

## DECENT WORK AND ITS PURPOSE

Ingrida MAČERNYTĖ PANOMARIOVIENĖ

Mykolas Romeris University Faculty of Law, Social Security Department

Ateities g. 20, Vilnius. tel. 5 271 46 33.

e-mail: ingridam@mruni.lt

Institute of Law Research Manager;

Gedimino pr. 39/ Ankštoji g. 1, Vilnius, tel. 5 210 16 67

e-mail: ingrida@teise.org

**Abstract.** Not only labour relations have changed, but also the attitude towards work and labour relations, therefore, it requires new legal regulation. The possibility to reconcile work and family obligations, work at home, qualification development, seek a career and many other things might motivate more efficient and productive work, influence work quality and satisfy the concept of decent work. The concept of “Decent work,” embedded in the Law on Support for Employment of the Republic of Lithuania (further—LSE) does not correspond to the concept of “Decent work” declared at the international and European Union level (further—EU), thus a lot of space for interpretation is left. However, consolidation of the concept of “Decent work” in the Labour Code of the Republic of Lithuania (further—LC) in principle would allow to implement the principle of balance between labour market flexibility and employment security (flexicurity).

**JEL classification:** J16, J60, J81.

**Keywords:** decent work, working conditions, labour law functions, flexicurity, human rights.

**Raktažodžiai:** tinkamas darbas, darbo sąlygos, darbo teisės funkcijos, flexicurity, žmogaus teisės.

### 1. Introduction

“Decent work” (in Lithuanian language this usually is translated as “padorus darbas,” “deramas darbas” [40]) first of all should be understood as legal, admissible and non-punishable activity, when work is performed without any constraint in compliance with all requirements of legal norms. In other words, the work consistent with the employee’s profession or education should be performed in safe and healthy working conditions, within given time, under fair payment, etc. The attempt to regulate strictly

everything in legal norms limiting the freedom of choice does not always serve as effective means for the security of employee's rights; especially in respect to increasing competition. The global economic crisis in 2008–2010 might serve as an example. Such as when after the decrease of the turnover of production and service, various measures were applied, including legal regulation, which first of all was directed to maintain business, but not the employees. As a result, a major part of employees were left without work. The rest worked more for the same or even less payment in worse conditions (for example, longer working hours, shorter rest periods, compulsory leave without pay and similar). On the other hand, labour market politics are not ready to provide analogical employment for the jobless army or for the possibility to adapt to the varied market situation. T. Davulis observes that both employers and employees, or their representatives, do not find themselves as the ones acting in local or autonomous space, but penetrate connection or even direct dependence upon market forces [7, p. 27-33]. According to R. Blanpain, labour relations are force relations and binding capital forces employees to agree with increasing work flexibility [4, p.29], which might be insufficiently safe and useful for the employee. The implementation of interim measures is pending. However, according to Juan Somovia, Director-General of International Labour Organization (further—ILO), crisis cannot be used as a handle to diminish employee's rights. In his opinion, it is very important to follow key EU values—main human rights, rights at work and individual protection [38]. Search for the balance between flexible and secure employment forms in the present labour market force the updating of labour laws and other regulations of labour relations. On the other hand, new labour law function shows up—the consistency of capita-labour relations [18, p.162], which is substantiated by the search for social compromise. According to scientist V. Tiazkijus, the present economic situation dictates legal regulation of labour relations, which manifests in flexibility of legal regulation and adaptation to existing status [39, p. 188]. Italian scientist M. Faioli states that tension between labour law, which induces labour markets to conform to the law, and labour market's pressure to endeavour labour law to adapt itself to economic changes, generates the “duality” of labour law [15]. The author suggests to review and update the labour law considering the concept of “decent work” with expectations that the system of labour law will keep equilibrium within the labour market, which facilitates access to new employment opportunities and reinforces employability policy, and labour relations, the notion of which evolves outside the standard employment relationships and is expanded beyond the limits of employment contract. LSE defines “decent work” narrowly and applies only in the issues on recruitment, i.e. proposition of decent work which might be refused by an unemployed person. Employment contracts become more flexible, their variety obliges one to think over the purpose of labour law, its functions and differences from other legal relations and to evaluate whether varied conditions satisfy the concept of “decent work.” The object of this research is to analyse the concept of “decent work” and its mission on the international, EU and Lithuanian level, to provide suggestions on its legal regulation. The article includes classified analysis, documentation analysis and comparative methods. It is substantiated with the scientific results of economists, lawyers, managers and sociologists.

