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## THE FEATURES OF LEGAL REGULATION ON PART-TIME WORK

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**Abstract.** *The article concentrates on the main features of part-time work according to international law and international practice. In order to discuss the modern understanding of part-time work, the author analyzes the provisions of legal regulation on part-time work, the concept of part-time work, the main forms of part-time work organization, duration of part-time work and the features of part-time work agreements.*

*The article aims at identifying the main features of legal regulation for ensuring the most effective implementation of part-time agreements in practice. It is discussed whether the implementation of this right can be linked with labour contract party autonomy, not limited by an imperative of the legislator. With the view on that, the author analyzes which legal regulation is mostly corresponding with the essence and the objectives of part-time work.*

*While analyzing the legal regulation in Lithuania, the issue of whether the concept of part-time work in the national law always corresponds to the modern concept of part-time work in the international law and practice.*

**Keywords:** *part-time work, incomplete working day, incomplete working week, summary recording of part-time work, part-time worker, shorter working time.*

## Introduction

Implementation of agreements on part-time work concluded according to the principle of party autonomy leads to the creation of more work places, reconciliation of professional and family life, work and studies, better conditions for pre-retirement workers to stay in the labour market and for young workers to join the labour market (it). Thus it is important to provide a legal basis for approximation of the principles of flexicurity in labour relations.

The purpose of this article is to analyze in detail the conditions of the formation of part-time work sub-institute, the concept of part-time work, the forms of its organization and duration, and the features of part-time work agreements, and to define the concept of part-time work and identify the features of legal regulation ensuring the most effective implementation of such agreements in practice. The article discusses whether part-time work is the right of the employee or the employer, and raises the question of whether implementation of this right in the context of the constitutional, international and the European Union (the EU) law may be identified with party autonomy to conclude labour contracts without mandatory limitations imposed by the legislator. The question is raised whether the “absolute” freedom of the parties of a labour contract to agree on the duration of part-time work and the procedure of implementation of this right and the rights of the employee corresponds to the international and constitutional legal requirements. The article also analyzes whether the choice of a dispositive method of legal regulation is sufficient to ensure one of the main functions of the labour law—to protect the interests of the weaker party of the labour relations—in this case, the part-time employee.

For this purpose, the author applies historic, comparative and legal analysis methods, analyses the main provisions established in the European Social Partners’ Framework agreement on part-time work<sup>1</sup> (further—the Directive), the International Labour Organization (the ILO), some foreign states and Lithuanian legislation.

### 1. Main Conditions of Part-Time Legal Regulation

In June 1994, both the ILO’s Part-time Work Convention No. 175<sup>2</sup> and the Recommendation No. 182 on Part-time Work (further—the Convention and the Recommendation respectively) were adopted, thus the part-time work issues were for the first time regulated under international law. The author agrees with the statement of J. Murray that the adoption of the said Convention has had a direct effect on the legislative process of

1 This Framework agreement of European Partners was transferred into the Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by the Union of Industrial and Employers’ Confederations of Europe (UNICE), European Centre of Employers and Enterprises (CEEP) and the European Trade Union Confederation (ETUC).

2 At the moment, this Convention is ratified by only 13 states (Albania, Bosnia and Herzegovina, Cyprus, Finland, Guyana, Hungary, Italy, Luxembourg, Mauritius, the Netherlands, Portugal, Slovenia and Sweden). [accessed 31-08-2010] <<http://webfusion.ilo.org/public/db/standards/normes/appl/appl-byConv.cfm?hdroff=1&conv=C175&Lang=EN>>.

the European Union in this field.<sup>3</sup> In December of the same year, the Essen European Council, in its conclusions which were the basis for transferring the said Framework Agreement to the Directive, stressed that promotion of employment may be achieved “in particular by a more flexible organization of work in a way which fulfils both the wishes of employees and the requirements of competition.”<sup>4</sup> The parties of the Agreement<sup>5</sup> recognized it as a contribution to the overall European strategy on employment and stated that “part-time work has had an important impact on employment in recent years.”

The development of the history of law in the western states, which were the first to introduce part-time work, confirms that the first precondition for legal regulation on part-time work is related to the state-implemented *promotion of employment*. In 1970s’ Netherlands, part-time work was used as an instrument to integrate into the labour market mothers who had never worked<sup>6</sup>. In Spain, since the amendments of the *Ley* decree on 2 August 1984, the right to initiate a part-time work agreement until 1991 was reserved only for employees who had encountered difficulties in finding a job.<sup>7</sup>

Part-time work for a while was understood as a measure of integration of certain persons into the labour market. The special feature of the modern right to part-time work is that every subject of labour law may exercise it. Moreover, this right applies both in private and public sectors. The international law and practice establishes only a limited number of exceptions of implementation of the right to part-time work, e.g. in public sector,<sup>8</sup> small enterprises<sup>9</sup> and other cases, usually agreed upon by the social partners in accordance with the national law or practice.

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- 3 J. Murray claims that this Convention has served as an inspiration both for the Agreement and the position of the European Commission and ETUC (Social Justice for Women? The ILO’s Convention on Part-Time Work, “Atypical Work” and Attempts to Regulate it. *International Journal of Comparative Labour Law and Industrial Relations*. 1999, 15(3).
  - 4 The conclusions of the Essen European Council are quoted in the 5th point of the Preamble of the Directive.
  - 5 Union of Industrial and Employers’ Confederations of Europe (UNICE), European Centre of Employers and Enterprises (CEEP) and the European Trade Union Confederation (ETUC).
  - 6 In the Netherlands, until 1975, women were forbidden to remain in civil service after conclusion of marriage and the dismissal of a pregnant married woman was considered lawful. See *Part-time work in the Netherlands*. September 2002, No. 39, Revised version, Ministry of Social Affairs and Employment, Directorate of International Relations, p. 7.
  - 7 Agut Garcia, C.; Yanini Baeza, J. Part-time Employment in Spain. *International Journal of Comparative Labour Law and Industrial Relation*. 2002, Spring 85.
  - 8 The legislative acts in Germany provide that this right cannot be executed by public servants, in the Netherlands—the military personnel in the sphere of state defence, in the United Kingdom—the state defence sector and judicial officers on a daily fee basis; in Poland—the military are excluded.
  - 9 The German Part-time and Fixed-term employment act (*Gesetz über Teilzeitarbeit und befristete Arbeitsverträge*), which came into force on 1 January 2001, established that in companies with a maximum of 15 workers, the employer’s refusal to set part-time work by request of an employee would not be unlawful. Although the German trade unions disapproved of the exception, from the legal point of view, the exception for small companies is reasonable and corresponds with the EU’s objective to protect the rights of small and medium enterprises (D. Burri, S.; C. Opitz, H.; G. Veldman, A. Work-Family Policies on Working Time in Practice. A Comparison of Dutch and German Case Law on Working-Time Adjustment. *The International Journal of Comparative Labour Law and Industrial Relations*. 2003, 19(3): 337).

