



Experiences of the developed countries on the rest time regulation

G. Kubenov

ORCID 0000-0002-7340-0369

Innovative University of Eurasia, Pavlodar, Republic of Kazakhstan

Article info

Accepted 28.02.2019

Kubenov, G.M. (2019). Experiences of the developed countries on the rest time regulation. Fundamental and applied researches in practice of leading scientific schools, 31 (1), 108-112.

Innovative University of
Eurasia, Republic of
Kazakhstan,
140000, Pavlodar, Lomova
Street, 45
gizat_1985@mail.ru

In the current context of the labor legislation reform in the Republic of Kazakhstan, studying and comparing the rest time institution standards in different countries, matching them with international and European labor standards make it possible to identify and examine the universal trends in the rest time regulation practice, as well as use them to the maximum extent to improve the relevant national law. This process should include both contrasting relevant provisions of the existing labor law in Kazakhstan with the international and European labor standards, and identifying those international legislative experience aspects being of interest to the national legislator, which are able to and should be taken into account in the course of law-making and law-applying procedures.

The article submits the author's personal opinion on many problems, encountered in following the international and European right to rest standards, foreign countries' relevant positive legislative experience, as well as improving forms and means to protect right to rest in case of its violation.

Besides, the distinctive features of the rest time regulation in the developed market economies are set up in the article, i.e. their rest time regulation is characterized by certain diversity; modern legislation of the developed countries is focused on minimum rest time standards, contained in the ILO conventions; substantial number of issues in the field of the rest time is defined by collective contracts, which usually establish more beneficial conditions for employees in comparison with those given under law and international acts.

Key words: rest time; leave; labor relations; integration; labor law; harmonization of legislation.

Introduction

The issue of the development of the rest time regulation is relevant both from an academic and practical perspective. However, despite the need for a perfect legal framework for the issue, it has not been fully revealed by the labor law theory, and numerous gaps and collisions remain in the law.

Right to rest is set up in the international human rights acts and constitutions of the developed countries as one of the fundamental labor rights. According to the Article 24 of the Constitution of the Republic of Kazakhstan, "Everybody has the right to rest. Persons working under a labor contract are guaranteed the legally established length of working day, as well as rest days, public holidays and annual paid leave." [1].

The maximum duration of work time, minimum duration of rest and annual paid leave, rest days and public holidays,

as well as other conditions for the exercise of this right, are regulated by law. The exercise of the constitutional right to rest is not possible without an appropriate legal security, guaranteed by the international acts and national law. However, the mere legislative enshrinement of this right is not enough, an effective mechanism for realizing the right to rest must be established.

Within the complicated set of issues, related to studying distinctive features of the labor regulation in the context of the economic development of the post-Soviet countries, the problem of regulating the relations pertaining to the rest time figures prominently. It is particularly relevant in present times, when the economy grows, market relations are in progress, many economic sectors are being globalized. The legislator faces the global challenge of establishing legal framework capable of ensuring such development in social and labor sense, and protecting the interests of the parties to

the employment legal relationship. The rest time is one of the key labor right institutions, corresponding to the time period established by law or based on it, during which the employees must be released from work duties, and which they may use at their discretion to restore their capacity to work, improve their health or pursue other personal interests.

The main object of this article is an integrated study on the rest time regulation in the Republic of Kazakhstan by means of comparing it with the international labor standards, foreign countries' relevant laws for the purposes of identifying the features and discrepancies in Kazakhstan labor law subject to reconciliation, determining the feasibility of using those countries' positive experience, and elaborating the proposals on the national law improvement.

To attain the goal established the following tasks must be accomplished:

- identifying the legal nature and structure of the right to rest as a subjective labor right;
- studying the foreign practice on regulating the rest time;
- undertaking the comparative analysis of some countries' labor laws related to the rest time, as well as integrating those countries' research and practices, elaborating proposals on the improvement and further development of the rest time legal frameworks.

It is impossible to cover within this research the entire complex of the relations corresponding to the rest time due to their multidimensional nature both in the Republic of Kazakhstan and foreign countries. This study analyses the most pressing problems connected with the rest time.

Methodological and Theoretical Research

The methodological basis of the article is presented by such general scientific methods as historical, systematic, logical ones, and such special research means as formal-legal, comparative-legal and others, based on the principles of objectivity, social approach and comprehensiveness.

The theoretical basis of the research is formed by the national specialists' works in the field of the comparative law and the labor law science, as well as the foreign scientists' fundamental works, applications and analytical research.