## 2. Purpose of decent work considering labour law functions

Law functions (principal–regulative (normative), social compromise, state compulsion and others) [28, p. 17; 17, p.13; 43, p.183] are the tendency of law influence on social relations, which is determined by the essence of law and social purpose. Labour law is implemented in three functions: regulative, protective and economic. At present, the *protective (social) labour law function* is treated more widely. Its purpose is to ensure employee's safety at work, to prevent employer's lawlessness (unjustified redundancy, overtime and etc.) and guarantee human rights at work <...> to consider the needs and expectations of a concrete employee [6, p.22]. Here the guarantee of the interests of the employee "as a full-fledged personality, which is independent, has proper pride, seeks for justice and might expect that at work he will get civilized communication without any offences, outrage or violence" [6, p.22] is kept in mind. As A. Pumputis observes, human rights are understood as a perfect system, however, we do not give any attention to the level of the implementation of the latter rights and assess them only according to the formulation in the law and other legislative acts. Usually such important circumstances as individual needs and public technological environment are forgotten, though they greatly influence the system of human rights and their implementation level [33, p. 321]. Having in mind that "work progressively becomes not a subsistent creature, but a method of self-actualization and satisfaction of other higher needs (A. H. Maslow)" [19, p. 52], and that "the typology of human rights depends on the typology of human needs" <...> and that "each attempt to consolidate human rights, the realization of which does not outcome from social surrounding or hierarchy of needs, will be declarative and the norms embedding this ambition will be fictitious" [33, p. 332], law and its functions should also mediate according to their objective purpose. Most authors attribute democratic law function to the main law functions [28, p. 17; 17, p.13; 43, p.183]—*the function of coordination of conflicting interests, social compromise*, which is intended to protect the rights of all members of society, usually having opposite interests. The regulation of social relations includes coordination of interests of contrary law subjects, which prevents entrenchment or disregard of one or another subject, constriction of the interests of other social groups. Such regulation produces the compromise of conflicting interests (the unity of rights and duties) and ensures equal protection of rights for all members of society [42, p. 147]. Respectively, labour law should serve that both sides of labour relations—employer and employee—would create such labour relations the target of which is not the security and protection of one interest group. Attempts to search for methods of the liberalization of labour relations respecting fundamental human rights at work and protecting employees in case of unemployment demonstrate that labour law progressively has to perform the *capital and labour relations coordination function* [18, p. 162]. At present, such adjustment of conflicting interests is typical implementing the labour market flexicurity principle. On the one hand, when employers are allowed to organize the work process more flexibly, for example, to dismiss employees easier under financial difficulties or even crisis and to hire more employees after the market's revival; on the other hand, preparing em-

ployees for the changes in the labour market, i.e. “combination of flexibility of labour relations and the guarantees of employment and social protection will not only ensure balance between employer and employee’s interests, but will also bring benefit to the society, since its members will receive major employment and social protection” [32]. Although the labour market guarantees unrestrained search for work and actualization of the need to work, the social and economic situation in most national economies does not ensure all different population groups this declared freedom of choice. Moreover, declining opportunities to finance social protection properly push them into social exclusion [18, p. 161]. The human right to social protection in case of unemployment, as established in the Constitution, is implemented through the state social policy, which is closely related to labour market and employment policy. The strategic object of this policy is to decrease the unemployment level, apply methods of labour market policy more effectively and update regulation of labour relations, ensure a safe working environment and develop social dialogue. As B. Gruzevskis notices, the necessity to find new solutions, which would secure the balance between the maintenance of social security institutions and personal responsibility of the employee, emerges [19, p.53]. Thus, if persons are conscious and search for a legal job, pursue a career, develop qualification and etc., social protection will only contribute to the realization of those objects. On the other hand, if persons only pursue social maintenance, work illegally, avoid paying taxes, etc., they will become a burden to society, which will be unbearable for working people. Respectively the state’s labour market policy formed in the legal regulation, which renders certain stipulations, privileges or concessions, should be based on reason, revised and assessed over time or after the implementation of corresponding measures. For example, for a number of years, different retirement ages for men and women were not provisioned as discriminatory provision and since 1 January 2012 the pension reform uniformed the age limit for both men and women—65 years [26, art. 21]. Therefore, the law is invoked to protect common interests while coordinating them. In case of necessity, additional means of protection or concessions should be provided only to certain socially vulnerable groups (for example, the disabled, women, youth and etc.) and only temporarily until the obstacles for relations to become equal are eliminated. The conditions, established for job seekers to participate in active labour market policy measures, increase their readiness to participate in the labour market and employment possibilities. In other words, individuals who have lost their jobs should get not only unemployment insurance benefit [27], the amount of which is minimum and encourages to seek for new job, but also conform to varied labour market needs and have qualifications satisfying the requirements of marketable workplaces. The state should collaborate with employers and think about about option possibilities, for example, dealing with issues on older, mature age workers’ qualification and youth unemployment. The majority believes that the dismissal of persons under retirement age, who get corresponding benefits, will create new workplaces. Unfortunately, workplaces will be only vacated, new ones still won’t be created. Search for balance in the latter situation might be only if experienced workers instruct and transfer their work experience to young inexperienced individuals, who in respect would teach them to

work with new informational technologies (further—IT), programmes and etc. Such a situation would retain experienced personnel and “grow” new ones. Implementation of those objects in legal regulation (for example, LC article 209) might anticipate guarantees at work for studying employees, analogical protection in scholastic institutions and introduce tax concessions. In either case, education is necessary for employees aspiring for comparative advantage competing in the labour market [33, p. 326]. Herewith the employer’s possibilities to accumulate qualified employees are improved.