The Directive does not elaborate on the duties of the member states (understood as a measure to promote employment<sup>10</sup>) but the Convention establishes some relevant substantive legal provisions. The Convention is adopted after recognition of “the need for employment policies to take into account the role of part-time work in facilitating additional employment opportunities.” Therefore, the implementing states are obliged to ensure that employment agencies announce the information about available part-time jobs. Under point 6 of the Recommendation, the state parties are recommended “granting to part-time workers minimum or flat-rate benefits, in particular old-age, sickness, invalidity and maternity benefits, as well as family allowances,” and providing the right to unemployment benefits for part-time workers and temporary workers. The Recommendation also provides for other provisions, enabling the member states to reconcile the legal norms of labour law and social security with the view of proper implementation of the said right.<sup>11</sup>

The model of international legal regulation, that combines legal provisions of labour, employment and social security<sup>12</sup>, shows that the part-time work sub-institute is effective only if it comprises of all fields of the mentioned legal regulation. For instance, in Spain in 1993-1995, the right to social benefits was granted to the workers who worked no more than twelve hours per week or forty eight hours per month. Although these benefits were proportionally smaller than the benefits of full-time workers, the purpose of harmonizing the legal provisions on labour and social security can be seen as one of the early manifestations of flexicurity.

As the labour market continued to change, other bases of legal regulation on part-time work have eventually formed. At the moment part-time work is recognized not only as a measure of state policy on employment, but also is linked with the employer’s right to be flexible in work organization at a company—which is a *measure of ensuring flexibility in legal labour relations*. It is important that flexibility in legal labour relations is associated not only with the employer, but also with the needs of the employee to reconcile his/her professional and family life, work and studies.

Usually, legal literature links the right to choose part-time work with the employee’s right for various subjective and objective reasons to work part-time and not to suffer

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10 The author notes that the European Employment strategy, which employed open an coordination method and the member states shared good practices, consistently recognized part-time work as one of the instruments used by the states to promote employment.

11 The Recommendation stresses that provisions of statutory social security schemes, based on occupational activity that may discourage recourse to or acceptance of part-time work, should be adapted, in particular those which: (a) result in proportionately higher contributions for part-time workers unless these are justified by corresponding proportionately higher benefits; (b) without reasonable grounds, significantly reduce the unemployment benefits of unemployed workers who temporarily accept part-time work; (c) overemphasize, in the calculation of old-age benefits, the reduced income from part-time work undertaken solely during the period preceding retirement. (point 16).

12 The ILO law and the Directive defines the content of part-time worker’s legal status by stressing the necessity to guarantee social security based on occupational activity without discrimination for part-time workers. Thus, the state’s social security guarantees for part-time workers fall under the exceptional prerogative of national legislation according to international law (except for the duty to coordinate social security schemes under European Union law).

*discrimination* for this choice.<sup>13</sup> Therefore, another precondition of part-time legal regulation can be distinguished—the *guarantee of security in legal labour relations*. This precondition of legal regulation in a wide sense may be linked with the aim to abolish discrimination in the fields of work, employment and certain fields of social security law, to increase the quality of such work (by ensuring proper safety of workers and etc.), to provide legal conditions voluntarily considering the interests of the employee and the employer, and to develop flexible forms of work organization.

It is recognized that the protection of the rights and guarantees of the part-time workers may be fully ensured only in cases where it applies not only to the fields of work and employment, but also in the field of social security law. The author agrees with the opinion of Carmen Agut Garcia that only harmonization of legal provisions on social security and employment can ensure an effective initial function and other functions of part-time work, i.e., promotion of employment, flexicurity and creation of more quality jobs.<sup>14</sup>

## 2. The Concept of Part-Time Work

In order to thoroughly analyze the concept of part-time work, the author in this part of the paper discusses the main features of the agreement on part-time work, the duration of part-time work and its forms of organization.

### 2.1. The Features of Agreement on Part-Time Work

According to legal provisions of the ILO and the Directive, agreement on part-time work may be reached only upon an *individual consensus of the employee and the employer*. Thus the main feature of this agreement is that it can be executed only upon a mutual consensus of the employer and the employee.<sup>15</sup> Article 15 of the Convention establishes that amendment of this condition of a labour contract must be voluntary. Therefore, the employer is not allowed to decide unilaterally to transfer the employee from full-time to part-time work even in cases when there are economic, administrative, technical, and other reasons, provided it has not been agreed upon with the employee in advance.<sup>16</sup>

The international and Lithuanian law allows providing for conditions for implementation of the said right in collective agreements. In the author's opinion, regardless of the possibility, the exclusively individual nature of part-time work also means that a

13 The concept of indirect discrimination was formulated by the European Court of Justice in the following cases: 96/80, Jenkins, [1981] ECR 911; 170/84, Bilka/Kaufhaus, [1986] ECR 1620 and etc. See Barnard, C. *EC Employment and Labour Law*. 2 ed. Oxford: 2000, p. 209–220; Blanpain, R. *European Labour Law*. Den Hague: 2000, p. 295–299; Nielsen, R. *European Labour Law*. Copenhagen: 2000, p. 220–223.

14 Agut Garcia, C.; Yanini Baeza, J., *supra* note 7.

15 *Ibid.*, p. 97.

16 Herne Cuevas, E.J. LA modificacion de la duracion de la jornada ex art. 41 ET, El tiempo de pa prestacion como condicion de trabajo y la tipologia contractual. *Tribuna Social*. 1997, 84(41).

provision on part-time work in a collective agreement contradicts with the essence of part-time work based on *individual* agreement, if it has not been individually consented to by the employer and employees.

Regarding the subjects who have the right to initiate the agreement on part-time work, it is important to note that the international law establishes only the duties of the employer to take measures for the purposes of part-time work accessibility to the employee, and guaranteeing that transfer from full-time to part-time work and vice versa is voluntary. The employers are obliged to supply the employees with timely information on part-time work and full-time work, and to consider such requests of the employees.<sup>17</sup> These duties of the employer presuppose the assumption that the agreement on part-time work can be initiated only by the employee. However, neither international, nor foreign law, nor practices establish a direct prohibition for the employer to initiate the said agreements. The duties of the employer do not negate his right to initiate part-time work agreements. International law forbids dismissing the employee based on his refusal to amend the relevant provision of the labour contract (Article 10 of the Convention, points 18-20 of the Recommendation). Thus it can be concluded that international law allows both the employer and the employee to initiate the agreement on part-time work.

