

I. V. LAGUTINA,

Doctor of Legal Sciences, Associate Professor,
Head of Labour Law and Social Security Law
Department of National University “Odessa Law
Academy”

«RIGHT TO DISCONNECT» AND THE NORMAL DURATION OF THE WORKING TIME: CORRELATION OF CONCEPTS

У статті підкреслюється, що нові форми роботи і зміни робочого середовища породжують нову небезпеку. Тривалість робочого часу веде до зростання соціальної напруженості і конфронтації. Аналізується, що порушення права на відпочинок, що забезпечується встановленням нормальної тривалості робочого часу, спричиняє посилення стресу і депресії серед працівників і, отже, до зниження загального обсягу виробництва.

Ключові слова: трудові права, працівник, робочий час, право на роз'єднання.

Problem setting. The modification of working time reflects changes in working conditions, its organization, content and, at the same time, the degree of flexibility of the labour market. Herewith, the organization of working time, including its duration, is an instrument through which the labour market can respond to processes occurring in the economic, social and technological spheres. Therefore, understanding the factors that underpin the processes of organizing and changing of working time is a prerequisite for the successful regulation of the modern labour market, increasing the efficiency of its functioning.

Working time is one of the central institution of labour law. The duration, organisation and predictability of working time has long been an important issues of political and social debate.

The analysis of research work and publications. Topical issues of legal regulation of working time is the subject of study of Ukrainian and foreign scientists, such as: M. Alexandrov, N. Bolotina, V. Venediktov, L. Ginzburg, V. Glazyrin, G. Goncharova, V. Zhernakov, M. Inshyn, RZ Livshits, V. Nikitinsky, J. Orlovsky, A. Pashkov, S. Prylypko, A. Protsevskyy, A. mirnov, G. Chanysheva, O. Yaroshenko, as well as C. Alpin, D. Anxo, A. Beauregard, P. Berg, H. Bewley, G. Bosch, A. Bryson, B. Burgoon, J. Charest, G. Dix, M. Fassmann, C. Franz, J. Forth, S. Folkard, R. Gammarano, I. Guardiancich, S. Hayter, L. Henry, B. Kersley, A. Kummerling, S. Lee, S. Lehndorff, P. Marginson, D. McCann, H. Muensterberg, J. O'Reilly, S. Oxenbridge, D. Raess, K. Sisson, P. Tucker, J. Visser, H. Wilson, etc.

The purpose of this article is to research issues of ensuring the right to disconnect in the context of providing for reasonable daily and weekly working hours, its impact on work–life balance.

Article's main body. The subject of working time has been central to the work of the ILO since its inception, when it adopted the first of many international labour standards, the Hours of Work (Industry) Convention, 1919 (№ 1). Normal hours of work are, according to the ILO, the hours that workers are expected to spend on work activities during a short reference period such as 1 day or 1 week, as stipulated in laws or regulations, collective agreements or arbitral awards, or establishments' rules or customs.

Legislation plays an essential role in the definition of the length of working time in Ukraine. The statutory duration of the working week in Ukraine is 40 hours according to the current Labour Code. The duration of the working day before a holiday or a weekend shall be reduced by one hour. In the case of a six-day working week, the duration of the working day before the weekend cannot exceed five hours.

It is important to note that the general rule is that overtime is not allowed. The Labour Code provides an exhaustive list of exceptions when an employee may be required to work overtime. The maximum limit of overtime work is 120 hours per year. Overtime work also shall not exceed four hours over two consecutive days for the same employee.

Furthermore, long working hours leads to increase the possibility of occurrence of psychosocial risks and work-related stress, in particular, concerning the health impact of digital overload, «info-obesity».

Information and communication technologies are what made the blurring of the space and time boundaries between work and private life possible in the first place, and today's Internet and mobile devices support constant reachability. This makes actual working time difficult to define and measure, especially when work emails are read and answered from home [1, p. 90].

