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**ISSUES OF REST TIME LEGAL REGULATION:
CASE OF LITHUANIA AND TURKEY**

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Abstract.

The relevance of this study. A person spends most of his time working, i. y. at the same time, having an employment relationship which obliges him to perform the work stipulated in the employment contract, it is nevertheless essential that employers ensure adequate rest periods for employees and do not violate the requirements for maximum working hours and minimum rest periods. The right of a person to have adequate rest is one of the constitutional human rights, which is enshrined in Article 48 of the Constitution of the Republic of Lithuania, which provides that «every working person has the right to rest and leisure, as well as annual paid leave» [1]. International law also reveals the importance of this human right. Article 31 of the Charter of Fundamental Rights of the European Union (Charter). 2 d. [2] provides 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». 2003 November 4 Directive 2003/88 / EC of the European Parliament and of the Council on certain aspects of the organization of working time, adopted in 2003, also lays down minimum safety and health requirements for the organization of working time regarding daily and weekly rest periods and breaks [3]. Regarding the regulation of rest periods at international level, mention should also be made of the International Labor Organization (ILO) conventions and the adoption of recommendations setting weekly rest periods for certain categories of workers [4]. **The main problem.** The interpretation and application of the norms related to the determination of rest time and the problems arising from it are assessed in three ways: firstly, the practice of interpreting and applying the rules governing working and rest time is not well developed and unclear. secondly, the employee, as a weaker party to the employment relationship, cannot protect himself from improper organization of rest and working time, for example, employers abuse the employee's trust and do not give employees raising children the benefits they deserve, i. y. additional rest days. thirdly, the abuse of the position of employers by forcing employees to work overtime or on public holidays, thus preventing the employee from complying with the statutory minimum rest requirements, is also problematic. **The following tasks:** 1. To define the concept of rest time and social significance. 2. To examine the mechanism of legal regulation of rest time. 3. To analyze the rulings of selected courts in cases where a dispute arises regarding the legal regulation of rest time and its implementation. 4. To identify the main problems of the legal regulation of rest time and to submit proposals for the improvement of the legal situation. **The aim of this work** to analyze the problems of legal regulation of rest time from the point of view of labor law. **The paper concluded** aannual leave and the compensation paid for it in the event of termination of employment are another problematic issue encountered in case law. In the event of dismissal, the employee seeks a declaration that the dismissal is unlawful and, on that basis, an award of compensation for unused annual leave to which he would have been entitled if the employment relationship had not been terminated. **The novelty** Although

there are quite several scientific articles and research analyzing the work-life balance, the novelty of the topic is that this work will reveal only the peculiarities of legal regulation of rest time in Lithuania and Turkey, as well as problems arising from rest regulation. **As the result** problems with the regulation of rest time at international level arise from reasons such as the abuse of rest breaks by employees, the payment of compensation for unused paid annual leave, and the inclusion of rest time in working time. **The used methodology** document analysis, systematic analysis, comparative, logical-analytical method, and generalization methods. **Keywords:** rest time, annual leave, employee, employer

Introduction

Statement of the problem

The interpretation and application of the norms related to the determination of rest time and the problems arising from it are assessed in three ways: firstly, the practice of interpreting and applying the rules governing working and rest time is not well developed and unclear. secondly, the employee, as a weaker party to the employment relationship, cannot protect himself from improper organization of rest and working time, for example, employers abuse the employee's trust and do not give employees raising children the benefits they deserve, i. y. additional rest days. thirdly, the abuse of the position of employers by forcing employees to work overtime or on public holidays, thus preventing the employee from complying with the statutory minimum rest requirements, is also problematic.

Relevance of the topic

Regulation of rest time shows that work affects the health, material and spiritual well-being of the employed person, other areas of personal and social life, and working time that is too long and disproportionate to rest can have extremely negative consequences. the likelihood of accidents at work and occupational diseases. It is recognized that an employee, as a weaker party to an employment relationship, cannot protect himself, both economically and socially, from excessive physical or mental fatigue, exploitation [5], abuse by employers by illegally allocating overtime to employees, without limiting and controlling their working hours and without adequate remuneration [6]. All these reasons lead to the need to create and establish an effective system of the right of employees to the necessary rest and leisure at the state level. The disclosure of the content of the current legal regulation and the legal problems arising from its imperfection will reflect the latest and most relevant problems of the legal regulation of rest time and its application in Lithuania and Turkey.