The ILO legislation consistently establishes the concept of “part-time work” and at the same time defines what does not come under the definition of this legal term. Article 1(d) of the Convention and point 2(d) of the Recommendation provide that “full-time workers affected by partial unemployment, that is a collective and temporary reduction in their normal hours of work for economic, technical or structural reasons, are not considered to be part-time workers.”

From the legal perspective, the term of “partial unemployment” differs from the term “part-time work” in particular because it does not concern an individual agreement of the employer and employee, but only establishes a shorter duration of work time for all staff of the employees, i.e. a *unilateral action of the employer in the company, institution, or organization*. In this case, the employer is not obliged to receive the consensus of each employee. However, the unilateral action of the employer can have only temporary effects and be taken only upon certain conditions. The Convention provides a finite list of conditions which allow the employer to take use of the said right. Although the ILO does not directly establish the duration of partial unemployment, it may be presumed that the duration may be linked with the disappearance of said conditions. International law does not provide for a limited list of conditions on the conclusion of part-time agreement nor the duration of this agreement, leaving parties the autonomy to decide upon that. It must be stressed that in case of partial unemployment, in contrast to part-time work, the employer is provided with the right to shorten the duration of work and not extend it. The Convention establishes that in this case the employees are not considered to be part-time workers.

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17 The legislation of foreign states provides for the general duty of the employer to inform the workers on work conditions and a special employer’s duty to inform the workers on shortening or extending the working time. For instance, German law provides that employers are obliged to provide information about free jobs in the company to workers who want to change their working time and to consider the requests of such workers.

The author considers that the term “partial unemployment,” from the legal point of view, is close to the term “idle time” without any fault on the part of an employee, provided for in the Labour Code of the Republic of Lithuania (further—the Labour Code).<sup>18</sup> This is important only if the discussed cases involve employees being exempted from the requirement to be provided with all the rights and guarantees applicable to employees by the Convention and related to the content of the legal status of such employees.

To conclude, the employer and employee may agree upon part-time work only voluntarily and individually (not collectively). It is important that international law does not provide for a finite list of bases nor the duration of such agreements. The right to initiate a part-time work agreement is not reserved for employees only. Although the ILO establishes the duties of the employer that serve as adequate conditions of the employee to execute the said right, the employer is not prohibited to submit an offer to conclude part-time work agreement because it is recognized in the international law and practice that part-time work is based on the agreement of the employer and the employee.

## 2.2. The Main Forms of Part-Time Work Organization

For the purposes of thorough analysis of the main forms of organization of part-time work, it is important to discuss the terms “part-time worker” and “comparable full-time worker” that were not properly analyzed in the Lithuanian legal literature. The terms are in essence described alike in the Directive (Clause 3 of the Agreement) and by the ILO (Article 1 of the Convention and point 2 of the Recommendation). “Part-time worker” is an employed person whose normal hours of work per week or average work hours per year are less than those of comparable full-time workers. “Comparable full-time worker” is a full-time worker who is engaged in the same or a similar type of work or occupation and has the same type of employment relationship in the same establishment.

Based on analysis of the content of the before-mentioned provisions and the methodology of work-time calculation established in the Convention, Recommendation and the Directive, these *forms* of part-time work organization are distinguished:

1. calculation of work hours per day;
2. calculation of work hours per week;
3. calculation of working time on the basis of average of part-time work (summary recording of working time).

It must be stressed that international law provides for the possibility to extend the established part-time work.<sup>19</sup> In states where the method of social partnership and dialogue had been most thoroughly developed, trade unions objected to the transposition of the Directive into the national legislation providing only the right to reduce the working

18 Articles 122, 128, 143 (1) (8), 195 of the Labour Code.

19 Where appropriate, employers must consider requests by workers to transfer from part-time to full-time work or to extend the working time, and provide timely information to workers on the availability of part-time and full-time positions in the establishment, in order to facilitate transfers from full-time to part-time work or vice versa. (Article 5 (3) b and c of the European Social Partners’ Agreement and point 18 (b) of the Recommendation).

time. The German trade unions approved the national law transposing the Directive only when it established the employee's right to extend the part-time working time.<sup>20</sup> Moreover, the legislation of foreign countries establishes the possibility to extend or reduce the working time by providing a certain procedure which is sometimes different in reducing and extending the working time.<sup>21</sup>

In order to summarize the forms of organization of part-time work, it is important to mention that legal acts do not provide a finite list of such forms. This means that the parties may agree on an incomplete working day, incomplete working week, summary recording of working time, shortening and extending the set working hours of part-time work.

### 2.3. The Duration of Part-Time Work

For a more thorough legal analysis of the term “part-time work” is also important to analyze the content of the legal term “full-time work”. After analysis of the terms “part-time worker” and “comparable full-time worker” in the Directive and the ILO's legal acts, the author concludes that the term “full-time work” relates to “duration of the normal work” as defined by the national law, collective agreement or based on consideration with the duration of the working time of same or comparable work at the same establishment (same employer).<sup>22</sup> Besides, the concept of full-time (or normal) working time is not only related with the maximum working time duration provided by the laws.<sup>23</sup> Thus if local legal acts in the company establish 35 hours per week as the normal working time duration, a worker who is working for less than 35 hours per week in the company could be considered a part-time worker. For instance, in Spain since 1998 and until the transposition of the Directive into the national law, part-time work was defined as the work that lasts less than 77% of the whole working time set by a collective or

20 For instance, to set longer part-time working time or full-time working time.

21 For instance, in Germany, more complicated rules apply to reducing, rather than extending, part-time work. Provided that the worker informed the employer about extending his/her working time, the employer, on request of such a worker, must give preference to such a request, except for urgent orders, technical reasons or based on other interests of part-time workers. Moreover, the conditions of refusing the worker's request to extend working time are much stricter than in case of reducing the working time. The refusal to satisfy a worker's request in this case can be justified if the granting means that work organization and safety in the company may be seriously impaired and if it involves disproportional expenses. (“operational reasons”) (D. Burri, S.; C. Opitz, H.; G. Veldman, A. Work-Family Policies on Working Time in Practice. A Comparison of Dutch and German Case Law on Working-Time Adjustment. *The International Journal of Comparative Labour Law and Industrial Relations*. 2003, 19(3): 321–346. Kluwer Law International (KLI). Printed in the Netherlands).

22 If there are no comparable full-time workers in the company, the comparison is made according to the collective agreement, and if there is no collective agreement, the comparison relies on the national law, collective agreements or practice.

