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AVAILABILITY TIME AND THE RIGHT TO COMPENSATION OF VEHICLE CREW IN ROAD TRANSPORT


ABSTRACT: The working hours of vehicle crews in road transport are regulated by a special jurisdiction – *ratione personae*. The Law on Working Hours of Vehicle Crews in Road Transport and Tachographs addresses the working hours of vehicle crews differently than the general labor relations framework. A significant difference is that availability time is not considered working time. During availability time, a crew member is entitled to appropriate compensation, as defined by labor regulations, specifically those governing salaries and based on availability time.

In this paper, the authors, using the normative and comparative law method, examine the concept and legal nature of availability time for crew members in both domestic and comparative law, as well as the right to compensation for availability time. The authors also propose a more comprehensive regulation of the right to compensation based on availability time.

Keywords: *working hours, availability time, readiness, vehicle crew working hours.*

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1. Introduction

Over the past twenty years, the major changes in the world economy and in the social, technological, and other work areas have affected the way labor relations are regarded (Jašarević, 2015, p. 1). Distinctive in labor law is the adoption of a series of special laws on certain individual rights (e.g. the law on health and safety at work, law on working hours) or collective rights (e.g. the law on collective labor agreements, law on strikes), as well as special laws regarding certain employee categories (Lubarda, 2018, p. 84). Thus, we have special legal systems for certain categories of workers – *ratione personae*. One of such systems is a special law that regulates the working hours of truck and bus drivers in the Republic of Serbia.

According to its geographical position, the Republic of Serbia is located at a crossroads that connects different parts of Europe, while the roads through Serbia are the shortest roads that link Asia and Europe. Numerous commercial vehicles (trucks and buses) – both domestic and foreign – travel on the roads of Serbia every day. Team drivers drive a large number of commercial vehicles. The reason is completely clear, especially when regarding international transport, i.e. transporting passengers. The length of the roads, especially international routes, requires a change of drivers for reasons of road traffic safety. However, despite this, commercial vehicles still make up a significantly large number of traffic accidents on Serbian roads.

This is indicated in the latest data published by the Road Traffic Safety Agency, which states that during the period from 2017 to 2021, there were 640 fatal traffic accidents (TA FAT) in the Republic of Serbia, in which commercial vehicles (trucks and buses) were involved, and a further 13.238 traffic accidents in which persons were injured (TA INJ). Traffic accidents involving commercial vehicles with fatalities made up 26% of the total number of traffic accidents with fatalities. In these traffic accidents, 734 people died and 21.015 people were injured. That amounts to about 27% of all deaths (DEA) and about 21% of all injured (INJ) persons involved in traffic accidents. Due to the weight of commercial vehicles, which is in most cases more substantial than of the other vehicles in a collision, most of those who perish in these traffic accidents are not the drivers and passengers. Thus, in collisions with cargo vehicles, 87% of those killed were not killed in the cargo vehicle, while 77% of those killed in collisions with buses were not in the bus at the time of the accident (Road Traffic Safety Agency, 2022).

At the time when the current Law on Road Traffic Safety began to be implemented in Serbia (LRTS), 10 December 2009, there was no legal

regulation in Serbia that regulates the working hours of team drivers. In 2010, the UN General Assembly adopted the *Global Plan for the Decade of Action for Road Safety 2011-2020*. The Republic of Serbia assumed responsibility for this activity and in the mentioned period undertook active measures with the aim of increasing road traffic safety. In the period 2015 – 2020, the Road Traffic Safety Strategy was also adopted, but the set goals regarding the reduced number of road casualties in our country were not met (Road Traffic Safety Strategy of the Republic of Serbia for the period from 2015 to 2020).

One of the goals set in that period was the legal regulation of the working hours of team drivers in road transport, given that this issue was previously regulated by a by-law (Regulation on the rest of drivers in international transportation, as well as on the application of digital tachograph systems), which goal was fulfilled in 2015. Since 2015, the Law on the Working Times of Driver Teams in Road Transport and Tachographs (hereinafter: Working Time Law) have been in force in Serbia. This law primarily regulates the working hours, breaks and rest of the team drivers in road transport as well as the times of driving the vehicle. With some exceptions, the law applies to the following road transport vehicles:

- 1) cargo vehicles, when the maximum permitted weight of the vehicle exceeds 3.5t;
- 2) and passenger vehicles, means of transportation that are designed and equipped to carry over nine people, including the driver (Working Time Law, Article 2).