It should be noted that many modern national and foreign labor law researchers recognize the importance and relevance of the rest time issues, but are not committed to examining them. Nevertheless, it seems that the overall picture of the research on either any national or international labor law cannot be objective without the comprehensive and profound study on the rest time issue.

Alexandrov N.G., Gintsburg L.Ya., Ivankina T.V., Livshits R.Z., Snigiryova I.O., Yarkho A.V. and others labor law researchers have contributed to solving the problems in question.

The O.S. Khokhryakova's research is focused on studying the leave regulation [2], while Soshnikova T.Ya. has revealed the legal mechanism for protecting constitutional rights and freedoms related to labor, including the right to rest [3].

The theses of 2000s' by Zmushko A.E. [4], Kutaphina G.O. [5], Postnikova N.A. [6], Tsurkan N.A. [7] cover the problematic issues of the annual paid basic leave and extra

holidays, as well as leave without pay, while Ukhtinsky P.V. [8] considers the right to rest only in the context of the breaks during the working day (shifts).

The scientists in the above mentioned works pay their attention rather to the problems of regulating the types of rest periods, than integrated consideration of the international legal practice on establishing the right to rest and types of the rest periods, discussed in this article, as being particularly acute and justifying the selection of study.

In 2016, the "Regulating work and rest time in Scandinavian countries" research by Chanyshv A.S. was released, which was focused on regulating the work and rest time in Scandinavia. The author has examined the work and rest time as economic and legal categories, as well as the current problems on setting the work and rest periods in foreign countries, role and importance of the international and European standards to the countries under review [9].

Of the direct relevance is the "Ontology of the national labor law science in the post-Soviet period" monographic study by Lushnikov A.M. and Lushnikova M.V. They pay certain attention to the foreign works aimed on comparative and legal aspects of the labor law, in particular the rest time institution [10].

The international and legal basis of the research is presented by the works of the international and European labor law scientists, such as Blanpain R. [11], Bronstein A. [12], Fudge J. [13], Servais J.-M. [14], Strasser R. [15].

Recognizing the importance of the scientists' contribution to the development of the legal and theoretical aspects of the rest time, it should be noted that further study of its multifaceted nature in the context of establishing democratic society and rule of law in accordance with the international legal acts on human labor rights is required.

Results and Discussions

The establishment of the rest time law occurred simultaneously with that of the work time. The Czech researcher Ya.A. Komensky was the first in the first half of the 17th century to examine the correlation between the work time and rest period and formulate the 'three eights' theory, under which with the regular 8-hour shift the rest time accounts for 16 hours, including 8 hours to sleep.

One of the first acts setting up Sunday as a weekly rest day was the French Act of 18 November 1814. In the course of the 19th century, similar acts were enacted in most western countries. Owing to the great involvement of women, the problem of exempting them from service for childbirth had become urgent. The time period, which in many countries' law was initially called 'the post-delivery leave', was usually paid in part and accounted for, for example, 3 weeks under the Prussian Law of 17 July 1878, 4 weeks under the Dutch Law of 5 May 1889 [16,49].

Until the beginning of the 20th century, the paid leave was regulated exclusively by means of collective and individual contracts (Austria, Australia, New Zealand, Canada). Mandatory leave was attributed to certain categories of public servants and officers.

Meanwhile the demand for extending the duration of a weekly rest day up to 36 hours (weekly rest) occurred. A specific point of discussion was special women's rest regulation [16,51]. The issues of extending the maternity

leave, weekly rest time and daily breaks, providing family leaves, etc. were discussed.

After the First World War, there have been substantial changes in the rest time regulation in western countries above all due to the International Labor Organization's activities. Convention # 14 of 1921 on Weekly Rest in Industrial Enterprises guaranteed to all industrial companies' workers weekly rest period not exceeding 24 consecutive hours. As far as the annual paid leave is concerned, it was regulated by the collective contract.

First leave laws were enacted by Austria (30 July 1919), Lithuania (24 March 1922), Poland (16 May 1922). In the 40s of the 20th century constitutions of Italia, France and other countries enshrined the right to rest. It was declared by the human rights international acts. Thus, Article 24 of the Universal Declaration of Human Rights guaranteed to any individual the right to work and rest, including reasonable limitation of working hours and annual paid leave.

The ILO had harmonized national laws and enacted a number of important conventions on weekly rest and leave. In particular, the ILO's Convention # 132 of 1970 on Paid Leaves had extended the employee's minimum paid leave duration up to 3 weeks per year.

