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THE RIGHT TO REST AND DISCONNECT IN THE SLOVENIAN LEGAL SYSTEM – A LEGAL REFORM IN THE MAKING

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Abstract The author discusses the legal aspects of the regulation of the right to daily and weekly rest and right to disconnect. The primary focus is on the study of Slovenian normative legal framework (with an emphasis on the amendment to the Employment Relationships Act, through which Slovenia regulated the right to disconnect). The measures to ensure the right to disconnect that employers must adopt (until 16th November 2024) should be, if possible, established through the collective agreement at the sector level. However, if a collective agreement with relevant content is not concluded, employers will have to adopt the measures themselves in their general acts. Following the review of sector collective agreements in the Republic of Slovenia (in September 2024), the author concludes that most collective agreements do not yet regulate the right to disconnect, and those that do, lack the necessary measures. Therefore, the inclusion of the right to disconnect at the statutory level has, so far, not resulted in any amendments to collective agreements regarding the right to disconnect. It should be noted that further research (of this kind) will have to be carried out in the forthcoming period in order to fully assess the impact of the legal reform in question.

Keywords
rest,
right to disconnect,
working time,
availability,
Slovenian law,
international law,
EU law,
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1 Introduction

Maximising working hours on the one hand and ensuring minimum daily and weekly rest on the other hand prevents excessive exhaustion of the worker's mental and physical strength (Senčur Peček, 2016: 892). International and national rules on rest also aim to ensure safety and health at work and to enable the reconciliation of work and family life (Senčur Peček, 2017: 156). However, the massive use of information and communications technology (hereinafter: ICT) for work purposes puts the provisions on working time and rest to the test, since it enables one to work anywhere and at any time. Due to the intense competition in the market and the need to conduct business quickly, the worker is often required or expected to be available outside working hours to answer an e-mail, give advice or something similar (during daily or weekly rest periods). This blurs the boundaries between working time and leisure time, and the feeling of constant availability can have a negative impact on workers' fundamental rights, their work-life balance and on their (physical and mental) health. In particular, the latter not only affects the individual (worker) but also results in economic losses for the employer (Starič and Mićić, 2017: 16-17; Bagari, 2024: 978; Hopkins, 2024: 9). All this is even more true when working from home (or remotely), where the boundary between working time and free time (rest) is even more blurred and the constant availability more pronounced (Bagari, 2024: 978). This leads us to the realisation that the current legal rules on working time and rest are not sufficient to solve the problem of workers' permanent availability (outside official working hours) and that additional normative regulation is needed to solve this problem (Kresal Šoltes and Senčur Peček, 2024: 69-70). The development of the so-called right to disconnect is a reflection of this realisation. This is the right that allows workers to switch off their mobile devices outside working hours and not respond to emails, phone calls or texts without being exposed to negative consequences (Senčur Peček, 2021a: 295).

Recently, the Republic of Slovenia (by adopting the Amendment to the Employment Relationships Act (in Slovene: Zakon o delovnih razmerjih (hereinafter: ZDR-1))[1] joined the countries that have included the right to disconnect at the statutory level,

[1] Employment Relationships Act (Zakon o delovnih razmerjih), Official Gazette of the Republic of Slovenia, No. 21/13, 78/13 - corrected, 47/15 - ZZSDT, 33/16 - PZ-F, 52/16, 15/17 - Decree of the US, 22/19 - ZPosS, 81/19, 203/20 - ZIUPOPDVE, 119/21 - ZČmIS-A, 202/21 - Decree of the US, 15/22, 54/22 - ZUPŠ-1, 114/23 and 136/23 - ZIUZDS. This refers to the ZDR-1D amendment.

thus providing additional normative protection of the worker's right to rest. Accordingly, the first part of this article aims to critically analyse the current regulation of protective standards in relation to working time and rest,[2] since the right to disconnect is directly linked to the right to rest (Jaworska, 2022: 51). In the second part of the article, a critical analysis of the current effects of the new reform of the Slovenian legal order follows - from the perspective of the new legal provision on the right to disconnect as well as from the perspective of collective agreements at the sector level in the Republic of Slovenia.

In this article, established research methods will be applied. Using the descriptive method, the basic concepts and legal institutes that are relevant for understanding the topic at hand, will be introduced. Next, the normative dogmatic method will be used to analyse the right to daily and weekly rest and the right to disconnect, focusing in particular on the normative regulation of Slovenian law (with an emphasis on the adopted amendment (ZDR-1D)), while also taking into account the legal acts of EU law and international legal acts that have an impact on Slovenian law. In light of the above, selected case-law of the Slovenian courts and the Court of Justice of the European Union (CJEU) will be analysed. Furthermore, collective agreements at the sector level in the Republic of Slovenia will be analysed, in particular with regard to the regulation of the right to rest and the right to disconnect. It should be noted that the cut-off date (regarding the analysis of collective agreements at the sector level in the Republic of Slovenia) is 24 September 2024, which is approximately 10 months after the adopted amendment (ZDR-1D), which introduced the right to disconnect. At last, final conclusions will be drawn on the effects of the current regulation of protective standards in relation to working time and rest periods and the effects of the reform of the Slovenian legal framework, i.e. from the perspective of the new legal provision on the right to disconnect as well as from the perspective of collective agreements at the sector level in the Republic of Slovenia. It is worth pointing out that this research will also serve as a relevant basis for any later studies that will examine the long-term effects of the newly introduced legal provision on the right to disconnect.

[2] The core focus of this article is on daily and weekly rest periods (Articles 155 and 156 of the Slovenian Employment Relationships Act - ZDR-1) and the right to disconnect (Article 142.a of ZDR-1). However, it should be noted that the provisions ensuring minimum standards of working time also include other restrictions on working hours (i.e. provisions on full working hours, overtime, work schedule arrangements, and protective provisions related to night work), which are not covered in this article.

2 Introduction on working time, rest periods and availability periods

Working time has been regulated at both international and national level since the beginning of labour law (Senčur Peček, 2021a: 298-299). The regulation (i.e. in particular the limitation) of working time by international and national rules is primarily aimed at preventing excessive exhaustion of workers and at ensuring their health and safety at work and the reconciliation of work and family life. Minimum standards relating to working time are regulated by ILO Conventions, in addition to the European Social Charter (revised) (ESC),[3] adopted within the Council of Europe, and a number of EU legal instruments, in particular the Charter of Fundamental Rights of the EU (hereinafter: the Charter)[4] and Directive 2003/88/EC of the European Parliament and of the Council of 4 April 2003 concerning certain aspects of the organisation of working time.[5] At the national level, working time is regulated by ZDR-1, which follows these binding international instruments (Senčur Peček, 2021a: 299).

According to Slovenian legislation (ZDR-1), working time consists of effective working hours, breaks and the time of justified absences from work in accordance with the law, the collective agreement and the general act.[6] Effective working time is any time during which a worker carries out his work, which means that he or she is at the employer's disposal and fulfils his working obligations arising from the employment contract.[7] Effective working time is the basis for calculating labour productivity.[8] The definition of effective working time is taken from Article 2(1) of Directive 2003/88/EC, which defines "working time"[9] as "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". Directive 2003/88/EC defines, in addition to the concept of 'working time', the concept of 'rest period and lays down a number of minimum health and safety requirements for the organisation of working time. Rest period is defined in Directive 2003/88/EC as any period other

[3] Act on the ratification of the European Social Charter (amended) (Official Journal of the Republic of Slovenia - International Treaties, No 7/99).
[4] Charter of Fundamental Rights of the European Union, OJ C 202, 7.6.2016, p. 389-405.
[5] 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, OJ L 299, 18.11.2003.
[6] Article 142(1) ZDR-1.
[7] Article 142(2) ZDR-1.
[8] Article 142(3) ZDR-1.
[9] It is worth pointing out that Article 2(1) of Directive 2003/88/EC defines working time and does not define effective working time.

than working time. This means that the concepts of working time and rest time are mutually exclusive.[10] Directive 2003/88/EC is based on a binary concept, which means that a certain period of time can be defined as either 'working time' or 'rest period' (Senčur Peček, 2021a: 308). Therefore, Directive 2003/88/EC does not provide for an 'intermediate category' between working time and rest time.[11]

In an era of mass use of ICT, this raises the question of whether periods of availability and periods of actual work can be classified as working time, and how this differs from on-call and stand-by periods. The CJEU has ruled in several judgments[12] that on-call time which is carried out in such a way that the worker must be physically present at the workplace is fully regarded as working time within the meaning of the Directive, even if the worker is not actually working during the whole period of on-call time. As regards the period of availability of homeworkers, the CJEU took the view that, although workers are at the employer's disposal (to respond to a call), they are generally less constrained in the management of their time, and therefore only periods of actual work are generally counted as working time. The availability period has not yet been the subject of a ruling by the CJEU, however legal theory takes the view that, where the employer requires or expects the worker to be available, the availability period should be treated analogously to on-call time (Senčur Peček, 2021a: 295). In particular, following the above-mentioned interpretation of the CJEU, if the worker is severely restricted in his leisure activities during this availability period (because he is obliged to start work immediately at the employer's request or within a very short period of time; and these requests are very frequent, etc.), the whole period would be counted as working time. If, during this period, the worker is only required to be available (for a phone call or email) and is obliged to perform work activities (e.g., replying to an email) later, within a longer timeframe and only in exceptional cases, it could be argued that only the actual working time should be considered as work time (Senčur Peček, 2021a: 295).