A team driver is any natural person who is in the vehicle and who undertakes road transport services for the carrier, regardless of whether they are paid or not, and can be the following:

- a) the driver, i.e. the person who drives the vehicle, even for a short time, or who is in the vehicle as part of their duties, in order to drive the vehicle if necessary,
- b) the co-driver, i.e. the person who accompanies the driver to help maneuver the vehicle and regularly participates in activities required, but is not a driver in the sense of the above point,
- c) the conductor, i.e. a person who accompanies the driver of a vehicle for regular passenger transport, who is specifically in charge of issuing or controlling tickets or other documents that entitle passengers to be transported by that vehicle,
- d) the apprentice, that is, a person who is being trained for independent work in the profession (Working Time Law, Article 3).

In the paper, the authors present the legal nature of the concept of availability, the right to compensation for availability time, presenting comparative legal solutions, identifying problems in practice and proposing solutions.

2. The working hours of team drivers

In the general system of labor relations, the working time is the period from the beginning to the end of daily work, during which employees effectively carry out their work, and they are at the disposal of the employer, performing their duties at the workplace or another site determined by the employer, i.e. the period during which the employees are at the disposal of the employer at the workplace, in order for the employer to entrust them with exercising their functions or until the task is completed (Lubarda, 2018, p. 182) at the disposal of the employer and exercising his functions or activities.

Therefore, all the time during which an employee is employed by an employer is considered working time and vice versa, the period during which an employee can carry out private activities at will is considered free time, in the framework of which an employee also uses their vacation time (Božović, 2020, p. 191). The definition of working time is given in EU directive 2003/88, which defines the term as the period of time which an employee uses to work, as well as being at the disposal of the employer and exercising his functions or activities in accordance with national law (Council Directive 93/104/EC of 23 November 1993, Art. 2). This definition was adopted by our Labor Law.

In relation to the general system of labor relations, the Working Time Law, as a *lex specialis*, specifically regulate the working hours of team drivers, daily and weekly rest, the time driven, daily and weekly time of driving a vehicle, night time and night work, availability time, etc. Thus, in accordance with this law, working time is the time from the beginning to the end of work, during which the mobile worker is at his workstation, at the disposal of the employer and exercising his functions or activities, and specifically includes the following:

- 1) the driving time;
- 2) other working hours, i.e. time for the implementation of other tasks within road transport, which include:
 - loading and unloading,
 - assisting passengers boarding and disembarking from the vehicle,
 - vehicle cleaning and technical maintenance,

- all other work intended to ensure the safety of the vehicle, its cargo and passengers or to fulfill the legal or regulatory obligations directly linked to the specific transport operation under way, including monitoring of loading and unloading, administrative formalities with police, customs, immigration officers etc.,
- times during which they cannot utilize their time freely and during which they are required to be at their workstation, ready to take up regular work and certain tasks associated with being on duty, in particular during periods awaiting loading or unloading where their foreseeable duration is not known in advance, that is to say either before departure or just before the actual start of the period in question (Working Time Law, Article 3, Section 33).

Vacation is a continuous period of time during which team drivers can freely utilize their time.

A daily rest is a rest that can be the following:

- 1) a full day's rest that lasts at least 11 hours continuously or it can be divided into two parts, with the first part of the rest lasting at least three hours continuously, and the second no less than nine hours;
- 2) a shortened daily rest that lasts less than 11 hours continuously, but no less than 9 hours.

A weekly holiday is a holiday that can be the following:

- 1) a full weekly rest that lasts at least 45 hours continuously;
- 2) a shortened weekly rest that lasts less than 45 hours continuously, but no less than 24 hours.

A break is an interval in the driving of a vehicle during which the driver may not drive, nor perform other tasks, and which is exclusively used for rest and recovery (Working Time Law, Article 3, Section 28-31).

Furthermore, the driving time is the period of time during which the driver operates the vehicle, which is recorded automatically, semi-automatically or manually under the conditions stipulated by this law. The driving period is the total driving time from its start, from the end of a rest or interval until the next rest or interval, and it can be continuous or broken up. The daily driving time is the total time of driving since the end of the last rest period, i.e. between

two consecutive rest periods. The weekly driving time is the total time of driving during one week.

