Working hour's standards: the Eurasian economic union states legislation review

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The study of working hours standards and its description in a comparative legal aspect have not been carried out in modern conditions by experts in the field of labor law although many researchers paid attention to the problem of legal regulation for working time. Working time is a multi-rated category. Currently, the issue to control working time legally is acquiring a new aspect. In terms of the global financial crisis, employers increasingly resort to use various types of working hours. Effective use of working time, introduction rational work and rest, special working hours (total control of working time, part-time work, subdivided working time and etc.) contributes to the improvement of social and labor relations, and thus achieving positive economic and social effect.

This article expresses the author's vision of many problems arising in particular when using unregulated working hours, rotational method and etc. Besides that based on a comparative study of the national resources a theoretical and practical conclusion is defined that it is more preferable to use softer forms of legal integration like harmonization at the stage of the Eurasian economic integration which involves labor market arrangement.

Key words: working hours; labor relationship; integration; employment law; legal harmonization.

Introduction

The problem of legal regulation related to working hours takes an important place in the complex range of issues related to study peculiarities in legal regulation of labor in the economic development of the post-Soviet countries. It is particularly urgent these days when economic growth, market development and globalization of many economic sectors occur. The legislator faces a global level mission which is creating a legal background capable to ensure such development in the social and labor sense and protect interests of the labor relations parties. Working hours is one of the central institutions in the labor law. It is a group of legal norms established in order to ensure employees the right to rest and restrict working hours, as well as consolidate measures of labor. Due to combination of a number of economic, political, social and cultural factors, it is of paramount importance at this stage.

Labor legislation development in countries of the Eurasian Economic Union (hereinafter referred to as the

EAEU) on working hours is possible considering the positive experience of developed countries found solution for many issues and tasks in the legislation and law enforcement the legislator faced at the present time. Under such conditions, the comparative and legal method of research acquires a special role and a number of modern scholars find in it the basis to harmonize and unify legislation required to develop international relations and cooperation.

Started functioning on 1 January 2015, the Eurasian Economic Union, which replaced the Eurasian Economic Community, is currently extensively developing its legal base (Eurasian law, or the EAEU law). At the same time, the national labor legislation of the EAEU Member States (Republic of Armenia, Republic of Belarus, Republic of Kazakhstan, the Kyrgyz Republic and the Russian Federation), has been establishing in parallel after the collapse of the USSR for more than 25 years, currently significantly differs both in terms of system and types of applicable laws and regulations, as well as on the content of norms, labor codes development and many others. There are

differences regarding the block of collective and contractual sources ranging from its names, levels of social partnership they have signed and ending with its rate in the mechanism of labor regulation. All this requires a comparative legal study in order to identify differences, develop optimal models that can be used in the process of further harmonization of labor legislation at the EAEU member states.

Integration of regional states in the post-Soviet space followed by unification and legislation harmonization processes, emergence of supergovernmental bodies with special legislative competence and new types of adopted legal acts, undoubtedly affect the legal systems of both the Russian Federation and other independent states established after the collapse of the USSR. Within the framework of regional integration unions (the CIS, the Union State of Belarus and Russia, the EAEU, the EU and etc.), gradually a group of sources is arranged which affects the national law of states, and therefore there is a need to identify systemic links between these subsystems.

Increasing growth of labor migration and transnational corporations dominance in the world economy creating extensive networks of branches and subsidiaries, active role of the international trade union associations and employers determine the need to study the impact of these processes on system of labor law sources understanding the legal nature and places in this system of new sources (global collective agreements, codes of conduct and etc.).

Choice of such integration as the Eurasian Economic Union is related to the fact that these countries, to a certain extent, tend to unify labor legislation ensuring a number of social and labor rights and guarantees for employees of the EAEU member countries. Despite the desire to unify labor laws within the framework of the current EAEU labor standards, member states have significantly different models of legal regulation for public relations related to working hours as well as legal differences in regulatory wordings. Frequently, the polar provisions of the labor law of countries selected as objects of research allow in a greater extent to reflect trends in labor legislation development including the area of working hours in the post-Soviet countries that have certain differences in law enforcement as well as develop various recommendations for relevant legal provisions for labor legislation of the Republic of Kazakhstan.

The main purpose of this research study is a comprehensive study of working hours standards based on the comparative law and analytical study of positive experience of the Eurasian Economic Union countries to identify features and requiring elimination of non-compliances in Kazakhstani labor legislation, determination feasibility to use foreign positive experience of these countries and development possible proposals on how to improve legislation on working hours of the Republic of Kazakhstan as well as compensating existing gaps in the knowledge of foreign labor law on working hours.