[10] Case C 151/02 *Landeshauptstadt Kiel v Norbert Jaeger*-, 09.09.2003, paragraph 48.
[11] *Abdelkader Dellas and others v Premier ministre, Ministre des Affaires sociales, du Travail et de la Solidarité,* C14/04-, 01.12.2005, ECLI:EU:C:2005:728, paragraph 43.
[12] *Sindicato de Médicos de Asistencia Pública (Simap) v Conselleria de Sanidad y Consumo de la Generalidad Valenciana,* C-303/98, 3.10.2000, ECLI:EU:C:2000:528; *Jan Vorel v Nemocnice Český Krumlov,* C-437/05, 11.01.01.207, ECLI:EU:C:2007:23 *and Nicuşor Grigore v Regia Naţională a Pădurilor Romsilva - Direcţia Silvică Bucureşti,* C-258/10, 04.11.2011, ECLI:EU:C:2011:122.

In order to limit and regulate the period of availability as much as possible, a right to disconnect was created, which essentially allows the worker to exercise the (fundamental) right to rest. Given that the right to disconnect is a concretisation or an "extension" of the right to rest, the following chapter will, for a more thorough understanding of the topic, focus on the regulation of the right to rest.

3 Daily and weekly rest

3.1 General

Daily and weekly rest are measures that constitute a minimum standard to protect workers' health and safety and working conditions. Regular alternation of working time and rest periods must be ensured. Rest periods are the worker's free time and are at his or her own disposal. The purpose of legal rules on rest periods is to ensure a minimum standard of protection of workers' health and safety and working conditions, to prevent excessive exhaustion of the worker's mental and physical strength, and to enable the reconciliation of work and private life (Senčur Peček, 2017: 155-156). In light of the latter, it is emphasised that rest is intended for the worker's personal and family needs and activities (Bečan, 2016b: 882, 885, 897).[13] The right to rest is one of the fundamental rights of employment law, the axiological basis of which is the prevention of biological, psychological and social degradation of workers (Jaworska, 2022: 53).

3.2 International legal sources

The Universal Declaration of Human Rights[14] states *in Article 24* that everyone has the right to rest and leisure, including reasonable limitation of working hours, and periodic holidays with pay. Furthermore, Article 7 of *the International Covenant on Economic, Social and Cultural Rights*[15] obliges States Parties, in the context of the right to just and favourable conditions of work, to ensure everyone rest, leisure,

[13] *Sindicato de Médicos de Asistencia Pública (Simap) v Conselleria de Sanidad y Consumo de la Generalidad Valenciana,* C303/98-, 3.10.2000, ECLI:EU:C:2000:528, paragraph 50.
[14] Decision on the publication of the text of the of Human Rights, Official Journal of the Republic of Slovenia - International Treaties, No 3/18.
[15] International Covenant on Economic, Social and Cultural Rights, Official Journal of the Republic of Slovenia, No. 35/92 – International Treaties, No. 9/92.

reasonable limitation of working hours, and periodic holidays with pay, as well as remuneration for public holidays.

Conventions of the International Labour Organisation (ILO), which are binding on the Republic of Slovenia, are also important. Article 2 of *Convention No. 14 concerning Weekly Rest in Industrial Undertakings*[16] as well as Article 6 of *Convention No. 106 on weekly rest in trade and offices*[17] guarantee: a) uninterrupted weekly rest of at least 24 hours over a period of seven days, b) that weekly rest shall, whenever possible, be granted to all at the same time, c) that the weekly rest period shall, whenever possible, coincide with a day of the week designated as a day of rest according to the traditions or customs of the country or of the district, while the traditions and customs of religious minorities shall be respected. Both Conventions also allow for exceptions,[18] and both require Member States to ensure that workers who are not provided with rest in accordance with the Conventions are subsequently provided with rest of an appropriate duration (so-called "compensatory rest"). Compensatory rest must be provided within a reasonably short period of time, as this is the only way to protect workers' health and family life (Senčur Peček, 2019b: 407; Debelak, 2017: 9).

The European Social Charter (revised), adopted within the Council of Europe, regulates weekly rest in Article 2(5). The Contracting Parties have thus undertaken, with a view to the effective exercise of the right to just conditions of work, to guarantee a weekly rest period which shall, as far as possible, be on a day recognised as a day of rest by tradition or custom in the country or region concerned. If a worker works on a rest day, the employer must provide the worker with an adequate (at least equal in length) compensatory rest on another day of the week.

3.3 Legal sources of the EU and CJEU case-law

i. Charter of Fundamental Rights of the European Union

Article 31 of the Charter establishes the right of workers to healthy and safe working conditions and to working conditions which respect their dignity. In this context, it

[16] ILO Convention No. 14 concerning weekly rest in Industrial Undertakings, Official Journal of the Republic of Slovenia, No. 54/1992.
[17] ILO Convention No. 106 concerning weekly rest in commerce and offices, Official Journal of the Republic of Slovenia, No. 54/1992.
[18] See Article 4 of Convention No 14 and Articles 7 and 8 of Convention No 106.

guarantees the right of every worker to limited working hours, daily and weekly rest and paid annual leave. Unlike the international instruments mentioned above, the Charter explicitly mentions the right to daily rest.

ii. Directive 2003/88/EC

Article 2 of Directive 2003/88/EC defines 'working time' as the time during which a worker is working, is at the employer's disposal and carrying out his/her activity or duties, in accordance with national laws and/or practice. It further defines 'rest period' as any period other than working time. The concept of 'adequate rest' means that workers have regular rest periods, the duration of which is expressed in units of time and which are sufficiently long and continuous to ensure that, as a result of fatigue or other irregular working patterns, they do not cause injury to themselves, to fellow workers or to others and that they do not damage their health, either in the short term or in the longer term. It is worth pointing out that the concepts of 'working time' and 'rest period' are mutually exclusive and Directive 2003/88/EC does not provide for an intermediate category between working time and rest time.

Given that the definitions of working time and rest time are vague (Senčur Peček, 2019a: 861), it is necessary to highlight the purpose of Directive 2003/88/EC - i.e. to establish minimum requirements to improve the living and working conditions of workers and to ensure greater protection of workers' safety and health. At this point, it is also worth highlighting the purpose of the rest rules under Directive 2003/88/EC - i.e. to ensure minimum standards of protection of workers' health and safety (Senčur Peček, 2017: 155-156). It is also important to note that the CJEU[19] has pointed out that rest time is the worker's free time, which he or she is free to dispose of and use in a completely free manner.

Article 3 of Directive 2003/88/EC explicitly recognises the right to a minimum daily rest period of 11 consecutive hours in a 24-hour period. Article 5 further regulates weekly rest in such a way that a worker is entitled to a minimum of 24 hours of continuous rest in a seven-day period and to the 11 hours of daily rest referred to in Article 3. Article 16 of Directive 2003/88/EC further imposes that weekly rest must

[19] *Sindicato de Médicos de Asistencia Pública (Simap) v Conselleria de Sanidad y Consumo de la Generalidad Valenciana*, C303/98, 3.10.2000, ECLI:EU:C:2000:528.

be provided during a reference period of not more than 14 days. The options are therefore 48 hours of weekly rest in 14 days or 24 hours of weekly rest in 7 days (Kompare, 2018: 39). Already in 1996, the CJEU ruled that Sunday as a weekly rest day is no more important from an occupational safety and health perspective than any other day of the week. The designation of Sunday as a rest day is a matter for the Member State to decide, considering cultural, ethnic and religious factors.[20]

Under Articles 17, 18 and 19 of the Directive, Member States may, subject to the general principles relating to the protection of the safety and health of workers, in certain cases, derogate from certain safety provisions of the Directive. Derogations are only permissible if the workers concerned are given equivalent compensatory rest or, in exceptional cases where this is not possible, are provided with adequate protection. It follows from the CJEU judgment in *Jaeger*[21] that workers whose (daily) rest has been cut short must be provided with compensatory rest immediately, and in the immediate aftermath of the period during which the rest was missed.