Successful operation of labour law functions depends on the substantial role of social partners representing employer and employee interests. Results concerted in compromise must be established in collective agreements. State intervention must be minimal and only in cases when human rights at work must be protected. One must not forget that actualization of employee rights, as well as other social-economic rights, depends on economic conditions and resources. Respectively in the second half of the 20th century, an *economic* (industrial) *labour law function* has been formed. With the help of legislation it encourages the rational usage of labour resources, increase of labour productivity, development of industrial democracy and etc. [6, p. 22; 18, p. 162] In other words, this function has to protect employer’s interests, i.e. to invoke the required amount of employees, determine employment rates, tasks and their payment (i.e. to pay wage and bonuses) during the whole work process, to identify working time and schedule, disciplinary and material liability. Latter provisions protect the employer from employee’s laziness, unwillingness to develop qualification, work spoilage, intent, business failure risk and other things which would be an obstacle in competitive struggle at market conditions. In other words, according to regulated legal norms, an employee must work at the position of a certain profession, speciality and qualification, or hold a certain position in obedience to the employer’s determined work rules. Working results depend on the latter rules and work organization. The speed of new technologies and their implementation have affected work processes, which “increase requirements on workforce skills and abilities, change the concept of labour quality control, work organization principles, <...> moreover, change the ratio of working and rest time” [18, p. 158]. For example, the evaluation of IT has disclosed that most processes might be performed by computer programmes. However, the increasing volumes of work, brief terms of performance, impel the employees to work after normal working hours, at their leisure time, on weekends or even during their holidays. Thus, both employees and employers have to adapt to market changes and prepare for it, since employers meet control problems in the employee’s independence, honesty, quality of performed work and etc. In such a way the result of interest coordination of both sides should be aspired to. According to R. Anker, we should take into consideration that work content <...> employment goal is best expressed as adequate opportunities for productive and meaningful work in decent conditions [2]. In other words, productive work for a competitive market might be ensured only in adequate conditions and under certain requirements to perform work perfectly. Thereto, the State should interfere in order to not jeopardize business and to protect employees who have lost their jobs and follow labour law functions, primarily the coordination of conflicting

interests. Temporary amendments of certain norms of LC in 2009-2010 illustrate the state role in Lithuania, for example, amendments which were accomplished in 2009 in order to overcome financial-economic crisis and contributed to the protection of the employer's interests more than the employee's, i.e. on severance benefits in dismissing the employee from work under the LC art. 129 providing major amounts than 5 AME in instalments (LC art. 141 part 1, art. 206, part 1 clause 1), on reduction of period of notice of dismissal, on the fixed-term employment contracts to the newly created jobs for a period of up to two years, but not longer than till 31st July 2012, on overtime per week increase in duration (LC art. 152 part 1, amendment valid till 31st December 2010) and etc. Meanwhile, amendments of LC in 2010 pursued to embed compromise of both participants of labour relations since employers complied with some changes (for example, on LC art. 77, art. 80 part 2, art. 107 parts 1-2, art. 127 part 4, art. 202 part 2, art. 293 part 1, art. 294 part 3, appendix art. DK 123<sup>1</sup>), in respect employees submitted to others (for example, on LC art. 109 part 2, art. 127 parts 1-2, art. 147 parts 1, 3, 6, art. 149-151).

In summary, it might be stated that the purpose of contemporary labour law is assistance in developing employment policies, which constitute equal negotiating conditions for the representatives of conflicting interests. Negotiating conditions should secure both employees' rights (needs) on work and at work and other (economic, social and etc.) conditions for decent work and its process. Moreover, they should provide contemporary help (protection) to those who are weaker and unable to compete with all participants of labour relations on an equal basis. Following the functions and purpose of labour law, the concept of "decent work" and possibilities of its legal regulation should be considered.

### 3. Concept of decent work in international and EU documents

According to N. L. Liutov and P. E. Marozov, the concept of "decent work" has no direct purpose imbedded in any international legal act [29, p. 20]. For the first time, the term "decent work" has been mentioned in the Global Report of ILO director-general in 1999. ILO Conference 87 anticipated that ILO has aspired decent work in creating new jobs, though the quantity of employment cannot be divorced from its quality, which might be interpreted in many different ways. It could relate to different forms of work, and also to different conditions of work, as well as feelings of value and satisfaction [9]. It might be noticed that most scientists identify "decent work" as "quality of employment or job" or isolate it as one of the indicators of "decent work." For example, R. Anker, I. Chernyshev, Ph. Egger, and F. Mehran approve three work quality indicators identified by the European Commission: employment security, possibility for skills improvement and carrier, hourly work payment [3, p.159]. As Commission indicates, one of the main political principles on health and safety at work is a priority to save employee's well-being, health and employment, in comparison to work or production capacity [5, p.1]. Communication of the European Commission "EUROPE

2020—A strategy for smart, sustainable and inclusive growth“ sets a vision to achieve the principles of balance between flexibility and employment and provide people with possibilities to get new skills in order they could adapt to new conditions and change their profession on demand. However, scientist D. Ghai distinguishes one element of employment quality—employee’s interest in remunerative employment [16, p. 119] and observes the problem of remuneration as the relation between the effort and physical or mental potency. Remuneration is important to ensure decent work, since working individual can satisfy the needs (not only essential) of his family and his own with his income from work, which guarantee a normal level of well-being and do not derogate his dignity [14, art. 4 and 26]. One of his needs is personal and professional development. According to A. Hemerijck, in the future, employment promotion should guarantee that “work pays” and, what is even more important, that changes are effective [20, p. 15-16]. In other words, it should be evaluated whether the existing or developed qualification is reimbursed in work payment or in any other compensation forms (for example, additional holidays, rest day and etc.). In the international scientific conference, “Labour market of the XXI century: In search of flexibility and security” on 12-13 May, 2011, in Vilnius, T. Davulis stated that “investments to qualification development become effective in the possibility to find a job.” However, the issue of qualification development and carrier possibility usually is not legally regulated or is left to the process of collective negotiations, which is still very vulnerable in Lithuania. The results of the 5<sup>th</sup> European Working Conditions Survey 2010 demonstrate that in Lithuania during the last 12 months 23,5 per cent of employees improved their qualification on employer’s expenses, i.e. less than, for example, in Latvia—29,2 per cent; Estonia—36,6 per cent; Scandinavia—47,4-51 per cent; Czech Republic—46 per cent, Slovenia—48 per cent. At their own expenses—11 per cent, i.e. less than in Latvia and Slovenia—11,2, but more than in the Czech Republic—7,8 per cent, Estonia—7,9 per cent. During the last year, 27,5 per cent of employees developed their qualification at their workplace, i.e. less than in Latvia—29,3, Estonia—33,2, Czech Republic—32,1, Slovenia—45,3 per cent [12]. In 2005, in Lithuania, legal regulation embedded only a norm for employer’s protection on recovery of costs on employee’s qualification development or other trainings when an employee is dismissed from work under his/her guilt or under notice without an important reason (LC art. 95, part 5). Actual costs include not only the amount paid for the training period (courses, internships and etc.), but, for example, the amount of the employee’s average wage paid during the whole period of educational leave (LC art. 210, part 1) as well. There are no legal norms on the employees’ carrier organization, qualification development, except the general norm which provides employers with the obligation to create appropriate conditions for employees to develop professional qualification and improve skills (LC art. 191, part 6) in accordance with nominative legal acts [art. 24, 43 part 4, art. 98, art. 101 part 6] and special norm for trade union members who are granted a leave of absence for 6 days in a year for qualification development (LC art. 183, part 3). In reference to the research results of the 5th European Working Conditions Survey 2010, more than 70 per cent of Lithuanian residents (in Latvia—80, 6 per cent, in Estonia—77, 5 per cent) [12] think that they