Within this study, it does not seem possible to cover the whole range of relations associated with the institute of working hours due to the multiple aspects and big range of these relations in the Republic of Kazakhstan and in legislation of foreign countries. This study analyzes more urgent problems associated with working hours: the concept of working hours, types of working hours, working hours

limit, working hours regulation sources as well as individual problems related to overtime and irregular working hours.

In order to achieve this goal it is necessary to solve the following:

- analyze working hours concept and features, determine its meaning at the current stage of labor law development of the EAEU member states;
- identify the main trends of its development in these countries based on a comprehensive study of working hours as one of the most important institutions of labor law;
- identify the scope of working time concept and characterize different approaches to its definition and find the optimal definition for a phenomenon being under consideration taking into account historical and international legal trends based on comparative and legal research methods;
- identify and consider the peculiarities of working time types and use certain conditions of working hours in these countries and certain problematic issues related to the violation of employee rights;
- conduct a comparative analysis of labor legislation in the area of working hours of the EAEU member states as well as summarize the research and experience of these countries, develop proposals aimed at improving and further developing legislation on working hours;
- identify perspective ways to harmonize labor legislation within the EAEU based on the author's definition of labor and law integration, its forms and methods and a comparative study of supranational sources.

Methodological and general theoretical bases of study

Methodological basis of article is presented by such general scientific methods as historical, system, dialectical, logical and special research methods: formal and legal, comparative and legal and other methods based on the following principles: objectivity, social approach and comprehensiveness.

Theoretical basis of study was compiled from the works of domestic specialists in the field of general theory of law, comparative law and labor law as well as fundamental works, practical developments and analytical monographs of foreign scholars.

Theoretical and practical problems of the working time institute among the EAEU Member States constitute a complex scientific problem which up to now has not been the subject of research.

Complication of this problem is firstly explained by the national specifics of the legislative sources of labor law in Armenia, Belarus, Kazakhstan, Kyrgyzstan and Russia, and the peculiarities of its functioning; secondly, by the influence globalization processes and regional legal integration on labor legislation development; thirdly, by inconsistency and gaps in legislation on the legal nature of working time standards.

The labor law of the EAEU Member States study guide written by P.Ye. Morozov and A.S. Chanyshhev was published in 2016 [1]. It describes and compares the acts of legislation, norms and institutions of labor law of five countries belonging to the EAEU. The textbook "Eurasian Labor Law" [2] was published in 2017.

Another monograph by A. Chanyshv was published in 2016. "Legal regulation of working and rest time in the countries of Scandinavia" which describes the issues of legal regulation of working and rest time in the countries of Scandinavia. The author pays attention to the study of working and rest time as to economic and legal categories, modern problems of setting working and rest time in foreign countries, role and importance of international and European standards on these issues for the countries considered [3].

A monographic study by A.M. Lushnikov and M.V. Lushnikova "The ontology of the national science of labor law in the post-Soviet period" is also of interest. This scientific publication pays a particular attention to studies of foreign authors on the comparative legal aspects of labor law, in particular working time standards [4].

The international legal basis for study was identified by the works of scientists in the field of international labor law and European law such as Blanpain R. [5], Bronstein A. [6], Fudge J. [7], Servais J.-M. [8], Strasser R. [9].

Recognizing importance of scientists contribution to development legal regulation issues and theoretical aspects of working hours institute and its legal guarantees should be noted that it requires an additional study of comprehensive problems of the institute in terms of establishment a democratic civil society and legal state in accordance with international legal acts of labor protection human rights.

Results and Discussions

Integration processes within the Eurasian Economic Union aimed at creating unification and harmonization the legal field including the social and labor sphere cause an objective interest in the study of labor legislation of the EAEU countries.

The study of prospects to develop legal regulation on labor relations and the national labor legislation including legislation on working hours the norms of which have a significant regulatory impact on parties of labor relations is of particular importance under the current conditions to promote interconnections among member states of the EAEU which are quite close in its legal systems and mutual desire to cooperate. Working hours play a significant role as an essential factor determining personnel policy at any enterprise in solution some topical issues of deepening integration contacts between the EAEU countries requiring agreed actions for the civilized development labor market, creation equal conditions and opportunities for economic entities in the exercise of labor rights and guarantees for employees.