The law also introduces a special institution – availability time, which is not considered working time (Working Time Law, Article 3, Sections 35-41).

3. Availability time

3.1. Availability time – the concept and its legal nature

What is particularly controversial, in our opinion, in this law is that the availability time of team drivers is not considered as being working time. Namely, availability time is a period of time that is not considered working time and includes the following:

- 1) time periods during which the employer requires the team drivers to be on standby, i.e. to be ready to start or continue driving the vehicle or performing other tasks, and does not require them to be at their place of work. In particular, such periods of availability shall include periods during which the mobile worker is accompanying a vehicle being transported by ferryboat or by train as well as periods of waiting at frontiers and those due to traffic prohibitions; the aforementioned periods and their expected duration should be known in advance to the team drivers before departure or immediately before the start of the driving period itself;
- 2) for mobile workers driving in a team, the time spent sitting next to the driver or on the couchette while the vehicle is in motion (Working Time Law, Article 3, Section 39). Likewise, the Law on Working Hours, Mandatory Vacations of Mobile Workers and Recording Devices in road transport of the Republic of Croatia stipulates in Article 4 “the excluding of periods of availability from working hours.”

The European Parliament and the Council of the European Union adopted Directive 2002/15/EC on 11 March 2002 with the aim of improving road traffic safety, preventing encroachment of market competition and guaranteeing the safety and health of transport workers covered by this Directive. “Mobile worker” implies those workers who are part of a train or bus team, including trainees and scientists, workers forming part of the travelling staff, including trainees and apprentices, who are in the service of an undertaking which

operates transport services for passengers or goods by road for hire or reward or on its own account (Directive 2002/15/EC, Article 3 (d)).

In accordance with the directive, mobile workers should know exactly which periods dedicated to road transport activities are working time and which are not and are therefore considered breaks, vacations or periods of availability. They workers must be granted a minimum of daily and weekly rest and appropriate breaks. It is also necessary to set a maximum limit for the number of weekly working hours (Directive 2002/15/EC, Section 10 of the preamble). This directive also stipulates that availability time is not included in the working time. Availability time, according to this directive, are:

- time periods, except those related to breaks and vacations, during which the mobile worker is not expected to remain at the workplace, but must be available for all calls to start or continue driving or perform other tasks. Such periods of availability in particular include periods when the mobile worker accompanies a vehicle being transported by ferryboat or by train as well as periods of waiting at frontiers and those due to traffic prohibitions; These periods and their foreseeable duration shall be known in advance by the mobile worker, that is to say either before departure or just before the actual start of the period in question, or under the general conditions negotiated between the social partners and/or under the terms of the legislation of the Member States.
- for mobile workers who drive in a team, the time spent sitting next to the driver or on the couchette while the vehicle is in motion.

Additional EU rules (Driving and Rest Time Rules, 2022) for the transport of passengers stipulate that a regular weekly rest period must last at least 45 hours. The period of reduced weekly rest must last at least 24 hours, but less than 45 hours. A weekly rest must start within 144 hours (6 x 24 hours) of the end of the previous weekly rest. In two consecutive fixed working weeks (from Monday to Sunday) there must be at least:

- two periods of regular weekly rest (each lasting at least 45 hours) or
- one period of regular weekly rest (at least 45 hours) and one period of a shortened weekly rest (at least 24 hours).

If a period of reduced weekly rest is taken, the reduction must be compensated by using an equivalent rest period (*en bloc*) related to a rest period of at least 9 hours before the end of the third week following the week in which the reduced weekly rest was taken. A regular weekly rest cannot be

used in the vehicle. The employer must pay for appropriate accommodation with adequate sleeping and hygiene facilities for the team's rest.

Within each period of 3 or 4 consecutive weeks (depending on whether there have been two consecutive reduced weekly rest periods), the employer must allow team members to return to one of the following two places for a regular weekly period of rest:

1. the employer's operational center in the EU member state where the headquarters are located and where the team members are normally located or
2. the residence of the team members if different from the seat of the employer.