The aim of the research to analyze the problems of legal regulation of rest time from the point of view of labor law.

Results

The concept and types of rest time

In the dictionary of the current Lithuanian language, the term rest is interpreted as «rest after work

or travel». Such an interpretation of the term shows that rest occurs after a certain amount of physical activity, in this case work. We can consider rest time as rest time, which is regular. Time, meanwhile, is defined as a dimension that is consistent, continuous, and irreversible, and a period of time. Thus, as can be seen from the interpretation of the concepts of rest and time, the meaning of rest time is the period during which a person rest [7]. Given that the concept of rest time is interpreted in the context of employment law, it is precisely rest from work.

The right to rest from work is regulated by Article 48 of the Constitution of the Republic of Lithuania. This means that this right is a constitutional right of every working person. The entrenchment of this right in the constitution emphasizes its importance and reveals the attitude of the state to the implementation and protection of subjective rights [3]. The above-mentioned Article of the Constitution of the Republic of Lithuania establishes «[...] the right to have rest and leisure, as well as annual paid leave» [1].

The Labor Code of the Republic of Lithuania (LR DK) contains the concept of rest time. In accordance with Article 122 of the Labor Code of the Republic of Lithuania 1 d. rest time is considered to be all free time left from work [8]. This means that during this period the person does not perform work functions, i. y. not only is he not obliged to carry out the employer's tasks entrusted to him, but he is also not obliged to be available to him [9].

Given the working time conditions laid down in Directive 2003/88 / EC and the fact that working time is the opposite of rest time, we can consider rest time as any time that does not have at least one of the criteria discussed above within the definition of working time [10]. In most EU countries there is no specific rest period, i. e., y. definition of breaks from work. In EU countries, as in Directive 2003/88 / EC, rest time is assessed based on working time or simply by defining it as breaks from work [11]. In Member States whose legislation does not specify rest periods, at least the breaks that may occur and how they are used shall be specified. The Austrian Working Time Act states that during a rest break, the employee must be able to spend time freely, in other words, it must be a real leisure or rest period

from work [12]. The Finnish Working Hours Act specifically states that an employee is free to leave the workplace during a break [13]. Italian law on labor law defines rest periods in detail. Here, rest time is understood as any moment of inactivity during the entire working day. During this period, the employee must restore his psychophysical energy, eat, and rest from monotonous and repetitive tasks [14].

In implementing this Directive by 2016, the Lithuanian legislator July 1 established five types of rest in the current DK of the Republic of Lithuania: 1. «A break to rest and eat. 2. Additional and special breaks to rest during the working day (shift). 3. Daily uninterrupted rest between working days (shifts). 4. Weekly uninterrupted rest. 5. Annual rest period (holidays, holidays) [15].

As in Lithuania, similar types of rest periods are established in many other EU countries. The Labor Code of the Republic of Poland provides for the following rest periods for employees: daily and weekly rest, breaks during the working day and annual leave for employees [16].

In Turkey annual paid leave is given to a worker who is assumed to be tired by working for most of the year to rest; It is an economic and social right, the basis of which is the social state principle of the Constitution, which, as a rule, covers a long rest period in the form of a week holiday, national holidays and general holidays in the form of consecutive days once a year without division. This rest period is the basic right of the worker who is able to work but has worked for a long time, which is important in terms of protecting his mental and physical health [17].

As stated in the justification of Article 50 of the Constitution, which regulates the right to rest, «Resting is the right of employees. This is necessary both for the physical protection of the employee and for the efficiency of the employee's work after resting. Due to the importance of the subject, each law applied to business relations is regulated separately [18].