23 Article 144 of the Labour Code provides that “working time may not exceed 40 hours per week” (paragraph 1) and that “a daily period of work must not exceed 8 working hour” (paragraph 2) and that “maximum working time, including overtime, must not exceed 48 hours per 7 working days”(paragraph 3).

labour contract, or 77% of the normal working time set by the law in the absence of a collective agreement.<sup>24</sup>

The analyzed international legal acts do not directly discuss the term or duration of the “normal working time.” However, the author considers that this term should not include overtime, which is usually applied upon an agreement of the employer and workers.<sup>25</sup> Thus the term “full-time work” should be identified with the “normal” work duration (applicable to the workers engaged in similar activities in the company). When this “normal” working time is exceeded, it is considered that the worker is working “overtime.” As a result, the term “full-time work” should not be identified with the maximum working time allowed by the law which also includes overtime.<sup>26</sup>

The duration of part-time work (minimum or maximum) is not limited by the ILO or the Directive. In other words, this duration is linked exclusively with the dispositional party autonomy and other statutory limitations, related to the maximum (or average maximum) of the working time.<sup>27</sup>

### 3. Part-Time Work Regulation in the Lithuanian Legislation

This part of the paper analyzes the features of the Lithuanian legal regulation on part-time work and analyzes whether all national provisions are based on the international legal norms.

#### 3.1. The Duty of the Employer to Set Part-Time Working Time by Request of the worker

It is important that, according to the present version of the Labour Code (and the Labour Code of the Soviet Republic of Lithuania), the principle of party autonomy implies the right to part-time work not only by agreement of the parties but also by request of the worker which the employer *must* grant setting part-time work under the conditions established in the Labour Code.<sup>28</sup> As previously stated, the implementation of the

24 Agut Garcia, C., Yanini Baeza, J. *supra* note 7.

25 Law on amendment of Articles 76, 77, 80, 107, 108, 109, 115, 127, 147, 149, 150, 151, 202, 293, 294 and supplying with 123<sup>1</sup> article of the Labour Code of the Republic of Lithuania No. XI-927 of 22 June 2010, which came into force 1 August 2010, provides that in exceptional cases established in Article 151 the employer may order the worker to work over-time without his/her consensus. *Official Gazette*. 2010, No. 81-4221.

26 Article 150 (1) of the Labour Code.

27 Article 6 of the 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 provides only the average maximum and not the maximum weekly time. It is defined as “b) the average working time for each seven-day period, including overtime, does not exceed 48 hours.”

28 Paragraphs 2-6 of Article 146 (1) establish that part-time work is set: 1) by request of the employee due to his/her health status in accordance with conclusions of health care institution; 2) by request of a pregnant woman, 3) by request of a woman who has recently given birth; 4) by request of a woman who breast-feeds 5) by request of an employee raising a child until it reaches three years of age, 6. by request of an employee who alone raises a child until it reaches fourteen years of age or a disabled child until it reaches eighteen

Convention should involve special attention to the needs of specific groups such as the unemployed, workers with family responsibilities, older workers, workers with disabilities and workers undergoing education or training. These social groups are imperatively listed in Article 9(2)(c) of the Convention. The question arises whether these ILO's provisions could be considered as the basis for the before-mentioned provisions of the Labour Code that allow certain groups of workers to request setting part-time work. Nevertheless, the Recommendation, which explains the provisions of the Convention in more detail, establishes that even in such cases, the “national or establishment-level conditions” must be considered.<sup>29</sup> Thus, not only the request of the worker is considered, but also the interests of the employer.

The provisions of the Labour Code that grant the right to request setting part-time work should be evaluated in comparison with other imperative provisions of the Labour Code establishing the duty of the employer to set a shorter working time (Article 145).<sup>30</sup> The key feature that distinguishes the shorter working time from part-time work is that in case of shorter working time the persons are usually paid the same salary as for the full-time work.<sup>31</sup> However, Lithuanian law is not always consistent in defining the inter-relation of part-time work and shorter working time. For instance, persons under 18 years of age in accordance with Article 145 of the Labour Code must work shorter working times, while Article 146 provides that they can request part-time work. In this case it is important that the mandatory legal norm on shorter working time is more favourable for a person under 18 years of age who is not in school,<sup>32</sup> because the work-pay cannot be less than a full-time worker's pay, irrespective of age.

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years of age; 7) by request of an employee under eighteen years of age; 8) by request of a disabled person according to the conclusions issued by the Disability and Capacity for Work Establishment Office under the Ministry of Social Security and Labour; 9) by request of an employee nursing a sick member of his family, according to the conclusions of a health care institution.

- 29 Point 20 of the Recommendation establishes that “where national or establishment-level conditions permit, workers should be enabled to transfer to part-time work in justified cases, such as pregnancy or the need to care for a young child or a disabled or sick member of a worker's immediate family, and subsequently to return to full-time work.”
- 30 Article 145 of the Labour Code provides that a shorter working time is set for: “1) persons under 18 years of age—in accordance with the provisions of the Law on Safety and Health at Work; 2) persons who work in the working environment where the concentrations of hazardous factors exceed the acceptable limits set in legal acts on safety and health at work and it is technically or otherwise impossible to reduce these concentrations in the working environment to acceptable levels not hazardous to health, working time shall be set, taking into account the working environment, but not exceeding 36 hours per week. The specific daily and weekly duration of working time for persons working in such environment shall be set, taking into account the results of the investigation of the working environment on the basis of criteria and procedure approved by the Government for setting the duration of shorter working time according to the factors of working environment; 3) employees working at night.”
- 31 Resolution of the Government of the Republic of Lithuania of 30 September 2003 No. 1195 on General provisions of payment conditions for reduced-time workers. Item 1 provides: 1. Workers listed in article 145 of the Labour code (*Official Gazette*. 2002, No. 64-2569) receive the same remuneration to reduce the working day as for full-time work, except for schoolchildren, as provided in Item 2 of these provisions.
- 32 *Ibid.*

The author stresses that “part-time work” for workers to whom according to the following law only the shorter working time shall be applicable means the work which lasts shorter than the maximum duration<sup>33</sup> of the shorter working time applicable only to these specific groups of workers. It is important that the agreements on part-time work can be initiated also by the workers who work shorter working time. Thus, such workers, just like any other workers, have the right according to Article 146 of the Labour Code to request the employer to set a shorter working time than the statutory “shorter working time.”

The question arises whether the provision of Article 146 of the Labour Code establishing the duty of the employer to set a shorter working time on request of a disabled person according to the conclusions issued by the Disability and Capacity for Work Establishment Office under the Ministry of Social Security and Labour (further—Office’s conclusions), is justified. The case law in this particular case has recognized the employer’s duty to set the shorter working time even when the worker has not submitted such a request. The Supreme court of the Republic of Lithuania in its decision of 22 June 2007 (civil case No. 3K-3-278/2007) noted that Article 146 (1)(2) does not provide how the employer should behave if the worker does not request a shorter working time. The Court held that in such cases, if the worker does not execute his right to work part-time, the employer is left with the only possibility of terminating legal relations under Article 136 (1) (4) of the Labour Code, provided that the Office’s conclusions state that the worker cannot perform the agreed work (hold a position). However, the employer should first transfer the worker, with his consent, to another job suitable for his health and, if possible, in line with his qualification according to Article 273 (1) of the Labour Code.