The state of availability is similar to readiness. By the provisions in Article 5, Sections 3 and 4 of the Labor Law the definition of availability for work is the so-called "third period," which implies the time during which the employee is preparing to respond to the call of the employer and performs tasks as needed, as the employee must perform his tasks in accordance with the law, and organizes the time of preparation and the compensation provided for by the law or a general act or an employment contract.

Therefore, it can be concluded that working time is not considered as the time when the employee is ready to respond to the employer's call to perform tasks if the need arises, under the essential condition that the employee is not at the place where his tasks are performed. However, regardless of the fact that availability is not part of effective work, the employee must be available to the employer in order to be able to respond to the needs for effective work, which is why availability still enters into the area of working time, given that it consists of operational availability to work or by order of the employer to start effective work. In this regard, it is important to point out that such a state of availability requires the employee to forego anything that could impair his availability to start work immediately or within a certain period after the call, while the foregoing represents a kind of limitation of the employee to use his free time at his own free will, and such an obligation of the employee is the reason why the employee is entitled to financial compensation for availability, which is determined either by law or by a general act or an employment contract (Božović, 2020, p. 191; Ivošević & Ivošević, 2015, pp. 144–145).

The special feature of regulating availability time has had such an impact that the theory of (French) labor law defines availability as the so-called "third period," different from service time and rest time (at work) (Lubarda, 2020, p. 469).

3.2. The right to compensation for availability time

The method of paying mobile workers for being on duty or on standby does not fall within the scope of Directive 2003/88, but rather, within the scope of relevant provisions of national law (Judgment of the Court of Justice of the EU, *B.K. v. the Ministry of Defense, the Republic of Slovenia*, C-742/19, Paras. 93-94 and Paras. 96-97).

The provision of Article 9 of the Working Time Law stipulates that a team driver has the right to an appropriate salary, i.e. compensation, in accordance with the labor regulations, or the regulations regulating salaries, and during availability time, a team driver realizes the right to appropriate compensation in the manner regulated by the labor regulation, i.e. in accordance with the regulations governing wages based on standby time.

The Labor Law stipulates that working time is not considered as the time when the employee is ready to respond to the employer's call to perform tasks if such a need arises when he is not at his workstation, in accordance with the law. Standby time and the amount of compensation for it are regulated by law, a general act or an employment contract. The time that an employee spends performing tasks during standby time at the request of the employer is considered working time (Labor Law, Article 50, Paras. 3-5). Standby time is not considered to be working time but rather, it is a "state of operational readiness" to, at the invitation of the employer, carry out effective work, which is the reason that an employee is entitled to compensation in the amount determined by the law or general act or employment contract standby hours.

The Labor Law itself does not lay out the amount of standby compensation but refers to other laws, a general act or an employment contract. Thus, for example, the Law on Social Protection (Article 148, Para. 3) stipulates that employees during standby time have the right to an increased salary in the amount determined by the general act or the employment contract, and at the very least, the amount of 10% of the basic hourly pay for each standby hour. The Law on Police (Article 187, Para. 1, Section 4) stipulates that a police officer has the right to an increased salary in the amount determined by this law, for, among other things, being on standby: for each hour of standby time, in accordance with a special schedule of work, the amount of 10% of the basic hourly pay for each standby hour.

A special collective agreement for health institutions whose founder is the Republic, autonomous province or unit of local self-government (Articles 44 and 95, Para. 5) stipulates that for the time spent on standby when an employed health worker is not working, s/he has the right to supplemental pay in accordance with the contract. In other words, during standby time, an employee

is entitled to an allowance for each hour spent on standby in the amount of 10% of the basic hourly pay for each standby hour. Also, the Law on Salaries of Civil Servants and Officials (Article 28) stipulates that a civil servant, who outside of working hours must be available for the purpose of performing their duties, has the right to a supplemental pay. The pay for each availability hour amounts to 10% of the basic hourly pay of the civil servant's salary.

However, in relation to the special system of labor relations within the general legal system, there are a small number of general acts that set the amount of standby pay. Thus, for example, the Special Collective Agreement for the activity of Travel Industry (Article 12, Para. 5) stipulates that during the time in which an employee is available to respond to the employer's call, if such a need arises during the winter service, s/he employee has the right to 10% of the basic hourly pay.