have more perspectives to get employed in the future if they have taken participation in trainings. It is undisputed that persons with professional qualification may easier compete in the labour market. Risk for the choice of career largely falls on the shoulders of the person themselves, and the prediction whether you get the job after completion of the studies or earn enough to recover the expenses is speculative under changing market conditions. Employment policy should give more responsibility to education institutions, which offer marketable professions, specialities and qualifications which satisfy market needs. In respect to future dimensions of employment policy based on principles of lifelong training and free movement of persons, it might be expected that soon these provisions will be adjusted in more detail.

The annual report 2002 of the European Foundation for the Improvement of Living and Working Conditions [34] equates employment quality to workforce quality and estimates in 4 aspects, only the general aspect, “employment protection,” is predicted, instead of hourly earnings and includes employment status, income, social protection, worker’s rights and an additional fourth criteria “reconciliation of working and non-working life”. Italian scientist M. Faioli also distinguishes the latter feature. He proposes more strategic objectives, i.e. decent work should be assessed in law modernization and social protection. Besides, “dignity at work” is also an assumption of quality at work, which implies the possibility to reconcile work and personal life, and equality of opportunity [15]. “Possibility to reconcile work and personal life” is one of the main objectives of 21st century labour law modernization[10], which is relative to subjective combination of employees and employers’ needs and partly with employment policy regulation involving the flexicurity principle [quod vide 30, p. 163-178]. In other words, persons may work and earn while not working full time and expect social guarantees without discrimination between full-time employees. Working part-time may encourage companies to make better use of available human resources, yet, it forces to develop system of social welfare, which is used by employees and their families [20, p. 15-16]. The amendment of article 146, part 3 of Labour Code enacted since 3<sup>rd</sup> May, 2011 indicates that part-time work does not limit employee’s rights at work in comparison to the employees who work the same or adequate work at full time working day and in respect to seniority, qualification or other circumstances. Here equality must be understood both in respect to gender and of employees working in different labour regimes. However, article 9 of the Law on State Social Insurance Pensions of the Republic of Lithuania, which calculates the period of State Social Pension Insurance (here after SSPI), when a person was working under employment contract or on the basis of membership or service, indicates that the latter period depends on a person’s income. In other words, the period of SSPI, when a person was working under employment contract or on the basis of membership or service, includes all months until the retirement, if wages and other income on which compulsory SSPI contributions have been paid are not lower than the sum of minimum monthly wages (further—MMW) per all these months. In a contrary case, the period of SSPI in a year of retirement is considered to be proportionally lower [26, art. 9]. Persons who are working part-time and do not get minimum monthly wage are discriminated in respect to other employ-

ees who work under the same conditions, but get MMW. Thus, employees, working in qualified jobs and earning more though they are not working full time, are in a better position than employees working in unqualified jobs and earning proportionally less than MMW.

As is intended in later documentation (ILO Decent Work Programme [41], European Commission Communication, Resolution of European Parliament), “decent work” is described in 4 objectives: right to productive and freely chosen employment, which protects employee’s rights, generates appropriate income, provides sufficient social protection and emphasises equal opportunities [11 and 13]. Dharam Ghai analysed all 4 objectives of decent work. According to his words, productive and freely chosen employment implies all types of work. As the author states, decent work might be estimated in such a way not only after standard employment contracts, but also after employees working under the contracts with more flexible employment forms, for example, self-employed, homeworkers, remote workers and etc. This attribute is related to decent opportunities of employment, decent payment (in cash or other ways), safe and healthy working conditions. Social protection and income security are ascribed to main features of decent work. They are defined according to each state system and level of development. Two other features emphasize social relations of employees: main employee’s rights (freedom of association, right to work free from discrimination and ban on compulsory work and child labour) and social dialogue, which helps employees to implement their rights and attitude, protects interests and obliges to debate in order for employees to come to agreement with employers and authorities on issues related to employment [16, p. 113]. ILO director-general Juan Somavia also suggests applying the latter two objectives. First of all he proposes to evaluate whether international work standards are followed. Then social dialogue is necessary [38]. The consolidation of social dialogue is important both to determine employee’s rights for better work conditions, to maintain social union and peace and to encourage economic and social progress. Social dialogue is a tool to deal with many issues in consensus or compromise and becomes one of the advanced ways to organize work or business. Problems are easier to solve when employers and employees meet and discuss at one table [38].