Theoretically, employees with flexible working arrangements have the ability to adapt their working time to their time needs outside work. In practice, though, this is often not feasible (e.g., due to urgent customer needs). Employees pay for the freedom that comes with such results-oriented working arrangements with eroded work–life boundaries and constant reachability. In 2016, 22 per cent of employees were often expected to be reachable outside normal working hours, e.g. via email or telephone. As a result of constant reachability, 37 per cent of these employees end up doing additional, unpaid work [2]. Work intensity and performance pressure on employees, already high, are only further increased by working with the Internet and the expectation that emails will be answered quickly.

Obviously, long working hours leads to decreased total output. Overwork leads to decreased total output. Productivity during 60 hour weeks would be less than two-thirds that of what it was when 40 hour weeks were worked. It may be the case that employees simply become much less efficient: due to stress, fatigue, and other factors, their maximum efficiency during any given work day may become substantially less than what it was during normal working hours. Thus, overworked employees may simply be substantially less productive at all hours of the work day, enough so that their average productivity decreases to the extent the additional hours they are working provide no benefit. Also overworked employees using heavy machinery are much more likely to injure themselves and to damage or otherwise ruin the goods they are working on [3].

Employees who routinely worked overtime were also more likely to have accidents at work and more likely to neglect family activities because of work. Significantly, they were also more likely to omit or neglect duties at work because of family responsibilities.

Policies and approaches relevant to the management of psychosocial risks, can take various forms. French workers win legal right to avoid checking work email out-of-hours – «right to disconnect».

The measure is intended to tackle the so-called “always-on” work culture that has led to a surge in usually unpaid overtime – while also giving employees flexibility to work outside the office.

Under the new law, companies will be obliged to negotiate with employees to agree on their rights to switch off and ways they can reduce the intrusion of work into their private lives. However, the new “right to disconnect”, part of a much larger and controversial reform of French labour law, foresees no sanction for companies which fail to define it.

French newspaper *Libération* indicated that the law was needed because “employees are often judged on their commitment to their companies and their availability” [4].

The new rule applies only to companies with 50 or more employees, thus excluding large numbers of workers at small- or medium-size firms. Covered firms are required to negotiate email guidelines with their employees. Employers must also regulate email use to ensure employees are able to possess time away from the office. If employers and employees cannot agree on an appropriate policy, then the employer is obligated to publish a charter that regulates when employees can disconnect [5].

Some European companies have introduced restrictions on use of email outside of business hours. Automaker Volkswagen prevents its email servers from delivering messages to employees in Germany when they are off-shift or on vacation. Others, including automakers Daimler and BMW, insurance giant Allianz-France, telecoms firm Orange and IT giant Atos also have restrictions on employees’ use of email.

Many organisations take this further by implementing policies which not only define a right to disconnect but also the proper use of digital tools at work, such as how not to overload colleagues with «reply to all» emails, or internal policies for remote work while traveling or teleworking.

Cary Cooper, a professor of psychology and health at Britain’s University of Manchester, told NBC News that per capita productivity in the U.K. is poor «because we have the longest working hours in Europe but also because we are probably the biggest users in Europe of communications and information technologies, particularly emails» [6].

Frederic Lafage, director of engineering firm and told CNN Money it was difficult to implement the “disconnect” system, but it hasn’t resulted in a loss of productivity [7]. In fact, it’s the opposite, claiming workers are more efficient in the office after getting some much needed rest at home.

Even without government action, French companies have already begun grappling with how to tamp down their employees’ addiction to email. Managers at the insurance company Allianz France, with about 10,000 employees, are under orders not to send work emails after 6 p.m., or to hold meetings in the late afternoon. The cut-off time for staff emails is 7 p.m. at KEDGE Business School, which has campuses in France. Solvay, a Belgian chemical company with offices in more than 50 countries, introduced new email guidelines for its French employees last year, urging them to not send emails on holidays or off-hours except for urgent matters [8].

There has also been an increase debate among Spanish social partners and political parties on the possibility of allowing workers to disconnect their digital devices (primarily mobile phones and computers) after their working day ends. In January, the Ministry of Employ-

ment suggested a suggested a national debate on this. In parliament, on 28 March 2017, the Socialist Party proposed regulating citizens' digital rights, including the right to digital disconnection outside working time. Trade unions are strongly in favour, saying that legislation on this is urgently needed, bearing in mind the current lack of relevant legislation and the increasing presence of symptoms of stress and burnout associated with the continuous use of digital facilities outside traditional working time. However, CEOE has suggested that there are some sectors where this digital disconnection might not be feasible, though without giving more details [9].