The rest time regulation in western countries in the 20th century had some differences. Thus, the USA and England did not have any leave laws at all, while the rest time was set up mainly by the collective contracts. At the legislative level only the leaves for certain categories of employees were regulated (minors, women, employees in hazardous working conditions, etc.). The rest time was most fully regulated at the legislative level in France and Germany. It was permissible for the collective contracts to stipulate the leave extension. The Italian labor law had its own peculiarities, i.e. the right to week and annual rest was established by the Constitution, while specific standards specified the week rest duration up to 24 hours. The duration of the annual paid leave for certain categories of employees (youth, railway staff, etc.) was regulated at the legislative level. The other employees' leave duration was regulated by the collective contracts and varied from 10 to 30 days.

At the end of the 20th century many western countries extended the leave duration up to 5-6 weeks (currently - from 1 to 8 weeks), established paid and unpaid family leaves, study leave, and different types of additional leaves. In France since the early 1980s one is enabled to apply for a leave for building up one's own business. Long vacation (up to 11 months) once per 7-10 years, either paid or unpaid, is widely practiced. Continuous work without any absence nor tardiness, as well as work during days off and holidays, subject to the achievement of the targets, can be rewarded with additional days off. The child-care leaves up to the age of 1 to 8 years, unpaid or paid in part from social insurance funds, become increasingly widespread [17,402].

The rest time regulation in foreign countries covers its different types, namely work interruptions (during the working day, between the days), weekly rest, days off and holidays, and leaves.

Contemporary rest time regulation in the developed market economies is rather diverse. Besides, the governments are focused on minimum standards for the employees' right to rest guaranteed by the ILO conventions,

acts of the Council of Europe and European Union (in particular the ILO Convention # 52 of 1936 On Annual Paid Leave; ILO Convention # 132 of 1970 On Paid Leave (revised); ILO Convention # 140 of 1974 On Paid Study Leave; European Social Charter (revised); 2003/88/EC Directive On Some Aspects Of Arranging the Work Time). Moreover, substantial number of the issues in the field in question is regulated by collective contracts, which normally set up more beneficial conditions for employees in comparison with those given under law and international acts.

Many developed market economies have the right to rest, in particular to vacation, being guaranteed by the constitution and clarified by special legislation. Thus, the Article 36 of the Italian Constitution entitles any employee with the right to weekly rest and annual paid leave, which the employee is not entitled to waive. The "Workers' right" Article 59 of the Portuguese Constitution guarantees to employees the right to rest, limits working day length, weekly rest, and periodic paid vacations. The right to rest is provided for by the Article 35 of the Constitution of Spain and preamble to that of France.

As for the Great Britain, it does not have any rest time regulation acts at all. Special legislation is applied to leaves by Denmark, Austria, Germany and Italy. In France the rest time issues are regulated by Chapter 3 of the Labor Code of 2008, which has consolidated previous acts.

There is hardly any country having any legislative decision on the rest time term. Nevertheless, the following approach is still practiced in most countries, including the USA: in case an employee cannot use his/her rest time at his/her own discretion these periods must be included in the working time [18,428].

The foreign countries' legislation regulates breaks during the working day. In the USA they are regulated at the federal level. During the working day employees are provided with short breaks for rest from 5 to 20 minutes. According to the government, such breaks serve for the productivity increase. They are included in the working time and must be paid [19,61].

Breaks for rest and eating in the foreign countries are not included in the working time. Thus, minimum length of such break accounts for 30 minutes, while its minimum limit is not established. The duration of breaks for rest and eating is accommodated both at the local level and that of the states.

Many national laws do not contain any norms guaranteeing possibility of a short afternoon nap during the working time. Most often it is considered by the employers as a disciplinary offence consisting in failure in official duties. Nevertheless, recent studies demonstrate the short midday nap takes the edge off, increases the concentration and productivity level, improves memory and health. The experts' recommendations are summed up as follows: the nap time should not exceed 45 minutes; it is better to be between 1 p.m and 3 p.m.; 30-minute rest improves memory and health; 20-minute rest enhances the body energy and increases concentration level; 10-minute nap makes one feel good and increases productivity [20].

The foreign countries legislation regulates days off and holidays and their number in different ways. Thus, in Switzerland they amount to 20 days; in Germany - 18; in

Great Britain, Spain – 16; Austria, Slovakia, Greece – 15; Sweden, Belgium – 13, etc. In many countries all or some of such days are paid.

Leaves are regulated by laws and collective contracts, depending on the country, field, attribution to workers or employees categories, length of service, and sometimes age and work conditions. The length of the annual paid leave is 1 to 8 weeks. However, some countries do not practice any leaves (USA, Great Britain), and most workers are provided with vacations on the basis of collective contracts. Thus, in the USA no right to annual paid leave is guaranteed at the federal level.