3.4 Slovenian legislation and case law

Daily and weekly rest is regulated in Slovenian legislation mainly by ZDR-1, which (not entirely) follows the above-mentioned international and EU acts (Senčur Peček, 2017: 158). Rest between consecutive working days, the so-called daily rest, is regulated in Article 155 ZDR-1. In the case of an even distribution of working time, a worker is entitled to a daily rest period of at least 12 hours in a 24-hour period. However, a worker whose working time is unevenly distributed or temporarily reassigned is entitled to a daily rest period of at least 11 hours in a 24-hour period.[22] Furthermore, the weekly rest period laid down in Article 56 of ZDR-1 gives the worker, in addition to the right to daily rest, the right to rest for at least 24 consecutive hours over a period of seven consecutive days.

Any day of the week may be designated as a weekly rest day, depending on the distribution of working time and the needs of the work process (Article 156(2) ZDR-1; Bečan, 2016c: 888). The weekly rest period, which lasts for 24 continuous hours,

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[20] *United Kingdom of Great Britain and Northern Ireland v Council of the European Union,* C-84/94, 2.11.1996, ECLI:EU:C:1996:431.
[21] *Landeshauptstadt Kiel v Norbert Jaeger,* C-151/02, 09.09.2003, ECLI:EU:C:2003:437.
[22] Article 155(1) and (2) ZDR-1.

is in addition to the daily rest entitlement of 12 and 11 hours, which means that the total rest period must last for 36 and 35 continuous hours. The possibility of taking weekly rest is not limited to one day of the week, from 00.00 to 24.00 hours, which means that weekly rest may also be taken for 24 continuous hours on two consecutive days. It is essential that it be a continuous period of 24 hours.[23]

If, for objective, technical or organisational reasons, a worker has to work on a weekly rest day, he shall be granted a weekly rest day on another day of the week. This is the case when, exceptionally, the worker is ordered to work overtime or when his /her working hours have been temporarily rearranged. In this case, the employer must consider that the weekly rest period shall be 35 or 36 hours continuously. The minimum weekly rest period shall be taken as an average over a period of 14 consecutive days.[24] This means that the worker must be given two continuous rest periods of 36 and 35 hours within a 14-day period. Deviations from this 14-day reference period are permissible in accordance with Article 158 of ZDR-1. In particular, the provisions in Article 158(2), (3) and (4) ZDR-1 allow, in certain cases, [25] for the reference period, in which compensatory rest should be granted, to be extended by up to six months. However, this is contrary to the international instruments in question and to Directive 2003/88/EC (more on this below) (Senčur Peček, 2024b: 1035).

According to Slovenian case-law, if an employer fails to provide the worker with their minimum rest rights, but the worker nonetheless takes the rest, this cannot be considered as an unjustified absence from work.[26] On the other hand, if only part of the daily rest is provided, the worker is entitled to compensation for the part of the rest deprived, but not for the full 11 or 12 hours of daily rest. Therefore, in such a case, this cannot be regarded as an infringement of a unified right to daily rest.[27]

[23] Judgment and Order of the Supreme Court of the Republic of Slovenia, VIII Ips 5/2021 of 16.3.2021, paras 14, 15 and 18. Therefore, a 24-hour weekly rest period starting on one day and continuing on the next does not constitute a violation of the right to weekly rest. See also Senčur Peček, 2024a: 1029.
[24] Article 156(3) ZDR-1.
[25] According to Article 158(2) ZDR-1, this is the case when a worker moves from one shift to another (e.g. from the morning shift to the afternoon shift) and therefore cannot be provided with the required daily and/or weekly rest between the end of one shift and the start of another (see Bečan, 2016d: 896). Furthermore, there are also cases of activities or jobs where the nature of the work requires either a permanent presence or the continuous provision of work or services, and there are cases of foreseeable irregular or increased workloads (Article 158(3) and (4) ZDR-1).
[26] Judgment of the Supreme Court of the Republic of Slovenia, VIII Ips 106/2009 of 22.11.2010, point 12.
[27] Decision of the Supreme Court of the Republic of Slovenia, VIII Ips 45/2021 of 28.6.2022, point 13.

Slovenian legal theory also emphasises that rest time is the worker's free time, which he or she is free to use entirely at his discretion.[28] Slovenian case on weekly rest periods mainly relates to a specific environment - military missions abroad. Nevertheless, it is not superfluous to mention it briefly. The Supreme Court of the Republic of Slovenia ruled that the restriction of exit from a military base, as a measure to ensure a safe stay, does not preclude weekly rest. Nor does the finding that soldiers were required to be reachable and to carry a mobile phone interfere with the right to a week's rest, provided that they were not called away on specific duties and did not perform any work tasks during that time. As to whether meetings on a weekly rest day constitute a violation of that right, it is necessary to assess their duration, frequency and content. Short 'briefings' for the purpose of daily information, which are not formal and are not (as such) part of the work obligation, where members receive assignments, do not go beyond the daily routine necessary for the smooth functioning of an institution such as an army on a mission abroad, and therefore this does not infringe the right to rest.[29]

3.5 Collective agreements at the sector level in the Republic of Slovenia

An analysis of collective agreements at the sector level in the Republic of Slovenia[30] shows that many collective agreements, in accordance with Article 158 of ZDR-1,[31] contain very long (mostly up to 6 months) reference period for ensuring compensatory rest.[32] In this regard, it should be emphasized that Article 158 of

[28] For comparison, it is worth mentioning the breaks during working hours. This is because workers cannot dispose of and use their breaks with complete freedom, as is the case for daily and weekly rest. The time and manner of taking a break is determined by the employer, who may adopt more detailed rules for the exercise of the right to a break (in accordance with the purpose of the break and taking into account the work process). According to Slovenian case-law, the requirement that the worker be present at or near the workplace does not constitute a breach of the right to a break. Nor is there a breach of the right to a break per se because no replacement is provided for the duration of the break (Bečan, 2026a: 880; Decision of the Supreme Court of the Republic of Slovenia, VIII Ips 35/2021 of 10.03.2022 and Decision of the Supreme Court of the Republic of Slovenia, VIII Ips 54/2021 of 01.02.2022).

[29] Judgment of the Supreme Court of the Republic of Slovenia, VIII Ips 58/2020 of 11.05.2021, paras 8 and 10; Judgment of the Supreme Court of the Republic of Slovenia, VIII Ips 51/2020 of 20.04.2021, para 19; Judgment of the Supreme Court of the Republic of Slovenia, VIII Ips 40/2020 of 27.10.2020; Judgment of the Supreme Court of the Republic of Slovenia, VIII Ips 31/2019 of 8/10/2019, para 14. See also: Debelak, 2022.

[30] The review of collective agreements at sector level in the Republic of Slovenia took place on 24 September 2024.

[31] Article 158 of ZDR-1 allows, in certain cases, for a collective agreement at the sector level to stipulate a period of up to six months for granting compensatory rest.

[32] Many collective agreements at the sector level simply copy the legal provision that daily and weekly rest shall be provided in a period of up to six months. See, for example, Article 34 of the Collective Agreement for the Textile, Clothing, Leather and Leather Processing Industries, Official Gazette of the Republic of Slovenia, No 18/14, 24/14 and 148/22; Article 38 of the Collective Agreement for the Mining and Processing of Non-Metallic Minerals Industries of Slovenia, Official Gazette of the Republic of Slovenia, No 18/14, 24/14 and 148/22; Article 38 of the

ZDR-1, which allows for a reference period of up to six months, is incompatible with all the international instruments in question and with Directive 2003/88/EC. This is because such a long reference period poses a risk to workers' safety and health. In this regard, the European Committee of Social Rights (hereinafter: ECSR) has problematised Article 158 of ZDR-1, which, in certain cases,[33] allows for a collective agreement at the sector level to stipulate a period of up to six months for granting compensatory rest. Even though it is the responsibility of the state to remedy non-compliant legislation (Article 158 of ZDR-1), under the current regime, a great responsibility also lies with the parties to the collective agreements (Senčur Peček, 2019b: 407; Debelak, 2017: 9). Namely, the extension of reference periods is (under current legislation) subject to collective agreements, and it is therefore up to the parties to set shorter reference periods that are consistent with international instruments and Directive 2003/88/EC and, most importantly, eliminate risks to workers' safety and health.