The question arises, what if in practice an employer fails to fulfill the right to compensate availability time to the team driver. In this regard, the decision of the Supreme Court of Cassation of Serbia (Rev2 1157/2022 dated 13 September 2023) is significant: "There are no general acts that provide that the driver's working hours also include 30 minutes before the first ride, nor is it prescribed by the provisions of the Working Time Law. The audit establishes that the provision of Article 6, Para. 2 of the Working Time Law stipulates that a break from paragraph 1 of that article is not included in the working time, and that Article 3, Para. 1, Section 39 stipulates availability time as a period that is not considered working time, while Article 6, Para. 5 of the same Law stipulates that availability time can be considered to include the rest during work, which, based on the provisions of Article 7, Para. 6, is not included in the working time. The correct application of the provisions of the Working Time Law, as a *lex specialis* in relation to the provisions of the Labor Law, leads to the conclusion that the court of second instance, by passing the disputed verdict, including breaks and rests during the day that exceeded two hours as working time, as well as 30 minutes before the first ride, had incorrectly applied substantive law." Therefore, the conclusion follows that if an employer did not set compensation for standby time, i.e. availability time, then an employee cannot exercise the right to that compensation. In practice, employers usually do not impart rights to employees if they do not have to.

In the USA and some other countries, team drivers (mostly truck drivers) are paid per miles driven, and more than half fail to receive compensation for available time (Chen, Sieber, Lincoln, et al. 2015, p. 85). In Europe, only in France is availability time considered a part of the working time for which team drivers must be compensated (Comité National Routier, 2016). The literature states that

27% of the average truck driver's working time is taken up by non-driving duties, which usually go unpaid (Macdonald, Bentham & Malone, 2018, pp. 80–96). For these reasons, to compensate for loss of income, drivers spend more time driving.

Research results show that paying truck drivers for non-driving work time significantly reduces their working hours. In these cases, as already mentioned, drivers attempt to compensate for the loss of income by driving longer hours. The US Department of Transportation, Office of Inspector General (2018) also reported that longer wait times significantly increase the risk of accidents. This may occur due to increased working hours and fatigue caused by unpaid non-driving periods – especially when such non-driving work exceeds 2 hours at a time. Research suggests that compensating drivers for non-driving duties can prevent drivers from overworking, which can thus reduce risks to driver safety and health. An analysis found that more than half of all long-haul truck drivers work 63 hours a week or more, and that drivers are likely to violate driving time regulations, putting traffic safety and their own safety at risk. Obviously, compensating drivers for all working hours (and availability time) would increase their effective wage rates, while greatly reducing their incentive to drive longer hours to reach their target earnings (Kudo & Belzer, 2019, pp. 12–13).

Drivers who work fewer hours with higher wages are also likely to experience less fatigue. Earnings also have implications for drivers' health as their health deteriorates if working hours exceed 40 hours (Belzer & Sedo, 2017, p. 1). In 2009, the World Health Organization published the Global status report on road safety, based on data provided by 178 countries. Just 13 years ago, it was determined that the legal regulations regulating road traffic safety risk factors in more than two-thirds of the countries were incomplete, and that in those countries where legal regulations exist, they are not applied properly (Grahovac, 2022, p. 36).

In addition to the right to standby allowance, team drivers would also have the right to per diems for a business trip, or a field allowance. These fees are not excluded (see the judgment of the Supreme Court of Cassation, Rev2 21/2023 dated 20 April 2023).

4. Final considerations

In modern labor legislation, regulations on working hours are mainly protective in nature. In the area of labor, there is a general tendency to shorten working hours (Insurance Post, 2019, p. 55). On the other hand, strong globalization trends lead to the abandonment of labor law standards (Gligorić & Škorić, 2021, p. 88).

In the general system of labor relations, the availability time of an employee to the employer can be taken up by the following: for example, guarding an employer's business premises; in the field of hotel management – receptionists, regardless of the number of hotel guests; and in the field of services – employees in hair salons regardless of the number of clients during a work shift is equated with effective work (Lubarda, 2018, p. 182).