The membership of ILO member states is coherent to minimum labour standards, which are defined in ILO convention, 8 of which (No. 29, 87, 98, 105, 100, 111, 138 and 182) include 4 main principles: freedom of associations and right to collective negotiations, prohibition of compulsory and forced work, prohibition of child labour, equal opportunities and equal attitude to work must be implemented on national level. Member states have the freedom to choose whether they are willing to accept the obligations of other international labour standards. In this respect it might be concluded that ILO members have no strict legal obligations to follow ILO standards. International Labour Organization applies labour standard surveillance and control mechanism (ILO conventions art. 24-29 and 31-34), which is just diplomatic validation of expert assistance to the States for the proper application of international labour standards. Maybe it would be enough to check whether States ratify ILO standards (conventions) or not. However, as most experts observe, such ratification usually is just a formality, not a real

actualization of employees' rights [35, p. 18, 21]. Therefore, the actual implementation of these standards is feasible when assessing only the ratification of conventions as one of the features of decent work.

References about decent work might be found in much earlier international and EU documentation. For example, article 23 [44] of the Universal Declaration of Human Rights (1948) states that everyone has a right to employment, free choice of employment, just and appropriate work conditions and protection from unemployment. Article 7 [36] of the International Covenant on Economic, Social and Cultural Rights (1966) anticipate that a person's right to decent and favourable conditions include

- a) Remuneration, which provides all workers, as a minimum, with:
  - i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;
  - ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;
- b) Working conditions corresponding to safety and health requirements;
- c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;
- d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

After looking at the list of just and favourable work conditions and their content, it might be stated that they include equal opportunities and are a part of employment security feature, i.e. safe and healthy working conditions, just remuneration, carrier possibilities and work hours limit in respect to rest. The Constitutional Court of the Republic of Lithuania has repeatedly expressed its support (ruling on 9 April 2002 of Constitutional Court, ruling on 29 April 2008 of Constitutional Court, ruling on 2 September 2009 of Constitutional Court) to the attitude that work conditions include work environment, nature of work, work and leisure time, work tools and etc., which do not affect negatively the employee's life, health and meet safety and health requirements. Working hour limit is closely related to safe working conditions and is possible only on the basis that after certain hours of work decreases employees' labour productivity, attentiveness and vigilance, which result in mistakes at work, defects, losses for employer's and even accidents. However, employers are concerned that employees work more and longer; an employee, on the other hand, strives to work longer for possible additional earnings. Requirements for decent work change considering the needs of the modern European economy, attitude and understanding of labour relations, their form and content. If in 1931 the working hours (as one of the conditions for decent work) were reduced to 48 hours per week (ILO convention No.1), later, in 1994, to 40 hours/week (ILO convention No. 47), in 2004, 2008 and 2010 European Commission introduced the proposal to revise working time directive No. 2003/88/EB and to anticipate possibility to work longer than 48 hours [21]. In Lithuania today there are ambitions to prolong working hours, for example, on 14 April 2012 the draft of Labour Code amendments no. XIP-4555[23] intends that

“daily working hour limit must not exceed average 8 working hours,” “average maximum working hours including overtime in seven days should not exceed 48 hours”. It means that one day employee might work longer, for example 10 hours/day, and the next less. In such a case, decent work might be secured if legal norms protect employees from unfair exploitation, ensure safe and healthy working conditions, main rights (right to rest) and protect from their violations. On the other hand, according to experts, legal regulation on the improvement of employees’ safety and health conditions at work is sufficiently detailed and wide. Now the most relevant topic would be not the compliance to legal norms, but consolidation of social dialogue, business transparency, voluntary implementation of innovations in the enterprise [5, p. 5].

Attention should be paid that, in consideration of *coordination of conflicting interests and social compromise function*, the distinguished features of decent work are not just conditions under which the employee or work place are evaluated, for example, productive and freely chosen employment can be ensured only if the employer has the opportunity to choose the appropriate quantity of workers, who will work productively and, of course, will earn for the employer and for himself. Thus, the employee must be capacitated to improve qualification and choose to work part-time or in a flexible working schedule, with the objective to reconcile work and family responsibilities or personal life. In other words, the 4 main objectives of decent work are distinguished: productive and freely chosen employment, rights at work (including the core labour standards), social protection, social dialogue and equal treatment for men and women in respect to all four features [13]. It might be stated that decent work is primarily focused on employment protection which is implemented through the flexibility of labour relations, social dialogue and equal opportunities. Effective employment policy has to ensure necessary flexibility and the lowest possible risk. The flexible labour market improves if it is complemented by strong social security [20, p.15-16]. Employment security involves free choice of employment both at the time of getting employed, improving qualification, making carrier, reconciling work and family/personal life and employees’ rights including safe and healthy working conditions, wages, work time limit, social security and equal opportunities for which it would also be useful to negotiate in the form of social dialogue.

#### **4. Concept of decent work in legal regulation of Lithuania**

The Lithuanian labour market and business conditions require adequate, especially careful and measured legal regulation of labour relation, which would ensure a balance between economic and social interests, including the employers’ and employees’, state and personal interests [37, p. 187]. However, most authors (for example, I. Tatoriene, T. Davulis and others) observe that such a balance is absent. These amendments are intended to regulate labour relations in a more flexible manner. Thus, with the help of a temporary means and fragmentary development of individual labour law provisions or problem-solving tools, offer a hand to the employers [37, p. 182; 8, p. 230].