On the other hand, a large proportion of collective agreements do not have provisions on this,[34] which means that compensatory rest is provided in accordance with the general legal regime within a period of 14 days (Senčur Peček, 2021b: 449). Particular reference should be made to the Collective Agreement of the Trade Sector, which provides for a shorter reference period, e.g. 14 days[35] and to the Collective Agreement of the Coal Mining Industry of Slovenia,[36] which makes the use of daily or weekly rest within a reference period of 4 months subject to the worker's consent, which may be withdrawn at any time.

Collective Agreement for the Mining and Processing of Non-Metallic Minerals Industries of Slovenia, Official Gazette of the Republic of Slovenia, No 18/14, 24/14 and 148/22. 55/13, 6/14, 16/15, 4/16, 15/17, 29/18 and 126/23; Article 26 of the Collective Agreement for the Metal Materials and Foundries Industry of Slovenia, Official Gazette of the Republic of Slovenia, No 78/14, 22/17, 84/18, 43/19 - am., 82/19, 105/21, 26/22, 74/23 and 24/24; Article 25 of the Collective Agreement for the Metal Industry of Slovenia, Official Gazette of the Republic of Slovenia, No 6/15, 6/17, 66/17, 82/18, 15/22, 79/22, 100/23 and 36/24.

[33] This is the case for shift work and for activities or jobs or occupations where the nature of the work requires constant presence or continuous provision of work or where irregular or increased workloads are foreseen.

[34] For example, Collective Agreement for the Banking Industry of Slovenia, Official Journal of the Republic of Slovenia, No. 5/11, 14/13, 4/14, 95/14, 46/16, 24/18, 46/20, 17/22 and 27/2; Collective Agreement for the Paper and Paper Processing Industry, Official Journal of the Republic of Slovenia, No. 110/13, 52/16, 4/18, 2/19, 168/20, 5/22, 156/22 and 52/24; Collective Agreement for the Wood Processing Industry, Official Journal of the Republic of Slovenia, No. 58/17, 51/18 and 45/19.

[35] Article 49 of the Collective Agreement for the Retail Trade Sector, Official Journal of the Republic of Slovenia No 52/18, 155/22, 2/24, 26/24 and 52/24.

[36] Article 49 of the Collective Agreement of the Coal Mining Industry of Slovenia, Official Journal of the Republic of Slovenia, No 32/19, 34/19 - am. and 79/22.

4 Right to disconnect

4.1 General

Due to the development of digitalization (and the impact of Covid-19 pandemic measures), the occurrence of working from home or remotely has intensified. Teleworking through information and communication technologies (ICT) can have positive effects for both employers and workers and their work-life balance (due to the possibility of more flexible working hours and greater autonomy of the worker at work). On the other hand, ICT make the worker constantly accessible, leading to the intensification of work, longer working hours and a blurring of the boundary between work and private time. All this has a negative impact on the worker's ability to organise leisure time, on his health and family life, and on his ability to rest (Senčur Peček, 2021a: 295).[37] Furthermore, the time fragmentation of work and the feeling of a constant workload, constant supervision by the employer, and conflict between work and private (family) life increase stress in workers and can lead to burnout (Eurofound, 2020: 35; Eurofound, 2017: 33; Jaworska, 2022: 52).

With the help of ICT, the worker is available to the employer at any time of the day and can start work immediately (answer an email, give advice, etc.). However, under the current legal framework, the period of availability is not generally considered as working time, but only the actual performance of work. However, from the point of view of Directive 2003/88/EC, which is based on a binary concept (i.e. a period of time is defined either as working time or as rest period), this means that the period of availability (since it is not working time) falls within the period of rest time. However, the defining feature of rest period is that the worker has the freedom to use it freely. During the period of availability, however, the worker must be available and ready to respond to the employer's call and cannot therefore dispose of the time off entirely freely. This means that the employer is (gratuitously) interfering with the worker's free time (or the worker's freedom to spend and dispose of his free time), while at the same time interfering with the worker's health and family life. Therefore, the period of availability is essentially a period of overlap between work and leisure

[37] See also Draft Law on Amendments and Additions to the Employment Relationships Act (Predlog Zakona o spremembah in dopolnitvah Zakona o delovnih razmerjih), EVA 2022-2622-0061, p. 2.

time. It is also defined as 'third time' - time that is not working time (according to the current legal framework) and not rest period (Senčur Peček, 2021a: 295).

The problem described above cannot be fully solved by adapting the existing regulation of working time and the regulation of health and safety at work. This is why the so-called right to disconnect has been put forward abroad as a solution to this paradoxical problem. The right to disconnect is the right of workers to switch off their mobile devices outside working hours and not to respond to emails, phone calls or messages without being exposed to negative consequences. It can also be understood as the right of a worker not to carry out work using ICT outside normal or agreed working hours. The right to disconnect can also be understood as an obligation on employers to ensure that workers do not work during rest periods and annual leave (Senčur Peček, 2021a: 295; Eurofound, 2020: 1).[38]

In more and more countries and among the social partners, the belief that 'work without end' and a culture of constant availability must be curbed, is gaining ground (Končar, 2016: 257). As a result, it is becoming increasingly common to find measures to try to enforce the right to disconnect. These are measures established at the company, sector and national level, including through regulation, and there are also calls for regulation at EU level. In Slovenia, until recently (until the adoption ZDR-1D amendment in November 2023), the problem of constant availability was not regulated - neither from a pay perspective nor from an occupational health and safety perspective (Senčur Peček, 2021a: 295). However, with the entry into force of the amendment to ZDR-1D, Slovenia has joined the countries that have this right regulated at the statutory level (Kresal Šoltes and Senčur Peček, 2024: 69).

Before we dive into Slovenian regulation of the right to disconnect, an outline of developments on the right to disconnect on the EU level follows. These developments in the EU legal framework are so far limited only to non-binding legal acts.

[38] Some legal theorists, e.g. Glowack, do not see the right to be unavailable (disconnected) outside working hours as a right at all, but as a non-existent work obligation. For if the obligation to be reachable was never agreed, then there cannot be a right to be unreachable (disconnected) (Glowacka, 2021).

4.2 The initial steps towards the right to disconnect at the EU level

Currently, the right to disconnect is not explicitly regulated at EU level by a binding legal act. However, the adoption of the European Parliament Resolution of 21 January 2021 with recommendations to the Commission on the right to disconnect and the Proposal for a Directive of the European Parliament and of the Council on the right to disconnect is a step in this direction.[39] The resolution states that the right to disconnect is a fundamental and inseparable part of new working patterns in the new digital era. It further stresses that under current legislation and CJEU case law, workers do not have to be permanently and continuously available to their employer and that there is a difference between working time and non-working time. The Resolution defines the right to disconnect as the right of workers to refrain from work-related tasks, activities and electronic communications, such as phone calls, e-mails and other messages, outside their working time (including during rest periods, official and annual holidays maternity, paternity and parental leave, and other types of leave) without facing any adverse consequences; Finally, it also stipulates that it is important for the social partners to ensure that the right to disconnect is effectively implemented and enforced.[40] The European Commission also calls on the social partners to find solutions to address the challenges through joint agreements.[41]

The proposal for a Directive on the right to disconnect defines the term "disconnect" in Article 2. To "disconnect" means not to engage in work-related activities or communications by means of digital tools, directly or indirectly, outside working time. In Article 4, the proposal for a Directive sets out the following measures for the implementation of the right to disconnect:

- the practical arrangements for switching off digital tools for work purposes, including any work-related monitoring tools;
- the system for measuring working time;
- health and safety assessments, including psychosocial risk assessments, with regard to the right to disconnect;

[39] European Parliament resolution of 21 January 2021 with recommendations to the Commission on the right to disconnect, 2019/2181 (INL), OJ C 456/161, 10.11.2021.
[40] Point H and paragraphs 10, 16 and 21 of point J of the Resolution.
[41] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions EMPTY, The European Pillar of Social Rights Action Plan, SWD (2021) 46 final, 4.3.2021.