In the author’s opinion, setting part-time work by request of the disabled person and according to the Office’s conclusions contradicts the main features of part-time work according to the international law and practice. First, both the worker and the employer do not have the autonomy to agree on part-time work. The Lithuanian law provides the duty of the contract parties to set part-time work and not their right to agree on it. Furthermore, if the worker does not implement the said right (or rather, the duty), he faces the danger of being dismissed, and according to the case practice, the dismissal in such a case would not contradict the Lithuanian legislation. It is also important that if a worker decided to request setting part-time work, the employer would not even have the right to consider such a request. I.e., the employer has the duty to set part-time work without evaluating his own needs or possibilities. Therefore, the author considers that setting *shorter working time* for the disabled worker is more reasonable. However, this can only be decided upon by the legislator by amending Article 145 of the Labour Code, because the international law does not provide for bases of setting shorter working time.

Provisions of the Labour Code on setting part-time work upon the request of a worker repeat the Labour Code of the Soviet Republic of Lithuania and should be evaluated as a relic of Soviet Union law. The author criticizes these provisions for a number of

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33 According to Article 36 (7) the Law on safety and health at work, adolescents (i.e. persons from 16 to 18 years) are allowed to work not more than 8 hours a day *counting the daily duration of lessons as working time* (!) and not more than 40 hours a week counting the weekly duration of lessons as working time.

reasons. First, the legislator is not consistent in defining the relation of part-time work upon the worker's request and shorter working time. Second, the provisions of the Labour Code on setting part-time work by worker's request contradict the Directive and the ILO legal acts because they infringe on the principle of voluntary agreement on part-time work, which can only be based on party autonomy. According to the Labour code, part-time work must be set in the analyzed cases without consideration of the employer's interests. In addition, in case the worker disagrees with part-time work, his dismissal from work would be considered lawful.

### 3.2. Part-Time Work Organization forms in Lithuanian Legislation

The legislation of Lithuania and other states<sup>34</sup> establish various forms of part-time work organization. The Labour Code provides for the right of the parties to agree upon (in certain cases—the employer's duty of setting) incomplete working day or incomplete working week. Available forms of part-time work organization are discussed in the jurisprudence of the Constitutional Court of Lithuania.

The Constitutional Court in 2001, on request of the higher administrative court, analyzed whether the right of labour contract parties to agree both on reduced working hours per day and per week does not infringe Article 94 (2) of the Constitution which states that “government shall implement laws” and Article 14 (4) of the Law on labour protection of 7 October 1993. Item 3.3 of the Procedure for establishing reduced work days or reduced work weeks approved by Government Resolution No. 21 of 9 January 1995 (further—the Procedure) provided<sup>35</sup> that “upon agreement of reduced work time, one may provide for reduction of a work day (shift) by a certain number of hours, by reducing *at the same time* the number of work days in the week.”

The Constitutional Court considered the interpretation of Article 46 of the Law on Labour Protection which provided that upon an agreement of the worker and the employer, “reduced work days or reduced work weeks” could be established. Although the Constitutional Court agreed that it might seem that by law, the government was commissioned to establish either the procedure of reduced work days or that of reduced work weeks it also stated that the provision is to be construed not only literally (in a linguistic manner) but also taking into account other provisions of Article 46 of the Law.

In the course of the preparation of the case for court proceedings, a written explanation was received from prof. I. Nekrošius,<sup>36</sup> who noted that the constitutional provision permits the Government to establish certain procedures of implementation of the norm

34 For instance, the law of the Netherlands is entitled “*The Act on the Adaptation of Working Time (Wet op de aanpassing van de arbeidsduur)*” and instead of providing a worker's right to part-time work, it establishes the worker's right to adjust the working time to his/her needs. (D. Burri, S.; C. Opitz, H.; G. Veldman, A. Work-Family Policies on Working Time in Practice. A Comparison of Dutch and German Case Law on Working-Time Adjustment. *The International Journal of Comparative Labour Law and Industrial Relations*. 2003, 19(3): 321–346. Kluwer Law International (KLI). Printed in the Netherlands).

35 Procedure for establishing reduced work days or reduced work weeks approved by Government Resolution No. 21 of 9 January 1995. *Official Gazette*. 1995, No. 5-92

36 Vilnius University.

of the Law without changing the substantive content of the said norm. Thus under the discussed provision of the Law, upon agreement of the employee with the employer, a reduced work day or reduced work week may be established, and no one could restrict the freedom of this agreement.

Considering Article 46 (1) of the Law providing that other reduced work hour regimes which are more favourable to the employee may be established in collective contracts, collective agreements and labour contracts, as well as the principle of preference towards the employee, the Constitutional Court in its Ruling of 24 May 2001<sup>37</sup> held that there are grounds to assert that the Government, which, under the Law, was empowered to establish the procedure of reduced work days or the procedure of reduced work weeks, also had the right to establish that upon agreement of reduced work time, one may provide for reduction of a work day (shift) by a certain number of hours, by reducing *at the same time* (!) the number of work days in the week.

This ruling of the Constitutional Court is significant not only for the interpretation of legal provisions discussed in the case but also for the further development of Lithuanian labour law. At the moment the analogous sphere is regulated by Article 146 (2) of the Labour Code. Besides the part-time work regimes (established by the Law), the Article directly enlists other forms: the right to agree simultaneously on a decreased number of working days per week and a shorter working day (shift) discussed in the ruling, and a new form of part-time work that had not been provided for in Lithuanian legislation prior to the entry into force of the Labour Code—division into parts of a working day.<sup>38</sup> The Labour Code does not oblige the Government to establish other part-time forms. Although the Labour Code provides for a finite list of part-time work forms, according to the Code and other legislative acts and principles, collective agreements and labour contracts may provide other forms of part-time work organization. Nevertheless, in all cases it must be agreed upon individually, and the principle of favouring the worker, mentioned in the ruling of the Constitutional Court and established in Article 4 (2) and 4 (4) of the Labour Code must be respected.

### 3.3. Limitations Related to Summary Recording of Working Time

According to international law, summary recording of working time is a separate form of part-time work organization. However, some limitations of the right to part-time work remain in Lithuania in this case. Resolution No. 587 of the Lithuanian government of 14 May 2003 (further—resolution No. 587) establishes a prohibition of part-time agreements for workers engaged according to the regime of summary recording of working time.<sup>39</sup> This prohibition also applies to workers who requested setting part-time

37 Ruling of the Constitutional Court of the Republic of Lithuania on the compliance of Item 3.3. of the Procedure for establishing reduced work days or reduced work weeks approved by Government of the Republic of Lithuania No. 21 of 9 January 1995 with the Constitution of the Republic of Lithuania and Paragraph 4 of Article 46 of the Republic of Lithuania Law on Labour protection (wording of 7 October 1993). *Official Gazette*. 2001, No. 45-1595.