There is no doubt that psychosocial risks and work-related stress are among the most challenging issues in occupational safety and health. They impact significantly on the health of individuals, organisations and national economies.

The most substantive problem is that once work-related stress and ill health set in, absenteeism is usually already on the increase, and therefore productivity and innovation are already in decline.

Working irregular or extended hours can have negative consequences for health and well-being owing to the stress of interference with psychophysiological functions and social life.

The potential chronic effects of abnormal work schedule features on mental health appear at a different level from those on physical health and safety. This is because impaired mental health may underlie some negative safety and physical health outcomes, especially those for which "stress" is considered a causal factor. Mental health effects are seen as stemming from the acute effects of work schedule features on mood, but also as feeding back into and exacerbating the latter.

Thus, the well-known "vicious circle" may develop in which persistent bad moods may spiral downwards into depression. There is a reasonably consistent literature showing that abnormal work schedules, especially those involving night work, may result in increased levels of anxiety and depression, and this includes at least two longitudinal studies.

The adverse consequences of working hours and work schedules are seen as stemming from disturbances to individuals' sleep, biological rhythms and family and social life. The extent of these disturbances will depend not only on the precise nature of the working hours and work schedule but also on a number of moderating factors, such as situational, organizational and individual differences. The immediate consequences of these disturbances are various, but include impaired mood and performance. Individual coping strategies will determine the extent to which these result in longer-term consequences such as physical and psychological ill health, and reduced safety. Many such consequences stem from increased levels of fatigue, which may be viewed as a biological drive for recuperative rest [10, p. 7–10].

Conclusions and prospects for the development. Consequently, employers should be aware of the negative effects of the psychosocial hazards that may affect workers as a result of overwork and lack of control over their tasks, with the consequences of work-related stress and related coping behaviours and health outcomes. Finally it is important to mention that the Ukrainian social partners should be able to promote a healthy working life and to build of a preventive culture is a shared responsibility of governments, employers and workers, health professionals and societies as a whole.

LITERATURE

1. Ahlers E. Flexible and remote work in the context of digitization and occupational health / E. Ahlers // *International Journal of Labour Research*. 2016. Vol. 8. Issue 1–2. P. 85–101.
2. Der Report 2016: Die Digitalisierung der Arbeitswelt – Eine Zwischenbilanz aus der Sicht der Beschäftigten Institut // [Electronic resource]. – DGB-Index Gute Arbeit. – Mode of access: https://www.dgb-bestellservice.de/besys_dgb/pdf/DGB501017.pdf.
3. The Relationship Between Hours Worked and Productivity // [Electronic resource]. – Stanford Computer Science. – Mode of access: <https://cs.stanford.edu/people/eroberts/cs181/projects/crunchmode/econ-hours-productivity.html>.
4. French workers win legal right to avoid checking work email out-of-hours // [Electronic resource]. – The Guardian. – Mode of access: <https://www.theguardian.com/money/2016/dec/31/french-workers-win-legal-right-to-avoid-checking-work-email-out-of-hours>.
5. How will this new law work? // [Electronic resource]. – UConn Today. – Mode of access: <http://today.uconn.edu/2017/01/the-right-to-disconnect/>.
6. Hanrahan M. France 'Right to Disconnect' Law: Do We Need Rules To Reclaim Personal Time? / M. Hanrahan // [Electronic resource]. – NBC News. – Mode of access: <http://www.nbcnews.com/news/world/france-right-disconnect-law-do-we-need-rules-reclaim-personal-n704366>.
7. France may give workers right to ignore emails at home // [Electronic resource]. – CNN Money. – Mode of access: <http://money.cnn.com/2016/02/18/news/france-email-work-law/index.html?iid=hp-stack-dom>.