- the criteria for any derogation by employers from their requirement to implement a worker's right to disconnect;
- (in the case of a derogation) setting the criteria for determining how compensation for work performed outside working time is to be calculated;
- the awareness-raising measures, including in-work training, to be taken by employers.

Also worth mentioning is the European Declaration on Digital Rights and Principles for the Digital Decade,[42] which declares, in the context of fair and equitable working conditions, that the EU institutions are committed to ensuring that everyone can exercise the right to disconnect and enjoy safeguards to reconcile work and private life in the digital environment.

A major step forward is the Autonomous Framework Agreement on Digitalisation,[43] adopted in June 2020 by the cross-industry social partners at the EU level. It addresses the right to disconnect in the chapter named "Modalities of connecting and disconnecting". The aim of the agreement is to raise awareness among employers and workers about the challenges of the digital age and to help them design appropriate solutions. The signatories to this agreement and their members (employers' and trade union organisations in the Member States) are committed to promoting the implementation of the proposed solutions in collective agreements at national, sector and company level. The implementation period was three years and has now expired (Senčur Peček, 2021a: 295). The Autonomous Framework Agreement on Digitalisation lists several appropriate measures, including:

- training and awareness-raising measures;
- appropriate measures to ensure compliance;
- providing guidance and information for employers and workers on how to respect working time rules and teleworking and mobile work rules, including the health and safety risks of excessive connectivity;

[42] Article 6 of the European Declaration on Digital Rights and Principles for the Digital Decade, OJ C 23/1 of 23.1.2023.
[43] European Social Partners Autonomous Framework Agreement on Digitalisation (2020), BusinessEurope, CEEP, ETUC and SMEUnited.

- management's commitment to creating a culture that avoids out of working hours contact;
- the obligation to pay for any work done in excess of full-time hours;
- prohibiting the requirement to be available outside working hours in order to achieve the organisation's objectives.

In view of all the above, it can be concluded that the right to disconnect, being a relatively new right, has no basis in binding EU legal acts (let alone in international law). Nevertheless, as will be shown below, it has already been implemented to some extent – on the one hand, in the practices of certain companies and in sector collective agreements, and on the other, also at the legislative level.

4.3 Examples of good practice from abroad

As a good example, many foreign companies have already introduced the right to disconnect. This practice is common in the automotive industry. For example, the German car manufacturer Volkswagen has implemented since 2011 a measure to disconnect the connection between the server and the company phones between 18:15 and 07:00. The measure applies to most workers, but not to managers and senior technical specialists (Eurofound, 2020: 30). Furthermore, since 2014, the German car manufacturer BMW has also made it possible for all workers to register time spent working away from the employer's premises as working time (e.g. time spent answering e-mails from home). They can claim this time as overtime, which entitles them to overtime pay, or they can use it as time off. In this context, workers are encouraged to agree with their supervisors on limited availability times (Eurofound, 2017: 50). The guidelines introduced by BMW are also worth highlighting. The guidelines encourage workers to respect their own right to disconnect and the right to disconnect of their colleagues.[44] In particular, it is important to encourage managers to set an example through management policies and internal campaigns that they do not expect workers to be available all the time. Such a policy has been introduced by SAP.[45]

[44] Ministry of Labour, Family, Social Affairs and Equal Opportunities, 2024.
[45] Ministry of Labour, Family, Social Affairs and Equal Opportunities, 2024.

The right to disconnect is also the subject of several collective agreements in the sector. For example, the 2006 French collective agreement on homeworking in the telecommunications sector stipulates that the employment contract must contain a clause defining the period of time during which communication with the worker can take place (Eurofound, 2017: 50). Furthermore, the Greek banking sector collective agreement uses hard measures to ensure the right to disconnect. and stipulates that workers are guaranteed the possibility to technically disconnect from all forms of digital communication (for example: disabling the sending/receiving of emails and muting notifications of all digital tools) (Eurofound, 2021: 16). Data from Spain show that 27 sector collective agreements containing disconnect clauses (equivalent to 12% of all sector collective agreements) were concluded in 2020-2022 (Eurofound, 2021: 16). The figures in Italy show a comparable trend: more than 40 private sector collective agreements containing disconnect clauses have been signed between 2021-2022 (Eurofound, 2023: 16).

Several countries are discussing the regulation of the right to disconnect, and a few have already done so, either by adopting recommendations or by enacting specific legislation. France was the first European country to introduce a legal right to disconnect in 2016, followed by Italy in 2017 and Spain in 2018. In 2018, Belgium incorporated provisions supporting the right to disconnect into its legislation. However, these cannot be considered as a legal obligation of an employer to ensure the right to disconnect, but rather as the legal obligation of the employer to consult with their health and safety committee on this matter. On the other hand, as of February 2022, Belgian public sector workers are entitled to a right to disconnect by Royal Decree. It is worth pointing out that Belgian law requires reporting and registration of collective agreements governing the right to disconnect (Eurofound, 2021: 15). Furthermore, in 2021, Greece regulated teleworking and the right to disconnect by law (Lerouge and Trujillo Pons, 2022: 456).[46] Lastly, in 2024, Australia also decided to regulate the right to disconnect at the statutory level (Golding, 2024: 4).

These countries apply a range of hard and soft measures to ensure the right to disconnect. Hard measures to ensure the right to disconnect include, for example, switching off connections after a predetermined time or locking remote access to

[46] Draft Law on Amendments and Additions to the Employment Relationships Act (Predlog Zakona o spremembah in dopolnitvah Zakona o delovnih razmerjih), EVA 2022-2622-0061, p. 5-6.

documentation, blocking incoming e-mails and calls to the company phone, etc. Soft measures include, for example, the display of messages on the computer or phone screen warning workers that they do not have to reply to e-mails outside working hours. Soft measures also include various training sessions on the importance of work-life balance. Given that combinations of different measures are appropriate in different situations, it should be left to the social partners (at company level, and also at sector level) to regulate concrete measures to ensure the right to disconnect. However, all the proposed solutions can serve as a model for national legislators as well as for the social partners in regulating this area (Senčur Peček, 2021a: 295). As will be explained below, the Slovenian legislator has also followed this example.

4.4 Legislative regulation of the right to disconnect in the Republic of Slovenia

In order to implement and respect the worker's rest period, in November 2023, the amendment of ZDR-1D introduced the right to disconnect into Slovenian labour law. In this light, the Draft Law on Amendments and Additions to the ZDR-1 (hereinafter: Draft law) points out that the constant availability of the worker leads to the intensification of work, the lengthening of working hours and the blurring of the boundary between work and private time. It is further emphasised (in the Draft law) that the introduction of this right has a wider significance for ensuring the right to rest for all workers.[47]

Accordingly, the new Article 142a(1) of the ZDR-1 provides that the employer must provide workers with a right to disconnect to ensure that the worker is not at the employer's disposal during the exercise of the right to rest or during justified absences from work.[48] The latter means that during the worker's daily and weekly rest periods, annual leave and other justified absences from work, the employer or the worker's superiors must not require or expect the worker to respond to work calls, e-mails or to do any work (in particular using ICT) (Kresal Šoltes and Senčur Peček, 2024: 69-70). This is a so-called negative obligation of the employer (to refrain

[47] Draft Law on Amendments and Additions to the Employment Relationships Act (Predlog Zakona o spremembah in dopolnitvah Zakona o delovnih razmerjih), EVA 2022-2622-0061, p. 2.
[48] Other justified absences include, for example, sickness, public holidays and days off work, maternity, paternity and parental leave, care leave, absence due to personal circumstances such as one's own marriage, accompanying a child (a first grade pupil) to school on the first day of school, the death of a loved one, and other absences provided for by law, collective agreements or the employer's general act.

from contacting workers outside working hours) (Hopkins, 2014: 7). Furthermore, Article 142a(1) ZDR-1 also establishes the positive obligation of the employer, namely, Article 142a(1) ZDR-1 stipulates that the employer must adopt appropriate measures to ensure the right to disconnect (i.e. the duty of the employer to adopt appropriate measures to enable workers to exercise the right to disconnect (Hopkins, 2014: 7; Bagari, 2024: 978)).

To sum up, the first paragraph of Article 142a ZDR-1 imposes two obligations on employers: 1.) the employer has a duty to ensure the worker's right to disconnect (i.e. the obligation to refrain from contacting workers outside working hours) and 2.) the employer has a duty (in order to concretise this right) to adopt the appropriate measures to ensure the right to disconnect (Bagari, 2024: 978; Hopkins, 2014: 7).