With the adoption of the 1961 Constitution, the right to annual paid leave gained its constitutional basis. Article 44 of the 1961 Constitution states that the right to rest is a constitutional right for all employees and that the right to paid weekly holidays, public holidays and annual paid leave will be regulated by law. With the acceptance of rest as a right in the Constitution, new regulations regarding the right to annual paid leave have been introduced in other labour legislation. It is a correct approach to find special regulations for press workers arising from the nature of the work done. However, due to

the inadequacy of the regulations in the Press Labour Law, journalists are deprived of many rights protected by the Labour Law No. 4857 [19].

The right to annual paid leave, which is not included in the Code of Obligations No. 818, is regulated between articles 422–425 of the Turkish Code of Obligations No. 6098. However, there are debates about the applicability of these provisions in the Turkish Code of Obligations to workers subject to the Press Labour Law. In particular, it is debatable whether the 423th article of the Turkish Code of Obligations, which stipulates a reduction in the annual paid leave periods in case of absenteeism of the worker, and the 425th article, which regulates that the annual leave wage will be paid to the worker or beneficiaries in case of termination of the employment contract, will also be applied to the press workers [20].

The contract must be terminated for the unused annual leave right to be converted into a wage receivable and to be sued. The right to annual paid leave is a right that is closely tied to the worker, but when the employment contract is terminated, it turns into an economic right and can be demanded by his heirs.

Since the right to annual paid leave turns into a wage receivable only when the contract is terminated, it is legally invalid to not allow the annual paid leave to be used while the contract continues and to pay the wage in return for the work. However, with the agreement of the parties to the employment contract, if the worker has received his wage for the leave whether he has used his annual paid leave or not, then it should be deducted from the wages of the annual leaves to be paid after the employment contract ends [21].

Conditions for entitlement to annual leave.

At least one year of study (including trial period)

Seasonal or campaign workers are not entitled to annual paid leave.

Service time.

At least 14 days for those aged 1–5 years

At least 20 days for those aged 5–15 years

At least 26 days for those who are 15 years or more

At least 20 days regardless of the length of service for those 18 and younger and those fifty and older

The burden of proving that the annual paid leave has been used rests with the employer. It must be proved by written document bearing the signature of the worker [22].

The annual leave right is determined by adding the periods for which the employee is not entitled to leave because they have not completed one year and

are added to the subsequent work of the worker at the workplace or workplaces of the same employer. In case of termination of the employment contract, the notice period and the right to annual paid leave cannot be intertwined. The outcome of the reemployment lawsuit, if any, should be awaited. Annual leave fee must be calculated on the last fee [23].

The interest to be applied for the Annual Leave fee is the statutory interest. No matter how the employment contract is terminated, it is not possible to make a discount. After the return to work, the employee who is started to work is obliged to return the annual leave paid previously. The statute of limitations begins to run from the expiration of the employment contract and is 5 years [24].

Analysis of legal disputes related to problems of legal regulation of rest time

An analysis of the case law shows many disputes related to payment. Employees complain not only about incorrectly calculated wages, but also about incorrectly calculated compensation for unused annual leave in the event of termination of employment. There is also a lot of controversy over breaches of maximum working time requirements. As rest time is directly dependent on working time, violation of the requirements for maximum working time also violates the legal norms regulating the provision of minimum rest time. Violations of the minimum rest time requirements are often recorded during work and accounting for overtime work.

Although the law allows you to work on holidays and rest days with the consent of the employee, the employer does not always record such a period in the accounts, which leads to the problem of paying adequate wages. In this case, employees are forced to apply to the court for an award of arrears of wages. It is also common for court cases to involve the application of rest time benefits. Employers often refuse to allow employees to take advantage of the benefits to which they are entitled, which results in litigation. In the light of the above issues, the subsections of this part of the thesis will analyze the case law related to the above issues.

Clearly regulated minimum rest requirements are often violated when working at night or overtime. For example, in the Ukmergė Palace of the Vilnius Regional District Court, the case of administrative law violations / administrative misconduct no. A5.-336-1072 / 2018 [25].

Proper accounting of rest time is also important for proper payment of wages. Working on a holiday is faced with the problem of paying a decent wage.

