chamber) of 9 March 2021, paragraph 57, further states that *"the way in which workers are remunerated for periods of standby time is not covered by Directive 2003/88 but by the relevant provisions of national law. Consequently, that Directive does not preclude the application of a law of a Member State, a collective labour agreement, or an employer's decision that, for the purposes of the remuneration of standby time which makes a distinction between the treatment of periods in the course of which work is actually done and those during which no actual work is done, even if those periods must be regarded, in their entirety, as 'working time' for that Directive."*

The difference between the remuneration for the work performed, and the remuneration for readiness for work also results from the finding of the Constitutional Court of the Czech Republic no.: II. ÚS 1854/20 of 18 October 2021,[21] which concerns fair remuneration for work in connection with the employer's requirement for availability during the break. The reasoning of the finding also refers to the CJEU mentioned above judgment of 9 September 2021 in C-107/19[22] XR against the Prague Public Transit Company, and in connection with this judgment, it states in the justification for the finding, among other things, that the EU law *"does not preclude the application of a law of a Member State, a collective labour agreement, or an employer's decision which, for the remuneration of standby time, makes a distinction between the treatment of periods in the course of which work is actually done and those during which no actual work is done, even if those periods must be regarded, in their entirety, as 'working time' according to the [Directive 2003/88/EC]"* (in paragraph 42 of the judgment cited).

Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work (from now on referred to as "Directive 89/391/EEC")[23], which Directive 2003/88/EC refers to, in its Article 2, which defines the scope of its

[21] Available in Czech online at: https://usoud.cz/nalus. Accessed 4 May 2023.
[22] Available online at: https://curia.europa.eu/caselaw. Accessed 4 May 2023.
[23] The consolidated version is available online at: https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:31989L0391. Accessed 4 May 2023.

application, provides the following:

"1. This Directive shall apply to all sectors of activity, both public and private (industrial, agricultural, commercial, administrative, service, educational, cultural, leisure, etc.).

2. This Directive shall not be applicable where characteristics peculiar to certain specific public services activities, such as the armed forces or the police, or to certain specific activities in the civil protection services inevitably conflict with it."

It is clear from the preceding that the terms "working time" and "service time" cannot be equated since they differ in meaning.

4. Conclusion

In the context of the judgments discussed, the Czech legal regulation of dismissal on the grounds of loss of medical fitness contained in the Service Act and in the related Decree on Medical Fitness is partial without a problem. Despite this (or instead because of this), it will be necessary in the future, when dismissing a member of the service, to pay more careful attention to the reasons for the decision as to why the loss of medical fitness in a particular case is incompatible with the exercise of the profession of a member of the security forces as a whole, i.e., to answer and explain the question of what prevents explicitly the member from being appointed to another post. From the de lege ferenda perspective, it is up to consider whether to explicitly include in the Decree on Medical Fitness the possibility of using compensatory aids (typically hearing aids or contact lenses) that could help remove or mitigate the excessive strictness of the Decree on Medical Fitness, often mentioned by the members, and thus enable equal treatment of individuals with disabilities.

The authors find the Czech legal system compliant regarding reimbursing breaks and on-call time. The practice should approach the conclusions of the ECJ with restraint. Namely, they should only be generalised and broadly applied to some cases. In service, individual posts differ, such as service performance in an integrated operations centre *vs.* the service in the supervisory department. However, the content of the work is similar in many respects.

Similarly, the activity of the riot police patrol in the streets, where there are several patrols for each district, differs from, for instance, the traffic police patrol, which is responsible for initial operations at the sites of traffic accidents and cannot be easily replaced. The activities of their members are thus entirely different. In this respect, the superior officer and the courts should address each case individually. From the point of view of improving the current situation, it is necessary to look for ways to improve the decision-making action of service officials rather than amending the legal regulation. Considering the demands of acquis communautaire and the guiding principles of the European labour law, the authors underline that the EU member states can approximate the legislation on public service. The shared experience also allows individualization where the peculiarities of the national legal order require so.

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