In that regard Article 142a ZDR-1 does not prescribe measures to ensure the right to disconnect, whereas it shifts this responsibility (to adopt measures to ensure the right to disconnect) to social partners (mainly to employers) (Kresal Šoltes and Senčur Peček, 2024: 69-70).[49] The measures should be, if possible, established through the collective agreement at the sector level.[50] Furthermore, if the measures cannot be adopted in a collective agreement at the sector level (either because there is no specific collective agreement for a particular sector or because the social partners cannot reach a consensus on the measures to ensure the right to disconnect), the measures shall be adopted in a collective agreement at a narrower level (in particular in collective agreement at the company level) (Article 142.a(3) of ZDR-1; Kresal Šoltes and Senčur Peček, 2024: 70-71). However, if social partners fail to conclude a collective agreement at the company level (either because there is no trade union at the employer or because the consensus cannot be reached), the employer alone will have to (i.e. unilaterally) adopt the measures in a general act.[51] In this instance, the employer will have to submit the measures to the works council or the worker representative for their opinion before the adoption. The works council or worker representative must give its opinion within eight days, and the employer must consider and act on the opinion before adopting the measures

[49] See Article 142a(1) and (2) ZDR-1.
[50] Furthermore, the employer must inform the workers in writing of the adopted measures (as defined in the collective agreement) in the manner customary for the employer, e.g. at a designated posting point on the employer's business premises or by means of information technology (Article 142a(2) of ZDR-1).
[51] This is in line with Article 10 ZDR-1, which states that rights are in principle regulated by collective agreements, but only by general acts where the employer does not have a trade union.

(Article 142a(4) ZDR-1; Kresal Šoltes and Senčur Peček, 2024: 70-71). In this way, ZDR-1 established the obligation of an employer to consult with directly elected workers' representatives. Although the employer is not bound by the opinions and comments of the workers' representatives, it is reasonable to agree with the legal literature that it should take into account those comments that may contribute to the formulation of a more appropriate set of measures. Furthermore, ZDR-1 provides that if an employer does not have an organised works council or worker representative, the employer is simply obliged to inform the workers in writing of the adopted measures (in the manner customary for the employer).[52] Such unilateral determination of measures is therefore envisaged only as an exception (since it is preferable to adopt measures to ensure the right to disconnect through the collective agreement (Bagari, 2024: 981)).

Just like the French legislator, the Slovenian legislator has fully entrusted the implementation of the right to disconnect to the parties of the collective agreement or the employer (Kresal Šoltes and Senčur Peček, 2024: 70). This is on the one hand desirable, as it is impossible to determine appropriate measures for all types of work environments. Also, it is certainly true that social partners (or the employer) will be better able to determine the most suitable combinations of various measures based on different activities, professions, work environments, and market demands (Kresal Šoltes and Senčur Peček, 2024: 70; Bagari, 2024: 980). On the other hand, particularly in the case where the employer will unilaterally determine measures (i.e. where there is no trade union or where it is not possible to reach a consensus), the question arises as to whether such measures will truly be appropriate. It is clear, however, that the adequacy of the adopted measures, in the event of a dispute, will be assessed by the court (Kresal Šoltes and Senčur Peček, 2024: 70-71). Therefore, in my opinion, it would be advisable for the employer to consult with (at least some) workers before formulating measures, as they know best what burdens them the most in terms of (permanent) availability, and after all, it is the exercise of their right.

It should be particularly emphasised that the implementation of these measures will also establish standards of acceptable communication between employers and workers outside working hours which will not constitute a violation of this right (Senčur Peček, 2024c: 191). In this regard, on one hand, care must be taken to

[52] Article 142a(5) ZDR-1.

prevent any circumvention or abuse of the right to disconnect, while on the other hand, it must be ensured that the employer is still able to contact workers, particularly in cases of emergency.

Finally, Article 142a(6) ZDR-1 establishes an important rule regarding the reversal of the burden of proof. Specifically, if, in the event of a dispute, the worker justifiably claims that the employer did not ensure the right to disconnect, the burden of proof in this regard falls on the employer. This means that, under the law (i.e., ZDR-1), it is presumed that the employer violated the right to disconnect, and it is up to the employer to refute this presumption (i.e., to prove otherwise) (Bagari, 2024: 981). This provision significantly eases the process for the worker while also compelling employers to adopt and implement measures to ensure the right to disconnect. It is also worth noting that failing to ensure the right to disconnect, in accordance with Article 142.a of the ZDR-1, constitutes a misdemeanour punishable by a fine. [53]

The transitional and final provisions of ZDR-1 stipulate that the employer must take appropriate measures to ensure the right to disconnect within one year of the entry into force of this law, i.e. by 16 November 2024. Given that the deadline is approaching (and considering that the deadline set out in the Autonomous Framework Agreement on Digitalisation has already expired), the author conducted a review and an analysis of the existing sector-level collective agreements in the Republic of Slovenia. The findings are presented in the following chapter of the article.

4.5 Collective agreements at sector level in the Republic of Slovenia

In order to find out how many collective agreements at sector level in the Republic of Slovenia regulate the right to disconnect (in accordance with Article 142a ZDR-1), the author undertook a review and analysis of all the existing collective agreements at the sector level in the Republic of Slovenia.[54] The key finding is that most of the collective agreements at the sector level do not regulate the right to disconnect, and those that do are not specific enough and do not contain appropriate

[53] Article 217a ZDR-1 provides that the fine for an employer is between EUR 1,500 and EUR 4,000, for a smaller employer (one employing fewer than 10 persons) it is between EUR 300 and EUR 2,000, for an individual employer it is between EUR 150 and EUR 1,000, and for the person in charge of the employer it is also between EUR 150 and EUR 1,000. The fine for an individual employer is between EUR 150 and EUR 1,000.

[54] The review of collective agreements at sector level in the Republic of Slovenia took place on 24 September 2024.

measures as currently required by Article 142a ZDR-1. In this regard, it is worth highlighting the following collective agreements at the sector level, which to a greater or lesser extent (directly or indirectly) address the issues of the right to disconnect:

- The Collective Agreement for the Graphic Arts[55] explicitly states in Article 33(12): 'The employment contract must specify the exact period during which the worker must be available to the employer by telephone or e-mail. Outside these hours, the worker is not obliged to report to or answer to the employer (right to disconnect)". The provision in question does not provide for any measures (soft or hard) to ensure the right to disconnect. It only requires that a period of accessibility be established, without setting any limits as to the length and frequency of this period, which opens the door to violation of this provision. Namely, it can be established between the employer and workers that the worker must be available, for instance, from 7:00 to 22:00, which, of course, nullifies the essence of the right to disconnect, established in Article 33(12) of the Collective Agreement for the Graphic Arts. Hence, this provision should at least set a limit on the length and frequency of the availability periods.
- The Collective agreement of the newspaper, information, publishing and book publishing industry[56] establishes the right to disconnect in Article 17(13), which regulates homeworking, and states that "The employment contract must specify the exact time during which the worker must be available to the employer by telephone or e-mail, outside of which the worker is not obliged to report to or answer the employer (right to disconnect)." In the relevant provision, the same problem can be observed as in the previously mentioned provision - it does not set a limit on the length and frequency of the period of availability. It should also be pointed out that the provision in question is placed in an article regulating homeworking, which means that under this collective agreement the right to disconnect only applies to homeworkers, and not to others who work on the employer's premises and who may also be subject to the employer's expectation or requirement to be available during their rest period. The latter is, of course, not in line with ZDR-1, which guarantees the right to disconnect to

[55] Collective agreement for the graphic arts sector, Official Journal of the Republic of Slovenia, No 77/17, 84/18, 52/19, 175/20, 196/21, 70/22, 159/22 and 126/23.
[56] Collective Agreement of the Newspaper, Information, Publishing and Book Publishing Industry, Official Gazette of the Republic of Slovenia, No. 43/00, 24/01, 48/01 - ZMPUPR-B, 117/04, 79/05, 43/06 - ZKolP, 95/06, 118/06, 10/07, 93/07, 35/08, 97/08, 8/10, 55/11, 17/12, 17/12, 63/13, 83/16, 57/18, 173/20, 105/21, 103/22, 57/23, 57/23, and 38/24.

all workers - both those who work permanently from home and those who work at the employer's premises and remain available after working hours[57] to do some work if necessary (Kresal Šoltes and Senčur Peček, 2024: 69- 70).