Evaluation of one of objectives of decent work (employment security) reveals the fact that the concept of decent work is defined in LSE (2006), but not in LC. Decent work is understood in several respects: (1) work corresponding to the job seeker's vocational training, (2) available work experience or capacity to perform the proposed work, (3) state of health, (4) position in labour market and (5) whether total time spent travelling to and from work does not exceed 3 hours and in the case of the disabled and persons with family obligations—2 hours. This term refers only to this law, and only in offering unemployed person a job with the above-mentioned determinants. Distinguished features do not show the quality of the workplace or requirements to a certain position, but an unemployed person's application to a certain workplace or position, according to existing vocational training, work experience, skills, state of health. The other two features (position in labour market and general duration of trip to work and back home) show the possibility of the existing labour market to offer the job. In other words, in case of an overcrowded labour market and regional employment policy, very often jobseekers gratuitously refused work in another city or district which prevented fluent implementation of employment policy, deletion from lists of the unemployed or deprivation of unemployed status from persons with certain social guarantees (for example, right to unemployment benefit, health insurance, receipt of compensations and others). Thus, if an unemployed individual is offered a job according to his profession and skills only in a city or district other than where he lives, he might refuse it only under sound reasons. The refusal of the proposed work meets the principle of freedom to choose the job or not. Here another principle is in effect—the principle of forced and compulsory work insurance. However, the requirement to justify one's refusal might restrict the person's right to freely choose a job. Following the principle of coordination between personal and public interests, such a requirement is reasonably necessary to prevent abuse of the right of unemployment. Therefore, if a person unreasonably refuses the proposed work, sanctions are not applied, but there is a restriction to discontinue the provision of services for the period of 6 months: job search or offers of other active labour market measures, as well as allocation of unemployment insurance benefit [27, p. 42]. Such persons remain in the list of unemployed; moreover, concern is taken for their social and health welfare (they do not pay for health services) in order that they could return to the labour market on their own efforts as soon as possible. On the other hand, the above already-analysed feature of decent work—the right to productive and freely chosen employment—should be based not on distance in so far as on the trip costs. For example, they might be higher than income from work or similar. Besides, productive work is always related to perspectives, opportunity to improve qualification, make carrier and etc. At present, three objectives define the concept of decent work in LSE: (1) job corresponding to a jobseeker's professional skills, (2) ability to perform offered job (to exercise the functions), (3) total time spent when travelling to and from work [25, art. 2]. Features of “decent work,” as defined in LSE, do not provide legal employment guarantees, since an employee has to accept what is offered by the employer through the intermediates, i.e. Local Labour Exchange, which is not obliged to look for safe and healthy work, which would ensure all employee's rights,

productive and flexible work where there would be an opportunity to reconcile family obligations and work, develop qualification, participate in decision-making, keep social dialogue and protection from discriminations and inequality and etc. Accordingly, it might be concluded, that the above-mentioned features are not enough to consider the work as decent as it is defined in ILO and EU documentation, since, as has already been mentioned, the first two features do not characterize the workplace, but the employee, and the third is only partly related to the workplace.

A lot of interpretations of the concept of decent work and its distinguished features exist among scientists and representatives of the State. Nevertheless, in respect with the functions of labour law, the concept of decent work should be defined in LC instead of LSE.

## 5. Conclusion

The purpose of the contemporary labour law is, with the help of legal norms, to contribute to the formation of employment policy and constitution of equal conditions to the representatives of conflicting interests. Equal conditions should ensure both the employees' rights (needs) to work and at work and other necessary conditions (economic, social and etc.) for decent work and its process. Temporary additional protection is applied only to those who are weaker and unable to compete with all other participants of labour relations on equal rights.

Although there are a lot of "decent work" interpretations, most of them are focused on employment protection, which is implemented through the flexibility of labour relations and social dialogue on equal opportunities. Employment security is understood as free choice of a job at the time of employment and subsequently, qualification development, opportunities for carrier, possibility to reconcile work and personal life, employees' rights including safe and healthy working conditions, fair wages, limit on working hours and social protection. The negotiations in the form of social dialogue must cope with all conditions including the principle of equal opportunities.

Following the functions of labour law, the underlying concept of decent work should be defined in LC and would allow implementing the flexicurity principle. In order to avoid gaps in legal regulation, I would suggest to rename present definition of "Decent work" embedded in LSE into the "Proposal for job".

## References

1. Adhikari, D. R. "Decent Work and Quality of Worklife in Nepal: The Agenda for Framing New Labour Law and policy in Nepal." (*Prepared for the Second Conference of the Regulating for Decent Work Network Organised by the ILO Office, 6-8 July, 2011, Geneva*) Sundhara, Kathmandu. Nepal.
2. Anker, R. Measuring decent work using statistical indicators. Outline slides. PPT [accessed 2012-02-20] Available online: <<http://www.google.lt/url?sa=t&rct=j&q=&esrc=s&>

source=web&cd=1&ved=0CFoQFjAA&url=http%3A%2F%2Ftraining.ilo.org%2Fdecent-work%2Fstaffconf2001%2Fpresentations%2FKUS3-Anker.ppt&ei=pSLfT4S\_Na354QTS4ZGhCg&usq=AFQjCNHuLaB8TogIwspjeim-TTjoCG46Pg&sig2=dUaS6kNxnQvQw4JxuEOL7A>.