In many countries the length of annual paid leave depends on the employee's length of service more than it does under the law of Kazakhstan.

Foreign leave legislation contains provisions, which have no any analogue in national law. Thus, under the terms of the French Order of 1 January 1982 an employee is provided with 2.5 days off for one month of uninterrupted service. However, overall length of leave must not exceed 30 working days. Unexcused absence from work (for personal reasons, work interruption occurring through no fault of the employees, illegal strike, etc.) results in proportional leave period reduction. Only uninterrupted service during a calendar year, therefore, grants to the employee the right to 5-week paid vacation. Spouses working for the same company are guaranteed the right to leave simultaneously.

Foreign countries' leave legislation also differs from the national one by higher number of types of leaves, used for the employees' personal and socially useful purposes. Western countries' legislation and collective contracts stipulate paid and unpaid leaves for building the employees' own homes, running their own businesses, travelling abroad, study leaves, and even vacations granted to non-smokers, fit employees, etc.

Besides annual leaves, legislation and collective contracts in the developed countries include other types of leaves, which are used for different purposes: childbirth, marriage, death of a family member, study leave, and even additional vacations to non-smokers. The developed market economies guarantee their citizens the right to reward vacations.

Thus, Kazakhstan lags behind in some aspects of the rest time regulation, while in general the national law is more beneficial to employees. Notwithstanding the distinctive features of the rest time regulation in other countries, common characteristics and trends can be identified, namely increase in the number of the special-purpose leaves; study leaves practice, including leaves for the purpose of increasing the employees' qualification. The reward vacation practice finds wider application in the developed countries than in Kazakhstan, as well as reward leaves to dedicated employees, which have been working for the same company for long time.

The rest time regulation concept in the developed countries is more flexible and highly differentiated, especially where the collective contract is the main source of the labor law. These countries place emphasis on the motivating function of the rest time, which serves for the productivity increase.

Conclusions

The rest time regulation in foreign countries is characterized by certain diversity. Many developed market economies have the right to rest being guaranteed by the constitution and clarified by special acts (i.e. in Article 36 of Italian Constitution, Article 59 of Portuguese Constitution). As for the Great Britain, it does not have any rest time regulation acts at all. Special legislation is applied to leaves by Denmark, Austria, Germany and Italy. In France the rest time issues are regulated by Chapter 3 of the Labor Code of 2008, which has consolidated previous acts.

Absence of any strict legal guarantees for the employees' labor rights at the local level in the USA and the states' broad powers in regulating the rest time enable them to manage standards, which are not necessarily serve the employees' interests and sometimes even aggravate their situation in comparison with the existing federal legislation. In most cases the rest time legal standards are not stated neither at the federal nor regional level, but are at the local level (collective contracts).

The rest time regulation in foreign countries covers its different types, namely work interruptions (during the working day, day-to-day breaks), weekly rest, days off and holidays, and leaves.

Until the beginning of the 20th century, the paid leave was regulated exclusively by means of collective and individual contracts (Austria, Australia, New Zealand, Canada). Mandatory leave was attributed to certain categories of public servants and officers.

The foreign countries' legislation regulates days off and holidays and their number in different ways. In many countries (France, New Zealand, China) all or some of such days are paid.

Leaves are regulated by laws and collective contracts, depending on the country, field, attribution to workers or employees categories, length of service, and sometimes age and work conditions. The length of the annual paid leave is 1 to 8 weeks.

Foreign leave legislation contains provisions, which have no any analogue in the Labor Code of the Republic of Kazakhstan [21]. Thus, under the terms of the French Order of 1 January 1982, an employee is provided with 2.5 days off for one month of uninterrupted service. Spouses working for the same company are guaranteed the right to leave simultaneously. In case an employee is granted leave beyond the leave period, he/she is entitled to additional days off (1-2 days) in compensation. The leave data can be shifted by the company's management within the period of one month prior to its commencement.

Foreign countries' leave legislation also differs from the national one by higher number of types of leaves, used for the employees' personal and socially useful purposes (building their own homes, running their own businesses, travelling abroad, study leaves, and even vacations granted to non-smokers, fit employees, etc.), which is of interest to the national legislator.