- The Collective Agreement for the Railway Transport Industry[58] provides in Article 96(2): 'No telephone or personal summons of workers to work at night between 10 pm and 6 am of the following day shall be permitted, except in the cases referred to in Article 100 of this Agreement, where overtime may be introduced.'. The provision in question refers only to unavailability during night hours and not otherwise, therefore is difficult to assert that this provision represents the right to disconnect in the full sense of the word. Since it regulates the issue of availability (at least during night hours), the author decided to bring it to attention. In any case, it is certainly recommended to supplement the provision with measures ensuring the right to disconnect (especially for workers using ICT).
- The Collective Agreement for the Air Traffic Management and Control Sector,[59] through Article 23, regulates the worker's availability outside the workplace. It provides that: "Operational workers may be assigned availability outside the workplace with the obligation to be reachable by phone at all times during the assigned availability period, i.e., 24 hours, and must be on-site within two hours if called."[60] It is important to highlight Article 23(5), which provides: "A worker may be ordered to be available outside the workplace no more than once a month.". This provision is, in contrast to previous provisions, much more specific, as it limits the availability to one day per month and clearly requires that the availability be explicitly assigned. Furthermore, Article 23 also provides that attendance at the workplace upon request during the period of availability shall be considered as working time and shall be valued as work on a rest day.[61]
- It is also expressly stated that the worker must not exceed their prescribed full working hours due to actual work performed during the availability period. Additionally, it is provided that the employer may relieve the worker of their availability outside the workplace before the expiry of 24 hours if it is determined that the availability is no longer necessary. If the worker is relieved

[57] This includes weekends, annual leave and other legitimate absences from work.
[58] Collective Agreement for the Railway Transport Sector, Official Journal of the RS, No 95/07 and 48/18.
[59] Collective Agreement for Air Traffic Management and Control, Official Journal of the Republic of Slovenia, No 92/15, 92/15 and 92/15.
[60] Article 23(1) of the Collective Agreement for Air Traffic Management and Control.
[61] Article 23(3) of the Collective Agreement for Air Traffic Management and Control.

> of his availability during the first 12 hours, two hours shall be counted as working time.[62] It can be seen, therefore, that the provision regulates the conditions of workers' availability and the valuation of work on the day of availability quite precisely, while, on the other hand, the collective agreement in question (like the others) does not provide for any measures to guarantee the right to disconnect in the full sense of the word (disconnection after a predetermined hour or locking of remote access to documentation, blocking of incoming e-mails and calls to the work telephone, raising awareness among workers, etc.).

Given that the employer has until 16 November 2024 to take the appropriate measures to ensure the right to disconnect, it can be concluded that the state of collective agreements at the sector level in the Republic of Slovenia regulating the right to disconnect is not promising at the moment. At present, not a single collective agreement provides for appropriate measures for the implementation of the right to disconnect, and those that do establish the right to disconnect are not specific enough and do not contain appropriate measures as currently required by ZDR-1.

It should be pointed out that all the collective agreements mentioned above already contained a provision on the right to disconnect before the amendment to ZDR-1D (i.e. the amendment that introduced the right to disconnect at the statutory level). This confirms the established finding that collective agreements regulate to a greater extent the institutes that contribute to a more flexible organisation of working time, while they contain fewer provisions that contribute to the safety and health of workers and the reconciliation of work and family life (Senčur Peček, 2018: 583). At the same time, this shows that, unfortunately, the expectations of legal doctrine that the parties to (especially existing) collective agreements would agree on at least minimum measures to ensure the right to disconnect (Senčur Peček, 2024c: 189; Bagari, 2024: 980-981) have not yet materialised. However, the deadline is still a month and a half away (until 16 November 2024), which leaves some time for the social partners to come to an agreement (after all). Nevertheless, it is true that even if the social partners fail to reach a consensus on the appropriate measures to ensure the right to disconnect by that date (and the employer will therefore have to regulate the matter itself by means of general acts), this will not prevent the social partners

[62] Article 23(4) of the Collective Agreement for Air Traffic Management and Control.

from including (more appropriate or additional) measures in collective agreements later in time. Therefore, further research into collective agreements at the sector level in the Republic of Slovenia will be welcome, especially about a year after the deadline for the adoption of these measures.

In conclusion, it is important to highlight the stance of legal literature, which argues that, in addition to the implementation of the right to disconnect, it will be necessary to address the causes of excessive 'connectivity' of workers (excessive workload, management style, company culture) and to change habits and mindset (i.e., create a culture of avoiding contact with workers outside working hours). It must also be acknowledged that this is a challenging task, requiring the involvement of legislators and social partners at various levels, as well as the engagement of employers, managers, senior staff, and all worker representatives (Senčur Peček, 2021a: 295).

5 Conclusion

Based on the review of the legal framework and the literature, we conclude that the problem of permanent availability described above cannot be fully solved by adapting the existing legal framework on working time and occupational safety and health. In fact, employers' expectations or demands for constant availability are in conflict with the concept of rest. Rest period is worker's free time, which he or she is free to use at his or her own discretion, which means that the employer's requirement of worker's availability represents (non-remunerated) interference with the worker's right to rest. This constant availability, which often leads to burnout, also interferes with the purpose of rest, i.e. the protection of workers' health. This has a negative economic impact for the employer, as well as for the State, which finances long-term sick leave (as a result of burnout and other mental and physical health problems). As a result, to protect the right to rest, there have been calls to amend the rules on working time and rest by creating a new right – the right to disconnect (Senčur Peček, 2021a).

Calls for a right to disconnect have already been implemented in a growing number of countries and among the social partners, as well as few employers themselves. The Republic of Slovenia is from 2023 among the countries that have included the right to disconnect at the legislative level. The relevant statutory provision on the right to disconnect (Article 142a ZDR-1) stipulates that the employer must ensure

the right to disconnect for workers and must take appropriate measures for this purpose. ZDR-1 therefore (like the French legislation) does not provide for any measures to ensure the right to disconnect and places the burden on the employers (or social partners), granting them one year to adopt appropriate measures (until 16.11.2024). Furthermore, Article 142a ZDR-1 provides that if the measures are not adopted in a collective agreement at the sector level, they shall be adopted in a collective agreement at a narrower level (collective agreement at company level). However, if social partners fail to conclude a collective agreement at the company level (either because there is no trade union at the employer or because the consensus cannot be reached), the employer alone will have to (i.e. unilaterally) adopt the measures in a general act (after the consultation with the works council or the worker representative). In choosing measures, employers or social partners can follow the example of various measures already established. For example, they can draw the inspiration from the proposal for a Directive on the right to disconnect and from the Autonomous Framework Agreement on Digitalisation, whereby the (cross-sector) social partners at EU level have committed themselves to promote the implementation of the proposed solutions in collective agreements at national, sector and company level.

Based on an analysis of the provisions on right to rest and the right to disconnect, as well as the reviewed literature, we conclude that the right to rest imposes only an obligation on the employer to enable the right to rest (which essentially means that the employer must not interfere with this right). The right to rest does not, therefore, impose a positive obligation on the employer to take any action to facilitate worker's rest. This, however, derives from the new right to disconnect, established in Article 142a ZDR-1. This provision imposes two obligations on employers: 1.) the employer has a duty to ensure the worker's right to disconnect (i.e. the negative obligation of the employer - to refrain from contacting workers outside working hours) and 2.) the employer has a duty to adopt the appropriate measures to ensure the right to disconnect (i.e. the positive obligation of the employer) (Hopkins, 2024: 7; Bagari, 2024: 978). It is the latter that constitutes an upgrade that the right to rest did not contain.

After reviewing the existing collective agreements at the sector level in the Republic of Slovenia (10 months after the adoption of the amendment which introduced the right to disconnect), it is clear that not a single collective agreement currently (in

September 2024) provides appropriate measures to ensure the right to disconnect. However, those collective agreements which do (at least to a lesser extent) regulate the right to disconnect already contained this provision before the amendment to ZDR-1, which introduced the right to disconnect. The review shows that, so far, the reform in question has had no effect in terms of collective agreements being amended or supplemented regarding the right to disconnect. It is true that the social partners still have some time to reach an agreement on the appropriate measures before the established deadline (16. 11. 2024) and, more importantly, they are not precluded from doing so afterwards (after the established deadline). Hence, it is possible to expect (in the coming months or in the next year) that some social partners will adopt the measures for the exercise of the right to disconnect in the collective agreements. In any event, further research will be needed to ascertain the final impact of the reform in question (for example, the examination of the legal framework one year after the deadline for the adoption of the measures etc.). Further research will help to see whether the adoption of the legal provision on the right to disconnect will have any more impact on collective agreements than it currently does (i.e. 10 months after enactment). The present study may consequently serve as a starting point for possible future research in this area.