Giving a general description to legal regulation on labor relations in the EAEU countries it can be noted that they have a labor legislation codification. The labor codes of those countries have to a large extent similar features, similar structure and content stipulated by its general development within the Union of Soviet Socialist Republics (hereinafter - the USSR). They still have some legal norms and structures existed during the Soviet period and regulated specific issues of labor relations.

As of working hours regulation we note that it was consolidated in the codification documents of all the EAEU countries. We investigate the legal regulation for working

hours on the example of Labor codes as: Armenia, Belarus, Kazakhstan, Kyrgyzstan and Russia. It is interesting to study the positive experience of these countries to determine directions of the legal regulation of labor relations, convergence of national labor legislations and improvement of working hours standards. In this regard, we consider the similarities and differences in working time regulation in legislation of these countries.

First of all, it should be mentioned that in most Labor Codes there is no any conceptual system dedicated to working conditions which we regard as legislator's omission.

As a rule, there is no any clear specification of working time concept in the Labor Codes of the EAEU countries, and there is no any regulation of working time varieties. An example of it can be the Labor Code of the Republic of Kazakhstan. The institute of working hours as a separate chapter is available only in the Labor Codes of the Republic of Kazakhstan and the Russian Federation. The majority of codes contain a chapter with issues devoted working time which, from our point of view, demonstrates an insufficient study the structure of these legislative documents by legislators. Since at the current stage of labor law development working hours is of particular importance, it seems reasonable for us to create a separate chapter in the Labor Codes of the EAEU countries specifically devoted to working hours where it would be controlled more detailed.

Note that there is no any specific definition of working hours in any Labor Code of the EAEU countries. However, if the code of Armenia does absolutely not contain any definition of working hours, the codes of the Republic of Kazakhstan (art. 67) [10], the Republic of Belarus (art. 123) [11] and the Kyrgyz Republic (art. 143) [12] "working hours" term is revealed, and in many respects it is similar to the concept which is secured in Art. 100 of the Labor Code of the Russian Federation [13].

For example, the Labor Code of the Republic of Belarus (Art. 123) [11] and the Labor Code of the Kyrgyz Republic (Art. 101) [12] define working hours as the employer's procedure to distribute daily and weekly working hours and rest time during the day, week, month and other calendar periods for employees. The working time conditions determine the time of beginning and end of the working day (shift), lunch and other breaks, sequence of alternation among workers by shifts, working days and weekends. Thus, the legislators of these countries essentially include the lunch break and weekends in the concept of working time. We consider it is unjustified since the legal regulation of both lunch break and days off in these codes is specified in details in separate chapters. So, Ch. 11 is called "Breaks during the working day. Public holidays, holidays and weekends" in the Labor Code of the Republic of Belarus [11] and the Labor Code of the Kyrgyz Republic separately describes the rules governing this institution in ch. 11 "Rest Time" [12].

On the one hand, these standards are pointed at the effective use of working hours, increasing labor productivity, and from the other, at protecting the employees' health. The duration of work week, shifts, what time of the day the work begins and ends, how periods of work and rest are alternated, and how long the rest period, weekly and annual rest are depend on the human performance, its health and production indicators.

The category "working hours" can be interpreted as two legally significant features. Firstly, as distribution of working hours established for the employee in a specific calendar period. Secondly, as establishment of a procedure for attracting individual employees to work beyond normal working hours.

Note that the concept itself "working hours" is interpreted in the literature in different ways. For example, Yu.V. Tsarenko considers this concept as a legislator's "delusion". According to the author, "a more proper term could be "working conditions" [14,205]. "Preserving working hours the legislator doesn't consider any other options at all what leads the Labor Code to unilaterally consolidate only one system of labor remuneration - payment for working hours and not for the work itself" [15].

Disagreeing with this point of view we believe that labor legislation allows us to distinguish working hours of employees from organization's working hours. Working time is addressed to the employees and working conditions to the employer. For example, the employer is a continuously operating production, and employees work in shifts. Working time is an integral part of the internal labor regulations and must be followed by each employee. Working hours may be the same for all employees of organization or different for individual departments. The parties of labor agreement by mutual agreement may establish an individual working conditions if it does not worsen working conditions of the employee compared with the current legislation or collective agreement.