Also, according to the position of the Court of Justice of the European Union, stand-by or on-call time where the worker is required to be physically present at the place determined by his employer must be considered working time, regardless of the fact that the person does not continuously perform the professional activity during the on-call period. That conclusion is not changed by the fact that an employer makes available to a physician a rest room where they can stay as long as they deem necessary and as long as their professional services are not needed (Judgment of the Court of Justice EU *Pfeiffer and Others* C-397/01 to C-403/01, &93, in Marković, Obradović, Brković, & Galić, 2021, p. 112).

According to EU rules, the employer must organize the driver's working and free time so that they are not absent from work for more than 4 weeks in a row (Plutonlogistics, 2024).

According to jurisprudence, the criterion for delineating working time from free time is the possibility of an employee to carry out private activities, thus stating that the period during which an employee is employed by the employer is considered working time, regardless of whether this time is covered by the contract or overtime work (Judgment of the Basic Court in Novi Sad P1-745/19 dated 13 September 2019, confirmed by the Judgment of the Court of Appeal in Novi Sad Gž1-3800/19 dated 17 July 2020).

However, some criticism should be directed at the Working Time Law (similar to the amendments to the Law on Police from March 2018, according to which the time spent by police officers in a state of readiness for effective work, without the employer's directive, but at the place where their professional duties are performed, should also be considered availability and not effective or overtime work, Božović, 2020, p. 192) which in this special *ratione personae* system allows the introducing of unauthorized obligatory and compulsory working hours, with a relatively heavy burden imposed on team drivers in regards to the large amount of unpaid work. Thereby, the driver's free time, his social life and time spent with his family could be under threat.

In addition, companies use overtime as an effective tool of an integral strategy of flexibility in the set number of working hours. There is a growing number of empirical studies that focus on the individual and social consequences

of overtime work on health and well-being, and in China and Japan, the words ‘Guolaosi’ and ‘Karoshi,’ which in the literary translation mean ‘death due to excessive work,’ have long been established in the vocabulary. In this context, there is overwhelming empirical evidence that long exposure to overtime has a detrimental effect on worker safety, health, and the work-life balance. Therefore, the risk of accidents at work is not only increased proportionally to the number of working hours, but it is also increased exponentially after crossing the threshold of the set number of working hours (Klajić, 2020, pp. 17–18).

The issue of working hours is primarily regulated by the EU Charter of Fundamental Rights (Article 31, Paras. 1 and 2) as an integral part of fair and honest working conditions, which states that “every worker has the right to working conditions which respect his or her health, safety and dignity,” but also 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.” Directive 2003/88/EC is devoted to the issue of working time. The aim of Directive 2003/88/EC is to establish minimum provisions to improve the protection of health and safety in the workplace (see the judgment of the Court of Justice of the EU *Malo Marques da Rosa*, C-306/16, §45-46). The Directive sets the longest weekly working hours in such a way that the average number of working hours in each weekly period, including overtime hours, must not exceed 48 (Directive 2003/88/EC, Article 6). The Directive defines different terms, such as ‘working time’ or ‘adequate rest.’ It is based on the principle that the daily working time of an employee can be divided into working time and rest time. Also, it is important to emphasize that the Directive itself foresees specific rules regarding some occupations, but also certain exceptions in relation to the set rules (Kuzminac, 2022, p. 74).

On the one hand, exceptions refer to certain professions, while on the other, the possibility of exceptions to the set limits is also stipulated in individual cases, but only if there is the consent of the worker and if that had no negative consequences on the worker’s health. In this sense, it is stated that, although the Directive foresees the possibility of certain exceptions to the rules concerning working time, the repercussions of these exceptions in practice have yet to be comprehensively assessed (Cabrita, 2015).

It should also be emphasized that the EU Court has developed an ample case law related to various issues from the area of labor and legal relations. A series of cases also referred to the question of qualification of standby as ‘working time’ or ‘rest time’ (see judgments *Simap*, C-303/98, EU:C:2000:528, *Jaeger*, C-151/02, EU:C: 2003:437, *Matzak*, C-518/15,

EU:C:2018:82, Készenléti Rendőrség, C-211/19, EU:C:2020:344, in Turkalj & Turkalj, 2022, p. 89). Directive 2003/88/EC fails to foresee a ‘gray zone’ that would be inserted between working and rest time. In accordance with the system established by the EU legislator, the Court adopted a two-sided approach on the basis of which what includes the concept of working time does not include rest time and vice versa (Turkalj & Turkalj, 2022, p. 90).