Finally, it is clear from the examined legal framework and the literature that even if no agreement is reached between the social partners on appropriate measures for the exercise of the right to disconnect, employers will not be free of their obligations under the law (Kresal Šoltes and Senčur Peček, 2024). In such a case, employers will still have to adopt appropriate measures to ensure the right to disconnect in an employer's general act (after the consultation with the works council or the workers representative). The main addressees of the obligations under Article 142a ZDR-1 are employers. However, given that on the other side of these duties are the workers and their right to disconnect, it would be advisable for employers (in particular those that will adopt the measures in question themselves) to adopt such measures that are most appropriate to the sector, profession or working environment. Most importantly, the measures in question (whether adopted in collective agreements or in the employer's general acts) must actually (*de facto*) be implemented. In this regard, the key role will be, above all, to monitor the implementation of the right to disconnect in practice, thereby preventing it from being just the right on paper.

References

Bagari, S. (2024) 142.a člen. In: Zakon o delovnih razmerjih (ZDR-1) s komentarjem. Edited by Nataša Belopavlovič et al. (Ljubljana: GV Založba).
Bečan, I. (2016a) 154. člen. In: Zakon o delovnih razmerjih s komentarjem. Edited by Nataša Belopavlovič et al. (Ljubljana: GV Založba).
Bečan, I. (2016b) 155. člen. In: Zakon o delovnih razmerjih s komentarjem. Edited by Nataša Belopavlovič et al. (Ljubljana: GV Založba).
Bečan, I. (2016c) 156. člen. In: Zakon o delovnih razmerjih s komentarjem. Edited by Nataša Belopavlovič et al. (Ljubljana: GV Založba).
Bečan, I. (2016d) 158. člen. In: Zakon o delovnih razmerjih s komentarjem. Edited by Nataša Belopavlovič et al. (Ljubljana: GV Založba).
Debelak, M. (2017) Nekateri vidiki organizacije delovnega časa in plačila v mednarodni ureditvi, Pravosodni bilten, 1/2017, p. 9-40.
Debelak, M. (2020) Novejša sodna praksa Vrhovnega sodišča Republike Slovenije na področju delovnega prava, Podjetje in delo, 48(6-7), p. 1128-1139.
Eurofound (2020) The right to disconnect in the 27 EU member states, working paper, URL: https://cooperante.uni.lodz.pl/wp-content/uploads/2020/08/wpef20019.pdf.
Eurofound (2021) Right to disconnect: Exploring company practices, URL: https://www.eurofound.europa.eu/en/publications/2021/right-disconnect-exploring-company-practices.
Eurofound (2023) Right to disconnect: Implementation and impact at company level, URL: https://www.eurofound.europa.eu/en/publications/2023/right-disconnect-implementation-and-impact-company-level.
Eurofound in ILO (2017) Working anytime, anywhere: The effects on the world of work, URL: https://www.eurofound.europa.eu/en/publications/2017/working-anytime-anywhere-effects-world-work.
Glowacka, M. (2020), A little less autonomy? The future of working time flexibility and its limits, European Labour Law Journal, 12(2), p. 113-133.
Golding, G. (2024) Introducing Australia's New Right to Disconnect, Labour & Law Issues, 10(1), p. 1-22.
Hopkins, J. (2024), Managing the Right to Disconnect—A Scoping Review, Sustainability, 15(12), p. 1-14.
Jaworska, K. (2022) The Right to Disconnect, Studia z Zakresu Prawa Pracy i Polityki Społecznej, 29(1), p. 51-58.
Kompare, N. (2018), Tedenski počitek, Pravna praksa, 37 (3-4), p. 39-40.
Končar, P. (2016) Digitalizacija - izzivi za delovno pravo, Delavci in Delodajalci, 16 (2-3), p. 257-268.
Kresal Šoltes, K. and Senčur Peček, D. (2024) Zakon o delovnih razmerjih z novelo ZDR-1D: uvodna pojasnila (Ljubljana: GV založba).
Lerouge, L. and Trujillo Pons, F. (2022), Contribution to the study on the 'right to disconnect' from work: Are France and Spain examples for other countries and EU law?, European labour law journal, 13(3), p. 450-465.
Ministry of Labour, Family, Social Affairs and Equal Opportunities (2024) Right to Disconnect. URL: https://www.gov.si/novice/2024-07-29-pravica-do-odklopa/.
Senčur Peček, D. (2016) 157. člen. In: Zakon o delovnih razmerjih s komentarjem. Edited by Nataša Belopavlovič et al. (Ljubljana: GV Založba).
Senčur Peček, D. (2017) Delovni čas v dobi stalne dosegljivosti, Delavci in Delodajalci, 17 (2-3), p. 155-178.
Senčur Peček, D. (2018) Ureditev delovnega časa med prožnostjo in varnostjo v kolektivnih pogodbah dejavnosti, Delavci in Delodajalci, 18 (4), p. 583-608.
Senčur Peček, D. (2019a) 142. člen. In: Zakon o delovnih razmerjih (ZDR-1) s komentarjem. Edited by Nataša Belopavlovič et al. (Ljubljana: GV Založba).

Senčur Peček, D. (2019b) Delovni čas in letni dopust z vidika standardov MOD, MESL in novejše sodne prakse Sodišča EU, Delavci in Delodajalci, 19 (2-3), p. 407-440.
Senčur Peček, D. (2021a) Pravica do odklopa in druga pravna vprašanja upravljanja delovnega časa v dobi digitalizacije, Delavci in Delodajalci, 21 (2-3), p. 295 -323.
Senčur Peček, D. (2021b) Pravica do pravičnih pogojev dela v Evropski socialni listini, Delavci in Delodajalci, 21(4), p. 449 -472.
Senčur Peček, D. (2024a) 156. člen. In: Zakon o delovnih razmerjih (ZDR-1) s komentarjem. Edited by Nataša Belopavlovič et al. (Ljubljana: GV Založba).
Senčur Peček, D. (2024b) 158. člen. In: Zakon o delovnih razmerjih (ZDR-1) s komentarjem. Edited by Nataša Belopavlovič et al. (Ljubljana: GV Založba).
Senčur Peček, D. (2024c) Delovni čas in prožne ureditve dela ter njihova uveljavitev v ZDR-1, Delavci in delodajalci, 24 (2-3), p. 173-196.
Starič, K. and Mićić, N. (2017) Ali v delovnem pravu obstaja pravica do izklopa?, Pravna praksa, 36(33), P. 16-17.

Povzetek v slovenskem jeziku (Abstract in Slovene language)

Avtorica obravnava pravne vidike urejanja pravice do dnevnega in tedenskega počitka ter pravice do odklopa. Pri tem se osredotoča predvsem na normativni okvir slovenskega pravnega reda (s poudarkom na obravnavi novele Zakona o delovnih razmerjih (ZDR-1D), s katero je bila v Sloveniji uvedena pravica do odklopa). Ukrepi za zagotavljanje pravice do odklopa, ki jih morajo sprejeti delodajalci (do 16. novembra 2024), naj bodo, če je to mogoče, določeni v kolektivni pogodbi na ravni dejavnosti. Vendar pa, če do sklenitve kolektivne pogodbe z relevantno vsebino ne pride, bodo morali delodajalci ukrepe sprejeti sami v svojih splošnih aktih. Po pregledu kolektivnih pogodb na ravni dejavnosti v Republiki Sloveniji (v septembru 2024), avtorica ugotavlja, da večina veljavnih kolektivnih pogodb še ne ureja pravice do odklopa, tiste, ki jo urejajo, pa ne določajo ukrepov. Torej, vključitev pravice do odklopa na zakonsko raven do sedaj ni privedla do sprememb kolektivnih pogodb glede ureditve pravice do odklopa. Ob tem je treba izpostaviti, da bo za celovito oceno učinkov predmetnih zakonskih sprememb treba izvesti nadaljnje (tovrstne) raziskave še v prihajajočem časovnem obdobju.