38 When parties to a labour contract agree that the worker shall work, for instance, 5 hours per day (4 days per week), and out of these, two hours from 8 to 10 a.m. and three hours from 3 to 6 p.m.

39 According to the Resolution of 14 May 2003 of the Government of the Republic of Lithuania on General

work according to paragraphs 2-6 of Article 146 (1) and those who agreed on part-time work with the employer based on Article 146 (1)(1). The international legal acts analyzed in this paper provide in essence for one possibility of setting part-time work—by the agreement of labour contract parties. Thus only the prohibition established by resolution No. 587 to engage in regime of summary recoding of working time for workers who had agreed with their employee on part-time work according to Article 146 (1)(1) should be analyzed in respect of the Directive and the ILO's legislation. The author upholds the opinion of D. Petrylaitė<sup>40</sup> that there are doubts on lawfulness and correspondence to the Directive of only these provisions.<sup>41</sup>

The said prohibition to set summary working time for workers who had requested setting a part-time work regime should be considered only in respect of the ILO's legislation. Although the Convention obliges the contracting states to provide the possibility to work part-time for certain groups of persons (such as the unemployed, workers with family responsibilities, older workers, workers with disabilities and workers undergoing education or training) the prohibition to apply summary recording of time for those persons who became part-time workers by their request does not contradict the Labour Code and the ILO's legislation, in the author's opinion. Various research<sup>42</sup> demonstrates that prolonged periods of summary working time usually have a negative effect on the health of workers, reconciliation of professional and family life and other obligations. Thus the limitations of the right to part-time work can be justified by the principles of general application of laws, differentiation based on workers' psychophysical features, guaranteeing safe and harmless work conditions, legal imperatives of work safety and workers' health, and the features of setting part-time work by the employee's request ("impure" part-time work).

### 3.4. The Problems of Legal Regulation on the Duration of Part-Time Work

Resolution No. 587 of the Government of the Republic of Lithuania establishes a prohibition to agree on part-time work if the duration of working time in the company is

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provisions on works which may last up to twenty four hours, features of work and rest time in the fields of economic activities, conditions of summary time recording in companies, institutions, organization. *Official Gazette*. 2003, 48-2120. See Item 4.3.

- 40 See Petrylaitė, D.; Davulis, T.; Petrylaitė, V. *Europos Sąjungos teisės aktų įgyvendinimas Lietuvos darbo teisėje* [Implementation of the European Union's legislation in the Lithuanian labour legislation]. Vilnius: Valstybės įmonė „Registrų centras“, 2008, p. 219.
- 41 As previously mentioned, the Agreement only focuses on part-time work that is established by agreement of a worker and an employee. (according the Article 146 (1) (1) of the Labour Code). These part-time agreements form the basis of the European social partners' Agreement and the ILO's law.
- 42 Provided in the document of the European Commission No. COM (2010) 106 final of 24 March 2010 [interactive]. [accessed 2010-09-02] <[http://docs.google.com/viewer?pid=bl&srcid=ADGEEsi-tqG3lc6oAX6-snYfg6Dpb-8Gw87biU6KV5XYD\\_W-XuVOEIFz8fXA vbyVPHijGK6SUuRDRhdfUcznNx-hcAkd-5DaZyw\\_mHC\\_f25-xEC3J4nE2aaHK\\_jYXbefTChDx4oFBGJO3P&q=cache%3Aix\\_c3hDyT-YJ%3Aacc.europa.eu%2Fsocial%2FBlobServlet%3FdocId%3D4781%26langId%3Den%20working%20time%20reference%20period%20influence%20on%20employees%20health&docid=b744a4fc76e5955686ebf85a5f42a6f8&a=bi&pagenumber=2&w=800](http://docs.google.com/viewer?pid=bl&srcid=ADGEEsi-tqG3lc6oAX6-snYfg6Dpb-8Gw87biU6KV5XYD_W-XuVOEIFz8fXA vbyVPHijGK6SUuRDRhdfUcznNx-hcAkd-5DaZyw_mHC_f25-xEC3J4nE2aaHK_jYXbefTChDx4oFBGJO3P&q=cache%3Aix_c3hDyT-YJ%3Aacc.europa.eu%2Fsocial%2FBlobServlet%3FdocId%3D4781%26langId%3Den%20working%20time%20reference%20period%20influence%20on%20employees%20health&docid=b744a4fc76e5955686ebf85a5f42a6f8&a=bi&pagenumber=2&w=800)>.

longer than eight hours per day. Item 5 of general provisions on work which may last up to twenty four hours, approved by the said resolution, establishes that part-time workers are not allowed to work upon a setting of longer than eight hours length of works listed. The issue arises whether said provision means that the part-time worker is prohibited from working longer than eight hours per day, or the prohibition means that the part-time worker is prohibited to undertake the work provided in the list.

The analyzed provision is also not clear on whether this prohibition applies only to workers who are already part-timers. I.e., the issue arises as to whether the prohibition applies when the company has an affirmed list of works which could last up to twenty-four hours, the specific duration that is longer than eight hours in twenty-four hours is established in operational rules, and a newly hired worker is requesting to work part-time. On one hand, a provision that prohibits part-time workers from working longer than eight hours per day is reasonable, because part-time means that the work should last less than normally. However, the author requests to pay attention to international and Lithuanian law, which does not establish an analogous ban for part-time workers to work longer than usually, for instance, to work overtime.<sup>43</sup>

The author considers that the said provision of the resolution was established without considering the possibility of organizing said works by means of job-sharing (division of work into parts among employees), shifts, and other forms of work time organization, which are an object of agreement for the parties of labour contract. Moreover, the prohibitions negate the constitutional right to work, including the right to choose wanted work according to skills and competences and the right to choose forms of work time organization. Thus the provision contradicts the international law and the Labour Code.

Regarding the duration of part-time work, it is also important to analyze the observations of prof. I. Nekrošius in the case of the Constitutional Court. The observations relate to the consistency of Item 5 of the Procedure with the Constitution and the Law on Labour Protection and the applicant did not request the Constitutional Court to consider this aspect. Item 5 of the Procedure provided that a reduced work day (shift) may not be shorter than half of the work day (shift) while a reduced work week—less than three work days a week. The Constitutional Court stated that the Government, establishing Item 5 of the Procedure, virtually supplemented Article 46 of the Law on Labour protection which does not provide for any minimal standards of reduced work time. The provision of the Resolution was abolished only by Resolution of the Government No. 1275 of 5 December 2007.<sup>44</sup> The author considers that it was obviously influenced both by the legislation of the European Union and the ruling of the Constitutional Court of 2001.