3. Anker, R.; Chernyshev, I.; Egger, P.; Mehran, F. "Measuring Decent Work with Statistical indicators." *International Labour Review*, Vol.142 (2003), No.2.
4. Blanpain, R. "Flexicurity in a Global Economy." *Darbo rinka XXI amžiuje: Lankstumo ir saugumo paieškos*. [Tarptautinės mokslinės konferencijos 2011 m. gegužės 12-14 d. straipsnių rinkinys]. Vilnius, 2011.
5. Communication from Commission. Adapting to change in work and society: a new Community strategy on health and safety at work 2002–2006, COM(2002) 118 final.
6. Darbo teisė [vadovas I.Nekrošius, autorių kolektyvas]. Vilnius: Teisinės informacijos centras, 2008.
7. Davulis, T. "Lietuvos darbo modernizavimo perspektyvos." *Jurisprudencija*. Mokslo darbai. 2008, Nr. 8 (110).
8. Davulis, T. Lietuvos Respublikos darbo kodekso pakeitimai 2009-2010 metais – besikeičianti darbo teisėkūros paradigma? *Darbo rinka XXI amžiuje: lankstumo ir saugumo paieškos* [Tarptautinės mokslinės konferencijos 2011 m. gegužės 12-14 d. straipsnių rinkinys] Vilnius, 2011.
9. Decent work. Report of the ILO Director General to the International Labour Conference. Geneva, ILO, 1999. [accessed 2011-06-20]. Available online: <<http://www.ilo.org/public/english/standards/relm/ilc/ilc87/rep-i.htm#4>. The institutional capabilities>.
10. Europos Bendrijų Komisija. Žalioji knyga. Darbo teisės modernizavimas įgyvendinant 21-ojo amžiaus uždavinius. Briuselis, 2006.
11. Europos ekonomikos ir socialinių reikalų komiteto nuomonė dėl Komisijos komunikato Tarybai, Europos Parlamentui, Europos ekonomikos ir socialinių reikalų komitetui ir Regionų komitetui Skatinti padorų darbą visiems. Europos Sąjungos indėlis įgyvendinant padoraus darbo pasaulyje darbotvarkę COM(2006) 249 final. *OL C 93, 2007*.
12. Europos fondo finansuoto Penktojo Europos darbo sąlygų 2010 m. tyrimo rezultatai. [accessed 2012-04-04]. Available online: <[http://www.eurofound.europa.eu/surveys/smt/ewcs/results\\_it.htm](http://www.eurofound.europa.eu/surveys/smt/ewcs/results_it.htm)>.
13. Europos Parlamento 2007 m. gegužės 23 d. Rezoliucija dėl deramo darbo visiems skatinimo (2006/2240(INI)) *OL C 102E, 2008*.
14. Europos socialinė chartija. *Valstybės žinios*, 2001-06-08, Nr. 49-1704.
- Faioli, M. "The ILO's 'Decent Work' And Labour Law Deregulation: Can They Be Reconciled?" 08/10/2010 [accessed 2012-06-04]. Available online: <<http://www.social-europe.eu/2010/10/the-ilos-%E2%80%98decent-work%E2%80%99-and-labour-law-deregulation-can-they-be-reconciled/>>.
16. Ghai, D. Decent work: concept and indicators. *International Labour Review*, Vol.142 (2003), No. 2
17. Giedraitytė, V. ... [et al.]. *Teisės pagrindai: mokomoji knyga*. Kaunas, Technologija, 2011.
18. Gruževskis, B. "Darbo rinkos pokyčių įtaka darbo teisei." *Lietuvos darbo teisės raida ir perspektyvos* [Liber Amicorum et Collegarum Profesorei G.Dambrauskienei]. V.: MRU, 2010.
19. Gruževskis, B. "Darbo, gyventojų užimtumo bei darbo rinkos politikos tyrimai Lietuvos raidos kontekste." *Aktualūs socialinės politikos klausimai. Socialinė raida ir politika*. Vilnius: Lietuvos Socialinių tyrimų centro Darbo ir socialinių tyrimų institutas, 2011/9.