Vilnius City District Court examined civil case no. e2-20028-996 / 2018 on the award of employment benefits. In the above case, the plaintiff S. Ž. requested that the defendant UAB Ravainė be ordered to pay salaries, as well as related benefits for days off and holidays spent on business trips. The plaintiff S. Ž. stated that while on business trips, he worked on 31 days of rest and holidays. This number of days of rest and holidays worked during the «[...] period from 2016. July 4 until 2016 31 December 2006» [26].

An examination of the case-law shows that disputes often arise over unpaid wages for work on a day off. Klaipėda District Court examined case no. e2-5483-1032 / 2018, on wages, interest on arrears, compensation for unused annual leave and the imposition of penalties. According to the conditions of accounting and payment of working time, work on a day off is divided into two types: work on a day off, scheduled according to a working day (shift) and not paid at an increased rate, and work on a day off not scheduled according to a working day (shift) and paid at an increased rate [27].

There are also disputes in foreign countries regarding the regulation of rest time and its implementation. An analysis of the case law has shown that national courts often refer questions to the ECJ for clarification of the application of the rules of Directive 2003/88 / EC governing types of rest periods. The problematic situation arises from the different understanding of the existing legal norm. For example, the ECtHR in 2018. January 18 in case no. 46386/10 Hallier v. France concerned the refusal to grant parental leave [28]. Another problematic issue is the issue of mandatory rest days. 2017 June 21 in case no. C306/16 António Fernando Maio Marques da Rosa v Varzim Sol – Turismo, Jogo e Animação SA The ECJ provided clarification on the granting of rest days. In a dispute before the Portuguese national courts, the Court of Appeal questioned whether Directive 2003/88 / EC was to be interpreted as meaning that the weekly rest period was to be granted no later than the seventh day after six consecutive working days or whether the employer had discretion. rest period for each seven-day period [29]. Disputes arise during foreign breaks in foreign courts. In Hungary, for example, there has been a dispute over an employee being fired for playing cards in the workplace. The plaintiff claimed that card gambling was a «normal practice» in the company and that its managers were aware of it. He also stated that he interrupted work only because two more cranes were operating at the time and it was impossible for him to

work, and he took the rest break as usual so as not to interfere with work processes [30]. Thus, the norms of labor law regulating rest time are violated in case the employer does not comply with the requirements of the minimum rest time and thus violates the duration of uninterrupted rest between working days established by law. It is clear from the case-law that such a situation arises where employees work at night or overtime and the employer does not mention such time in the journal. A situation where the employer pays part of the wage due is possible in cases where work is performed on public holidays, when such work is not provided for. It is a common case in the courts when, in the event of dismissal, an employee seeks to have the dismissal declared illegal and, on that basis, to award compensation for unused annual leave to which he would have been entitled if the employment relationship had not been terminated.

Conclusions

1. The concept of rest time is derived from the concept of working time and means that every employee is guaranteed by law the time during which he or she is not obliged to perform the work functions equivalent to an employment contract. Ensuring rest time, both nationally and internationally, reveals the importance of

this institute to the working group of society. 2. The law provides for a comprehensive and extensive regulation of rest time, which allows the employee to regain strength more quickly and achieve better results when he or she returns to work. The minimum rest requirements ensure that the worker recovers at least for a short time. For this reason, physiological and special breaks, a break to rest and eat, and daily uninterrupted rest are provided. The purpose of granting annual leave to an employee is to restore the able-bodied, while granting special leave, the employee allocates it for specific purposes – pregnancy and childbirth, parenthood, childcare, education, creativity. 3. Problems with the regulation of rest time at international level arise from reasons such as the abuse of rest breaks by employees, the payment of compensation for unused paid annual leave, and the inclusion of rest time in working time. 4. Annual leave and the compensation paid for it in the event of termination of employment are another problematic issue encountered in case law. In the event of dismissal, the employee seeks a declaration that the dismissal is unlawful and, on that basis, an award of compensation for unused annual leave to which he would have been entitled if the employment relationship had not been terminated.