Regarding availability, what the Court of Justice considered a ‘decisive factor’ was the fact that a worker is obliged to be present at the place designated by the employer and to be at the disposal of the employer so that, if necessary, s/he can immediately provide their services. As a result, the workers in question had significantly limited time management and were separated from their families and social environment (judgment of the Court of Justice EU *Landeshauptstadt Kiel v Norbert Joeger* C-151/02 dated 9 September 2003, §63 and 65). The EU Court of Justice considers that presence “at the place designated by the employer” is equivalent to presence “at the workplace” considering the fact that a call to duty must be responded to within a period of time that is so short as to be nearly equivalent to having to respond ‘immediately.’ Obligations that prevent the worker from choosing the place to be present during the standby period should be considered as part of performing the duties in question (Judgment *Ville de Nivelles v. Rudy Matzak*, C-518/15 of 21 February 2018, §53, §60-65 and §59). Standby time can be qualified as working time when the worker’s freedom to devote themselves to personal and social interests during rest time is significantly restricted. The legal qualification of standby time as time that is not included in working time is contrary to the established case law of the EU Court of Justice, which excludes the possibility of such automatic qualification of standby time as rest time (Turkalj & Turkalj, 2022, pp. 97–98).

During working hours, an employee must be at the workplace where their work is carried out. That is the key difference between working time and standby time. During standby time, an employee is not at their workplace, but is free to be anywhere else. The time that the employee spends on standby is not included in working time, while working time is considered to be the time that an employee spends performing tasks on call (Rajić Čalić, 2018, p. 186).

In the specific case, considering that during availability time (accompanying a vehicle being transported by ferryboat or train as well as periods of waiting at frontiers and those due to traffic prohibitions, while sitting in the vehicle as a passenger), a mobile worker resides at the place designated by the employer, is far from his social and family environment and has limited freedom to manage his time during which his professional services are not requested, the availability must be qualified as “working time.”

As the method of payment for mobile workers on duty or on standby does not fall within the scope of Directive 2003/88 but rather, within the scope of relevant provisions of national law (Judgment *B.K. v. the Ministry of Defense, the Republic of Slovenia*, C-742/19, §93-94 and §96-97), domestic regulations should ensure the payment of mobile workers' availability time.

Currently, in Serbia there is a shortage of around 20,000 bus and truck drivers. The Law on Road Traffic Safety has been amended (Article 180). The age limits for driving a truck have been lowered to 18, and for driving buses to the age of 21 (Regulation on Drivers' Licenses, Article 6a). In addition, professional organizations (Srbijatransport, 2024) have proposed numerous measures to encourage employment in road transport (for example, subsidizing mortgages, compensation packages for women drivers, introducing subsidies for initial training for professional drivers, tax exemptions, etc.).

Furthermore, it has been recommended that the legislator set minimum amounts of compensation for availability time.

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VREME RASPOLOŽIVOSTI I PRAVO NA NAKNADU POSADE VOZILA U DRUMSKOM PREVOZU

APSTRAKT: Radno vreme posade vozila u drumskom prevozu nalazi se u posebnom režimu radnih odnosa – *ratione personae*. Zakonom o radnom vremenu posade vozila u drumskom prevozu i tahografima drugačije je, u odnosu na opšti režim radnih odnosa, uređeno pitanje radnog vremena posade vozila u drumskom prevozu. Značajna razlika je u normiranju da se vreme raspoloživosti ne smatra radnim vremenom. Za vreme raspoloživosti član posade ostvaruje pravo na odgovarajuću naknadu na način utvrđen propisom o radu, odnosno u skladu sa propisima kojima se uređuju plate, po osnovu vremena pripravnosti.

U radu autori, koristeći normativni i uporednopravni metod, obrađuju pojam i pravnu prirodu vremena raspoloživosti članova posade u domaćem i uporednom pravu, prava na naknadu za vreme raspoloživosti i daju predlog za potpunije uređenje prava na naknadu po osnovu vremena raspoloživosti.

Ključne reči: radno vreme, vreme raspoloživosti, pripravnost, radno vreme posade vozila.

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