8. The New French “Right to Disconnect”— Can Legislation Alter Work-Life Balance? home // [Electronic resource]. – Verdict | Legal Analysis and Commentary from Justia. – Mode of access: <https://verdict.justia.com/2017/02/07/new-french-right-disconnect>.
9. Increasing discussion on right to digital disconnection after work // [Electronic resource]. – Eurofound. – Mode of access: <https://www.eurofound.europa.eu/observatories/eurwork/articles/spain-latest-working-life-developments-q1-2017>.
10. Tucker P., Folkard S. Working Time, Health, and Safety: a Research Synthesis Paper / P. Tucker, S. Folkard. – The International Labour Office, Geneva, Switzerland, 2012. 67 p.

И. В. ЛАГУТИНА

доктор юридических наук, доцент, заведующая кафедрой трудового права и права социального обеспечения Национального университета «Одесская юридическая академия»

«ПРАВО НА РАЗЪЕДИНЕНИЕ» И НОРМАЛЬНАЯ ПРОДОЛЖИТЕЛЬНОСТЬ РАБОЧЕГО ВРЕМЕНИ: СООТНОШЕНИЕ ПОНЯТИЙ

В статье подчеркивается, что новые формы работы и изменения рабочей среды порождают новую опасность. Продолжительность рабочего времени ведет к росту социальной напряженности и конфронтации. Анализируется, что нарушение права на отдых, обеспечиваемый установлением нормальной продолжительности рабочего времени, приводит к усилению стресса и депрессии среди работников и, следовательно, к снижению общего объема производства.

Ключевые слова: трудовые права, работник, рабочее время, право на разъединение.

I. V. LAGUTINA

доктор юридичних наук, доцент, завідувач кафедри трудового права і права соціального забезпечення Одеського національного університету «Одеська юридична академія»

«RIGHT TO DISCONNECT» AND THE NORMAL DURATION OF THE WORKING TIME: CORRELATION OF CONCEPTS

Problem setting. New forms of work and the changing working environment are giving rise to new hazards, and consequently the definition of psychosocial hazards can still evolve. Psychosocial hazards are therefore those aspects of the design and management of work and its social and organizational contexts that have the potential for causing psychological or physical harm. Today there is a reasonable consensus in the scientific literature regarding the nature of psychosocial hazards.

Analysis of recent researches and publications. Topical issues of legal regulation of working time is the subject of study of Ukrainian and foreign scientists, such as: M. Alexandrov, N. Bolotina, V. Venediktov, L. Ginzburg, V. Glazyrin, G. Goncharova, V. Zhernakov, M. Inshyn, RZ Livshits, V. Nikitinsky, J. Orlovsky, A. Pashkov, S. Prylypko, A. Protsevsky, A. Smirnov, G. Chanysheva, O. Yaroshenko, as well as C. Alpin, D. Anxo, A. Beauregard, P. Berg, H. Bewley, G. Bosch, A. Bryson, B. Burgoon, J. Charest, G. Dix, M. Fassmann, C. Franz, J. Forth, S. Folkard, R. Gammarano, I. Guardiancich, S. Hayter, L. Henry, B. Kersley, A. Kummerling, S. Lee, S. Lehndorff, P. Marginson, D. McCann, H. Muensterberg, J. O'Reilly, S. Oxenbridge, D. Raess, K. Sisson, P. Tucker, J. Visser, H. Wilson, etc.

Target of research. The purpose of this article is to research issues of ensuring the right to disconnect in the context of providing for reasonable daily and weekly working hours, its impact on work–life balance.

Article's main body. The article emphasizes that the new French law means a small but important victory of human rights over IT, and a victory of workers' rights and rights to privacy over IT technologies and smart communications. This article analyzes how that victory will influence further developments in labour law when speaking of its online element, remains to be seen.

Conclusions and prospects for the development. It is important to note that trade unions which see themselves as guardians of France's highly protected workplace and working week of 35 hours have long demanded action. However, the new “right to disconnect”, part of a much larger and controversial reform of French labour law, foresees no sanction for companies which fail to define it.

Key words: labour law, employee, working time, right to disconnect.