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43 For instance, the Labour Code does not establish a prohibition for part-time workers to work over-time in a certain case. Moreover, the Code does not ban part-time workers from undertaking certain types of work.

44 *Official Gazette*. 2007, No. 128-5219.

According to the Constitution of the Republic of Lithuania, the legislator is entitled to define “the length of working time,”<sup>45</sup> therefore the limitations on autonomy of labour contract parties to agree on part-time work, overtime and other variation of duration of working time. The principles formulated by the Constitutional Court in the previously analyzed case are very important.<sup>46</sup> The Constitutional Court noted that “establishment of a flexible regime of work time is in line with the provisions of the Constitution that every person may freely choose an occupation or business, and shall have the right to adequate, safe and healthy working conditions, adequate compensation for work (Paragraph 1 of Article 48) and that the state shall support economic efforts and initiatives, which are useful to the community (Paragraph 2 of Article 46). Thus the Constitutional Court was laconic but clear in listing the conditions (*mandatory provisions*) which the agreements on flexible part-time work regime must meet. The interpretation of the Constitutional Court, in the author’s opinion, is in line with the modern context of labour law, where the principle of *flexicurity* is becoming one of the fundamental principles, and the legislator should provide an adequate regulation of this process.

In this regard the constitutional provision providing that the legislator defines the length of working time must be construed not only literally (in a linguistic manner) but also taking into account other analyzed international law norms and the principles formulated by the Constitutional Court. Thus it can be concluded that the essence of the constitutional provisions is not that the length of working time is set by the legislator, but that the legislator prefers dispositive legal regulation methods and thus grants the parties of labour contract the right to agree upon the duration of working time, including part-time work. Nevertheless, the imperative requirements established in the Ruling of the Constitutional Court must be fulfilled. Thus the Constitutional Court basically approved that when purely dispositive legal method is chosen, one of the main functions of labour law, i.e. the protection of the interests of the weaker party of labour relations (part-time workers) cannot be sufficient.

### 3.5. Part-Time Work in Companies in Economic Difficulty

The Law on support for Employment and the Social and Labour minister’s order No. A1-499 on terms of implementation of active labour market policy measures and procedure inventory of 13 August (the Order) provides that workers who become part-time workers in a company suffering economic hardship, because the production, amount of works or services, decreased or was impeded by objective reasons, can undertake public works.

45 Article 49(2) of the Constitution of the Republic of Lithuania provides that the length of working time shall be established by law. Notably, the compliance of the Procedure with this constitutional norm was not analyzed in the Ruling.

46 Ruling of the Constitutional Court of the Republic of Lithuania on the compliance of Item 3.3 of the Procedure for establishing reduced work days or reduced work weeks approved by Government of the Republic of Lithuania No. 21 of 9 January 1995 with the Constitution of the Republic of Lithuania and Paragraph 4 of Article 46 of the Republic of Lithuania Law on Labour protection (wording of 7 October 1993). *Official Gazette*. 2001, No. 45-1595.

Comparison of provisions of the Law on Support for Employment and the concept of “partial unemployment” under the ILO legislation reveals many similarities. First, the law provides for the right of temporal reducing of working time when employers face economic hardships. Second, such provisions of the Lithuanian national law at least imply that in these cases part-time work may be established by unilateral employer’s action rather than agreement of the employer and the employee. The concept of “company in difficulty” is described as a company suffering economic hardship because the production, amount of works or services has decreased or was impeded by objective reasons, and thus the workers are employed part-time (Article 2(8)<sup>47</sup>). In this case the basis for part-time work is not a mutual agreement of the worker and the employer, but temporary difficulties in the company. Thus, in the opinion of the author, in cases of economic hardship, as discussed by the law and the order, it is more purposeful to establish the term of idle time without the fault of the worker.

Notably, according to the law on Support for Employment and the order, the work pay is subsidized only if workers undertake public works in spare time from their main duties, i.e., the actual length of working time is not reduced. In this case only the work function changes in part, but not the working time duration, because the employee undertakes the work function under his labour contract as part of his normal working time and the remaining part of time engages in public works organized by the employer. Such agreements empower workers to gain additional income at their spare time. Thus, even when the work function is modified based on the agreement between the employer and employee, the agreements do not have the features of part-time work, because the overall length of time, in fact, is not reduced. The only difference is that for the time spent undertaking public works, the employer pays from state subsidy and not his own funds.

The significance of part-time work is universally accepted for promotion of employment, and thus, for preservation of jobs. The discussed working time arrangements are used not only as the measure of the employer to ensure sufficient flexibility in economical difficulties, but also as a measure of state policy of employment, allowing the employer to preserve jobs and the employee to gain income in an economically difficult time. In these cases, the Lithuanian legislation provides for the possibility to agree on part-time work through individual negotiations. It is also important to pay attention that no law or other legal act can limit the agreement of workers and employers because of the reason or duration of the part-time agreement. The author concludes that the said provisions of the Law on Support for Employment and the Order providing the bases and duration of part-time work are only applicable to the conditions of state aid, rather than establishing part-time work and the duration of its application.

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47 Version of 4 June 2010 of the Law No. XI-879 applicable from 1 July 2010. *Official Gazette*. 2010, No. 71-3552.

## Conclusions

1. The social and economic significance and influence on employment promotion of part-time work is universally accepted. The analysis of international legal terms on part-time work regulation leads to the conclusion that a thorough protection of part-time workers' rights can be ensured only in cases when it applies in the fields of work, employment and social security. Only a balancing of these fields of legal regulation and the dispositive and imperative legal methods, proper conditions for application of part-time work in practice are created. Thus more quality work places are created, the rights of such workers are better protected, and the main functions of the legal sub-institute of part-time work (promotion of employment, flexicurity in legal relations) are effectively guaranteed.

2. The nature of labour relations changes in the modern society with the increasing significance of distribution of work in time. It is important to adapt it to the needs of the worker and employer rather than define the duration of working time. Through analysis of the main features of part-time agreement, the forms of part-time work organization and the duration of part-time work, it can be concluded that the implementation of the said right in connection to reducing the working time does not correspond to the concept of part-time work developed by modern international law. In a broad sense, it is not just the right of the parties of labour contract, but also a measure of employment prevention. The concept of part-time work is related to the diversity of forms of part-time work organization, including the right to agree on an incomplete working day, incomplete working week, distribution of work into parts, summary recording of a working time, job-sharing and even a mixed model of part-time work organization, where both the work day and the work week is shortened at the same time.