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ПИТАННЯ ПРАВОВОГО РЕГУЛЮВАННЯ ЧАСУ ВІДПОЧИНКУ: ПРИКЛАД ЛИТВИ ТА ТУРЕЧЧИНИ

Анотація

Актуальність дослідження. Людина більшість свого часу проводить на роботі, тобто у водночас, маючи трудові відносини, які зобов'язують його виконувати роботу, передбачену у трудовому договорі, проте важливо,

щоб роботодавці забезпечували адекватні періоди відпочинку для працівників та не порушували вимог щодо максимальної тривалості робочого часу та мінімальних періодів відпочинку. Право людини на достатній відпочинок є одним із конституційних прав людини, яке закріплене у статті 48 Конституції Литовської Республіки, яка гарантує, що «кожна працююча людина має право на відпочинок та дозвілля, а також щорічну оплачувану відпустку». Міжнародне право також розкриває важливість цього права. Стаття 31 Хартії основних прав Європейського Союзу (Хартія). 2 дн. передбачає, що «кожен працівник має право на обмеження максимальної тривалості робочого часу, щоденні та щотижневі періоди відпочинку та на щорічний період оплачуваної відпустки». Директива 2003/88/ЄС Європейського Парламенту та Ради з певних аспектів організації робочого часу, прийнята у 2003 році, також встановлює мінімальні вимоги безпеки та гігієни праці для організації робочого часу щодо щоденного та щотижневого відпочинку, періоди та перерви. Щодо регулювання періодів відпочинку на міжнародному рівні, слід також згадати конвенції Міжнародної організації праці (МОП) та прийняття рекомендацій, що встановлюють щотижневі періоди відпочинку для певних категорій працівників. Головна проблема. Інтерпретація та застосування норм, пов'язаних з визначенням часу відпочинку, та проблеми, пов'язані з цим, оцінюються за трьома напрямками: по-перше, практика тлумачення та застосування правил, що регулюють час роботи та відпочинку, недостатньо розвинена та неясна. по-друге, працівник, як слабка сторона трудових відносин, неспроможний захистити себе від неналежної організації відпочинку та робочого дня, наприклад, роботодавці зловживають довірою працівника і надають працівникам, які виховують дітей, ті пільги, яких вони заслуговують, т. в. додаткові дні відпочинку; по-третє, зловживання становищем роботодавців шляхом примусу працівників до понаднормової роботи або у святкові дні, що перешкоджає дотриманню працівником встановлених законом вимог до мінімального відпочинку, також є проблематичним. Наступні завдання: 1. Визначити поняття часу відпочинку та соціальної значущості. 2. Вивчити механізм правового регулювання часу відпочинку. 3. Проаналізувати рішення окремих судів у справах, у яких виникає суперечка щодо правового регулювання часу відпочинку та його застосування. 4. Виявити основні проблеми правового регулювання часу відпочинку та внести пропозиції щодо покращення правової ситуації. Метою даної є аналіз проблем правового регулювання часу відпочинку з погляду трудового права. У документі йдеться про щорічну відпустку та про компенсацію, що виплачується за неї у разі звільнення, – це ще одне проблемне питання, що зустрічається у прецедентному праві. У разі звільнення працівник домагається визнання звільнення незаконним і на цій підставі компенсації за невикористану щорічну відпустку, на яку він мав би право, якби трудові відносини не були припинені. Новизна. Незважаючи на те, що існує чимало наукових статей та досліджень, присвячених аналізу балансу між роботою та особистим життям, новизна теми полягає у тому, що ця робота розкриває лише особливості правового регулювання часу відпочинку у Литві та Туреччині, а також проблеми, що виникають у зв'язку з відпочинком, регулювання. У результаті проблеми з регулюванням часу відпочинку на міжнародному рівні виникають через такі причини, як зловживання перервами для відпочинку працівниками, виплата компенсації за невикористану щорічну відпустку, що оплачується, та включення часу відпочинку у робочий час. Методологія, що використовується - аналіз документів, систематичний аналіз, порівняльний, логіко-аналітичний метод і методи узагальнення.