20. Hemerijck, A., *Pusiau suverenių Europos socialinės gerovės valstybių ir ES vaidmens kaita*. Nyderlandai: Leideno universitetas, 2005.
21. Komisijos bandymai siūlyti persvarstyti Darbo laiko direktyvą ir jos rezultatus [accessed 2012-06-04]. Available online: <<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/04/1129&format=HTML&aged=0&language=LT&guiLanguage=en>>; and <[http://ec.europa.eu/lietuva/ziniasklaidai/10062008\\_susitarimas\\_lt.htm](http://ec.europa.eu/lietuva/ziniasklaidai/10062008_susitarimas_lt.htm)> and <<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/10/345&format=HTML&aged=1&language=LT&guiLanguage=en>> and <[http://ec.europa.eu/lietuva/ziniasklaidai/21122010\\_laikas\\_lt.htm](http://ec.europa.eu/lietuva/ziniasklaidai/21122010_laikas_lt.htm)>
22. Komisijos komunikatas Tarybai, Europos Parlamentui, Europos ekonomikos ir socialinių reikalų komitetui ir Regionų komitetui - Skatinti padorų darbą visiems - Europos Sąjungos indėlis įgyvendinant padoraus darbo pasaulyje darbotvarkę {SEK(2006) 643}/\* KOM/2006/0249 galutinis. OL C 93, 2007.
23. Lietuvos Respublikos darbo kodekso pakeitimų įstatymo projektas [accessed 2012-06-12]. Available online: <[http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=427144&p\\_query=&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=427144&p_query=&p_tr2=2)>.
24. Lietuvos Respublikos teismų įstatymas. *Valstybės žinios*, 1994, Nr. 46-851.
25. Lietuvos Respublikos užimtumo rėmimo įstatymas. *Valstybės žinios*, 2004, Nr. 186-6930, 2005, Nr. 64-2292; 2009, Nr. 100-4186), 2010, Nr. 90-4773
26. Lietuvos Respublikos valstybinio socialinio draudimo pensijų įstatymas. *Valstybės žinios*, 1994, Nr. 59-1153, 2011, Nr. 77-3723.
27. Lietuvos Respublikos Vyriausybės 2004 m. gruodžio 24 d. nutarimas Nr. 1656 Dėl Nedarbo socialinio draudimo išmokų nuostatų patvirtinimo. *Valstybės žinios*, 2004, Nr. 186-6930, 2009, Nr. 100-4186, 2010, Nr. 90-4773.
28. *Lietuvos teisės įvadas: vadovėlis* [Banevičienė A... [et al.]; atsakingasis redaktorius Antanas Šenavičius]. Kaunas, Technologija, 2012.
29. Liutov, N.L.; Morozov, P. E. *Международное трудовое право. [Учебное пособие]*, Москва, 2011.
30. Mačernytė-Panomariovienė, I. "The Concept of common principles of flexicurity and legal importance in the formation of employment policy in the European Union." *Issue of the Yearbook. Studia z zakresu prawa pracy i polityki społecznej (Studies in Labour Law and Social Policy)* Krakow: Jagiellonian University, 2011.
31. Mačernytė-Panomariovienė, I. "Flexicurity samprata ir įgyvendinimo galimybės Lietuvos užimtumo politikoje." *Jurisprudencija*. Mokslo darbai, Vilnius: MRU, Nr.18 (3), 2011.
32. Petrylaitė, D. "Darbo rinkos lankstumo ir užimtumo garantijų pusiausvyra formuojant integruotą požiūrį į užimtumo didinimą Lietuvoje." [Report]. Vilnius: Darbo ir socialinių tyrimų institutas, 2008.
33. Pumputis, A. "Poreikiai kai žmogaus teisių raidos pagrindas." *Liber Amicorum Pranas Kūris. Teisė besikeičiančioje Europoje*. Vilnius: MRU, 2008.
34. Quality of work and employment in Europe Issues and challenges. European Foundation for the Improvement of Living and Working Conditions. Foundation paper 2002, February No1. Luxembourg: Office for Official Publications of the European Communities, 2002 ISBN 92-897-0156-0
35. Responding to globalization: a decent work agenda for the Caribbean in the context of regional integration. Background paper. Tripartite Caribbean Employment Forum. ILO: Barbados, 10-12 October 2006 [accessed 2012-06-04]. Available online: <<http://www.ilo-carib.org.tt/cef/background-paper.pdf>>.

36. Tarptautinio ekonominių, socialinių ir kultūrinių teisių paktas. *Valstybės žinios*, 2002, Nr. 77-3290.
37. Tatorienė, I. “Darbo kodekso pakeitimai liberalizuojant darbo teisinius santykius. *Ekonomikos, teisės ir studijų aktualijos 2009*” [Tarptautinė mokslinė praktinė konferencija, 2009 m. lapkričio 12 d.], Kauno kolegijos ekonomikos ir teisės fakultetas, 2009.
38. TDO vadovas: krizė neturi silpninti darbuotojų teisių. [accessed 2012-06-04]. Available online: <<http://ep.alfa.lt/2011/09/tdo-vadovas-krize-neturi-silpninti-darbuotoju-teisiu/>>.
39. Tiažkijus, V. “Darbo sutartis: teisinio reguliavimo raida ir perspektyvos.” *Lietuvos darbo teisės raida ir perspektyvos* [Liber Amicorum et Collegarum Professorei Genovaitei Dambrauskienei]. V. 2010.
40. Tinkamai padarytas, padorus darbas. E-žodynas [accessed 2012-02-04.]. Available online: <<http://www.zodynas.lt/terminu-zodynas/P/padorus>>; <<http://glosbe.com/lt/en/padorus>>.
41. Tinkamo darbo programos įgyvendinimas. [accessed 2012-06-02]. Available online: <<http://www.ilo.org/global/about-the-ilo/decent-work-agenda/lang--en/index.htm>>.
42. Vaišvila, A. *Teisės teorija: vadovėlis*. Vilnius: Justitia, 2000.
43. Vaišvila, A. *Teisės teorija: vadovėlis*. [3-ias pataisytas leidimas] Vilnius: Justitia, 2009.
44. Visuotinės žmogaus teisių deklaracija. *Valstybės žinios*, 2006, Nr. 68-2497.

## TINKAMAS DARBAS IR JO PASKIRTIS

Ingrida MAČERNYTĖ PANOMARIOVIENĖ

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**Ingrida Mačernytė Panomariovienė** – Professor, Labour Law and Social Security Department, Faculty of Law at Mykolas Romeris University. Science Secretary of Institute of Law.

**Ingrida Mačernytė Panomariovienė** – Teisės mokslų daktarė. Mykolo Romerio universiteto Teisės fakulteto Darbo teisės ir socialinės saugos katedros profesorė, Teisės instituto mokslinė sekretorė.