3. The right to enter into agreements on part-time work can only be executed through voluntary and individual negotiations and consensus of the worker and the employer, rather than collective negotiations and agreements. Notably, the right to initiate agreements on part-time work is not just the right of the worker but also the right of the employer. International law does not limit the reasons for entering into agreements on part-time work, their duration term, nor the minimal duration and special maximal allowable duration of part-time work. The parties of a labour contract are free to negotiate and independently agree on these conditions.

4. The analysis of the main features of the part-time work, according to the Lithuanian law, leads to the conclusion that although the Constitutional Court in 2001 recognized the diversity of forms of part-time work organization and the importance of combining the dispositive and imperative methods of legal regulation in this area, in our national law the imperative legal regulatory method is still prevailing in certain cases. Thus the concept of part-time work and its features, according to Lithuanian law do not always correspond with international law and practice:

- The author criticizes the establishment of part-time work by request of the employee because such provisions infringe the principle of voluntary agreement

based on the freedom of autonomy of parties. This type of part-time work provided by Lithuanian law contradicts the rule in international law that agreements on part-time work and the right to initiate such agreements is not the duty of the parties of a labour contract, but their right. Moreover, it contravenes other fundamental provisions of international law and practice, i.e., the rules prohibiting dismissal of the worker based on his refusal to transfer to part-time work.

- The Government renounced the ungrounded limitation on the minimal duration of part-time work in 2007. The limitation restricted incomplete working day to the minimum of four hours per day, and incomplete working week—to the minimum of three days. However, the Government did not renounce the ungrounded limitation prohibiting using summary recoding, to work overtime in certain cases, and to undertake certain work for part-time workers.
- The Law on Support of Employment provides a list of reasons to work part-time and the duration of part-time work. However, this relates only to the conditions of state financial support rather than providing the provision on part-time work and the durations of its application. The term “part-time work” is used incorrectly in the law because in the cases provided by law, the actual working time of the worker is not reduced. Thus, the concept of setting part-time work in a company in difficulty is closer to the concept of “partial unemployment” which is established by the ILO’s legislation and differs from the concept of part-time work.

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## NE VISO DARBO LAIKO TEISINIO REGLAMENTAVIMO YPATUMAI

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**Santrauka.** Straipsnyje nagrinėjami tarptautinei teisei ir praktikai būdingi ne viso darbo laiko esminiai ypatumai. Siekiant atskleisti šiuolaikinę ne viso darbo laiko sampratą, analizuojamos ne viso darbo laiko teisinio reglamentavimo prielaidos, ne viso darbo laiko sąvoka, pagrindinės organizavimo formos, trukmė, susitarimų dėl ne viso darbo laiko požymiai.

Autorė konstatuoja, kad visapusiškai ne visą darbo laiką dirbančiųjų teisių apsauga užtikrinama tik tais atvejais, kai ji apima darbo, užimtumo bei socialinio draudimo teisės reguliavimo sritis. Tik tarpusavyje derinant šias teisinio reguliavimo sritis bei dispozityvųjų ir imperatyvųjų teisinio reguliavimo metodus, sudaromos tinkamos prielaidos ne viso darbo laiko susitarimus taikyti praktikoje. Taigi sukuriami daugiausiai kokybiškų darbo vietų, geriausiai užtikrinama tokių darbuotojų teisių apsauga bei efektyviausiai įgyvendinamos ne viso darbo laiko pagrindinės funkcijos: skatinti gyventojų užimtumą, užtikrinti darbo teisinių santykių lankstumą bei saugumą.

Visuotinai pripažįstama ne tik užimtumo skatinimo, ekonominė, bet ir socialinė ne viso darbo laiko reikšmė. Šiuolaikinėje visuomenėje besikeičiant darbo santykių pobūdžiui, vis svarbiau tampa darbo laiką išdėstyti laike, jį pritaikyti prie darbuotojo ir darbdavio poreikių ir mažiau svarbi darbo laiko trukmės apibrėžtis.

Išanalizavus pagrindinius susitarimo dėl ne viso darbo laiko požymius, ne viso darbo laiko organizavimo formas bei trukmę, matyti, kad aptariamoms teisėms įgyvendinimas jų siejant tik su darbo laiko trumpinimu neatitinka šiuolaikinėje darbo teisėje išplėtotos ne viso darbo laiko koncepcijos. Plačiaja prasme tai ne tik darbo sutarties šalių teisė, bet ir gyventojų užimtumo skatinimo politikos priemonė. Ne viso darbo laiko samprata siejama su darbo laiko organizavimo formų įvairove, apimančia darbo sutarties šalių teisę susitarti dėl ne visos darbo dienos, ne visos darbo savaitės, dėl darbo laiko išskaidymo, suminės ne viso darbo laiko apskaitos, netgi mišraus ne viso darbo laiko organizavimo modelio, kai tariamasi dėl darbo dienos ir darbo savaitės trumpinimo vienu metu.

Teisė sudaryti susitarimus dėl ne viso darbo laiko gali būti įgyvendinama tik savanoriškomis individualiomis darbuotojo ir darbdavio derybomis bei susitarimais, o ne kolektyvinėmis derybomis ir sutartimis. Svarbu, kad teisė inicijuoti tokius susitarimus pripažįstama ne vien darbuotojo, bet ir darbdavio teise. Tarptautinė teisė neriboja susitarimo dėl ne viso darbo laiko sudarymo priešasčių ir galiojimo termino, ne viso darbo laiko minimalios trukmės, nenustato specialios maksimaliai leistinos darbo laiko trukmės. Dėl šių sąlygų darbo sutarties šalims suteikiama laisvė savarankiškai derėtis ir sulygti

Straipsnyje taip pat vertinama, ar Lietuvos teisėje numatytos nuostatos atitinka esminius ne viso darbo laiko požymius, jo teisinio reglamentavimo ypatumus, atitinkančius šiuolaikinę ne viso darbo laiko sampratą. Šiuo požiūriu autorė daro išvadą, kad nors Lietu-

vos Respublikos Konstitucinis Teismas dar 2001 m. iš esmės pripažino ne viso darbo laiko organizavimo formų įvairovę bei dispozityvaus ir imperatyvaus teisinio reguliavimo metodų derinimo svarbą, reglamentuojant ne visą darbo laiką, tačiau tam tikrais atvejais mūsų nacionalinėje teisėje vis dar dominuoja imperatyvusis teisinio reglamentavimo metodas. Todėl ne viso darbo laiko samprata ir požymiai Lietuvos teisėje ne visada atitinka tarptautinėje teisėje ir praktikoje suformuluotuosius.

**Reikšminiai žodžiai:** ne visas darbo laikas, ne visa darbo diena, ne visa darbo savaitė, suminė ne viso darbo laiko apskaita, ne visą darbo dieną dirbantis darbuotojas, sutrumpintas darbo laikas.

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