Ключові слова: час відпочинку, щорічна відпустка, працівник, роботодавець

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ВОПРОСЫ ПРАВОВОГО РЕГУЛИРОВАНИЯ ВРЕМЕНИ ОТДЫХА: ПРИМЕР ЛИТВЫ И ТУРЦИИ

Аннотация

Актуальность исследования. Человек большую часть своего времени проводит на работе, т.е. у. в то же время, имея трудовые отношения, которые обязывают его выполнять работу, предусмотренную в трудовом договоре, тем не менее важно, чтобы работодатели обеспечивали адекватные периоды отдыха для работников и не нарушали требования в отношении максимальной продолжительности рабочего времени и минимальных периодов отдыха. Право человека на достаточный отдых является одним из конституционных прав человека, которое закреплено в статье 48 Конституции Литовской Республики, которая гарантирует, что «каждый работающий человек имеет право на отдых и досуг, а также ежегодный оплачиваемый отпуск». Международное право также раскрывает важность этого права человека. Статья 31 Хартии основных прав Европейского Союза (Хартия). 2 дн. предусматривает, что «каждый работник имеет право на ограничение максимальной продолжительности рабочего времени, ежедневные и еженедельные периоды отдыха и на ежегодный период оплачиваемого отпуска». Директива 2003/88 / ЕС Европейского парламента и Совета по определенным аспектам организации рабочего времени, принятая в 2003 году, также устанавливает минимальные требования безопасности и гигиены труда для организации рабочего времени в отношении ежедневного и еженедельного отдыха. периоды и перерывы. Что касается регулирования периодов отдыха на международном уровне, следует также упомянуть конвенции Международной организации труда (МОТ) и принятие рекомендаций, устанавливающих еженедельные периоды отдыха для определенных категорий работников. Главная проблема. Интерпретация и применение норм, связанных с определением времени отдыха, и проблемы, связанные с этим, оцениваются по трем направлениям: во-первых, практика толкования и применения правил, регулирующих время работы и отдыха, недостаточно развита и неясна. во-вторых, работник, как более слабая сторона трудовых отношений, не может защитить себя от ненадлежащей организации отдыха и рабочего времени, например, работодатели злоупотребляют доверием работника и не предоставляют работникам, воспитывающим детей, те льготы, которых они заслуживают, дополнительные дни отдыха. в-третьих, злоупотребление положением работодателей путем принуждения сотрудников к сверхурочной работе или в праздничные дни, что препятствует соблюдению работником установленных законом требований к минимальному отдыху, также является проблематичным. Следующие задачи: 1. Определить понятие времени отдыха и социальной значимости. 2. Изучить механизм правового регулирования времени отдыха. 3. Анализировать решения отдельных судов по делам, в которых возникает спор относительно правового регулирования времени отдыха и его применения. 4. Выявить основные проблемы правового регулирования времени отдыха и внести предложения по улучшению правовой ситуации. Целью данной работы является анализ проблем правового регулирования времени отдыха с точки зрения трудового права. В документе говорится о ежегодном отпуске и о компенсации, выплачиваемой за него в случае увольнения, – это еще один проблемный вопрос, встречающийся в прецедентном праве. В случае увольнения работник добивается признания увольнения незаконным и на этом основании компенсации за неиспользованный ежегодный отпуск, на который он имел бы право, если бы трудовые отношения не были прекращены. Новизна. Несмотря на то, что существует немало научных статей и исследований, посвященных анализу баланса между работой и личной жизнью, новизна темы состоит в том, что эта работа раскрывает только особенности правового регулирования времени отдыха в Литве и Турции, а также проблемы, возникающие в связи с отдыхом, регулированием. В результате проблемы с регулированием времени отдыха на международном уровне возникают из-за таких причин, как злоупотребление перерывами для отдыха сотрудниками, выплата компенсации за неиспользованный оплачиваемый ежегодный отпуск и включение времени отдыха в рабочее время. Используемая методология - анализ документов, систематический анализ, сравнительный, логико-аналитический метод и методы обобщения.

Ключевые слова: время отдыха, ежегодный отпуск, работник, работодатель

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