The rest time regulation in the Republic of Kazakhstan, as well as in other countries, is currently a principal legal instrument serving for the adequate rest time allocation. The rest time mode makes it possible to manage business processes sensibly, provide employees with spare time, as well as enable both employer and employees to maintain

flexibility of the labor relations standards. Flexible approaches to the labor relations should be based on the rest mode rationality, which is secured by correlation between and content of the work and rest periods, serving for the high productivity being accompanied by the employees' steady working capacity out of the over-fatigue symptoms. Such swing of the work and rest is observed at different time periods, i.e. during the shift, day, week, year, under the company's mode of operation.

The rest mode is a mean of enhancing work time, allowing to produce the same or even bigger quantity of the products with reduced efforts. Optimum work and rest mode regulated by law serves for preserving the employees' health, maintaining high productivity, managing working time in an effective way, meeting production needs, and balancing community and personal interests.

Thus, selection of the optimal rest mode involves identification of the parameters that promote effective resources management and maximum production efficiency.

The rest mode should be focused on satisfying the employees' individual and collective needs (those of women, youth, students, etc.).

It can be, therefore, undoubtedly stated that the rest mode is one of the key elements of the beneficial environment promoting the working population's health preservation and improvement.

References

1. Constitution of the Republic of Kazakhstan (1995). Access mode: URL: <http://adilet.zan.kz/rus/docs/K950001000> [in Russian]
2. Khokhryakova, O.S. (1992) Leaves regulation: history, theory, perspectives for improvement: dis...DJS, M. - 356 p.[in Russian]
3. Soshnikova, T.A. (2005) Legal mechanism for protecting constitutional labor rights and freedoms: dis...DJS, M. - 405 p. [in Russian]
4. Zmushko, A.E. (2014) Regulation of additional paid leaves granted to employees: dis...DJS, M.: MSAL, - 171 p. [in Russian]
5. Kutaphina, G.O. (2007) Leave without pay: Abstract dis...DJS, M. - 23 p. [in Russian]
6. Postnikov, N.A. (2015) Classification of leaves under labor law of Russia: dis...DJS, M.- 26 p. [in Russian]
7. Tsurkan, N.A. (2011) Annual paid leaves under Russian and foreign laws: dis...DJS, M. - 25 p. [in Russian]
8. Ukhtinsky, P.V. (2009) The employee's right to rest: breaks during the working day (shifts): dis...DJS. Perm. - 151 p. [in Russian]
9. Morozov, P.Ye., Chanyshv, A.S. (2016) Labor law in the countries of the European Economic Community: training manual. M.: Prospect. - 336 p. [in Russian]
10. Labor law of Eurasia (2017) / Ye.A. Volk [and others]; under the general editorship of M.V. Lushnikova, K.S. Ramankulova, K.L. Tomashevsky. M.: Prospect. - 496 p. [in Russian]
11. Chanyshv, A.S. (2016) Regulation work and rest time in Scandinavian countries. M.: Prospect. - 240 p. [in Russian]
12. Lushnikov, A.M., Lushnikova, M.V. (2017) Ontology of the national labor law science in the post-Soviet period. M.: Prospect. - 624 p. [in Russian]
13. Blanpain, R. Europeanlabourlaw: 12-thed. (2010) / Roger Blanpain. - NewYork: Kluwer Law International. - 957 p. [in English]
14. Bronstein, A. (2009) International and comparative labour law: current challenges / Arturo Bronstein. - New York [etc.]: Palgrave Macmillan. - Geneva: Intern. Labour Office. - XXXII, 285 c.[in English]
15. Fudge, J. (2015) Constitutionalising Labour Rights In Canada and Europe: Freedom of Association, Collective Bargaining and Strikes / Judy Fudge // Current Legal Problems. Volume 68. Issue 1. - PP.1-39. [in English]
16. Louis, P. (1906) Labor law in civilized countries. M.: Novaya mysl. - 112 p. [in Russian]
17. Labor law in Russia and foreign countries. International labor standards: manual (2008) /L.Ya. Kiselyov, A.M. Lushnikov. - 3d edition., revised and upgraded. M.: EKSMO, - 608 p. [in Russian]
18. Okunkov, L.A. (1997) Constitutions of the European Union countries. M.: INFRA-M.: NORMA. - 490 p. [in Russian]
19. Nazmetdinov, R. (2013) Regulation of rest time in Russian Federation and the United States of America // Voprosy trudovogo prava. -#10. - P.61.
20. Carolanne Wright. Wake up to the benefits of power napping – Boost clarity, happiness and cardiovascular health with this daily habit: http://www.naturalnews.com/037025_power_napping_happines_s_heart_health.html [in English]
21. Labor Code of the Republic of Kazakhstan (2015). Access mode: URL: https://online.zakon.kz/document/?doc_id=38910832#pos=26;-59 [inRussian]