The rates of working day and working week established by the legislator are a measure of participation time by each employee in a social labor which is the basis of distribution over different periods of time in order to follow it and use rationally. Such periods of time can be a calendar day, week, month, quarter, year and other accounting periods. Choice of calendar period during which working hours established by law are distributed depends on specifics of the employer and the working conditions. Organizations can work intermittently, i.e. when there is idle hours for one or two days off (this is typical for the majority organizations in the current period of time), and continuously - when the main production performs all days of a calendar week as well as with a single-shift and multi-shift production cycle. Based on these circumstances the working time rates should be distributed in such a way as organization to ensure favorable conditions for the to carry out its functions, use of entire equipment, coordinated work of departments as well as compliance with labor laws in order to protect workers' health and ensure their rest time. Therefore, it is necessary to agree with the opinion expressed in the literature that working hours distribution in society aims two main goals:

- apply the rated working time in such a way as working and off time intervals alternated in the most optimal way from the point of view of employee's health protecting, his participation in family life and in various spheres of social activity;
- arrange work hours distribution per unit time in such a way as it meets the interests of society both for better organization of work and for better use of equipment and other means of the employer.

All this characterizes working time condition which is a distribution of working time for the proper course of labor

process and ensuring free time for employees. Determination a rational working and rest condition is a means to improve the working time efficiency since it allows to produce the same or more volume of products or provide services with less effort on the human part performing the work.

It is advisable to consider legal regulation of work outside the established working hours. The most urgent issues related to work outside the established working hours in Russia and abroad are issues related to overtime and irregular working hours.

An analysis of trends in working time arrangement has shown that most recently non-standard working conditions which assume only part-time employment have become increasingly popular among employees. Nevertheless, there are people who make their choice in favor of working with an unregulated working day which testifies the phenomenon of "workaholism." As of today irregular working hours is one of the most widely discussed "related phenomena" of social and labor relations transformation.

The conditions of irregular working hours is the ability to engage certain categories of workers in certain exceptional cases to work beyond standard working time and such work is not considered as overtime.

The main feature of unregulated working day is the employer's right to demand from employee to stay at the end of working day (or go to work before it starts) to perform urgent work. At the same time, neither frequency nor duration of such work is regulated by labor legislation. Although employee works above the established working time rate in irregular conditions, i.e. in most cases beyond 40 hours a week, and no any payment (or additional payments) for these working hours received.

Another feature of an irregular working day is engagement to work beyond the standard duration of the working day in a simplified manner, i.e. without any registration. The law establishes in advance only an additional compensation for such employees - an additional leave submission.

Basically each organization has employees whose working day does not fit into the casual time frame. It is even usual in some commercial organizations to regularly work after hours. Such an unspoken rule is often a part of the corporate organization culture. Overtime work beyond the established working hours is strongly encouraged by various awards (for example, a kind of competition who will work longer is held, and the winners will receive a premium or bonus).

Irregular working hours have a long period of existence which became widespread in the first years after adoption of the Labor Code of 1922 which along with the overtime work established another reason to engage to work beyond standard working time - in the note to art. 94 the right of the People's Commissariat of Labor of the USSR to establish some categories of employees whose work "is not limited to a standard working day" was provided [16].

Non-standardized working day is special working conditions according to which individual employees may by the order of the employer from time to time be involved in the performance of their functions beyond their working hours. The list of employees with irregular working hours is established by a collective agreement, agreement or local

regulation adopted considering the opinion of the representative body of employees.

As T.V. Ivankina rightly notes "an unregulated working day is a special working condition but not a kind of overtime. Therefore, the rules established to use overtime work do not apply to employees with irregular working hours. This applies both to the method of compensating for work beyond the prescribed working hours and to limitations of its duration. Active time in the unregulated working day is limited only by a requirement that engaging to work outside the prescribed working time is necessary and does not occur regularly but occasionally " [17,89]. All the above allows to conclude about the similarity of scientists in their opinion about the concept of irregular working hours, that this is exactly the mode of operation, but not a type of working time.

The analysis of opinions about the issue being investigated indicates that working hours do not establish but implements the already established standards of working hours including local ones while ensuring compliance with its standard duration within the established reference period. Consequently, recognizing an unregulated working day as a special working conditions means that overtime working per one day should be compensated by undertime in other working days or by time off. "In that case," L.Ya. Ostrovskiy asks a reasonable question - if the balance of working hours and rest time can be ensured who and why needs this irregular working day and for what should additional leave be provided? "[18,64]

L.Ya. Ostrovsky comes to the conclusion that not only the minimum but also the maximum duration of the established basic working hours including working day is mandatory for employees with irregular working hours. This means that they are obligatory on a general basis both rationing of working time and the rates of its duration. In the light of foregoing L.Ya. Ostrovskiy admits that the term "irregular working day" does not meet the essence and purpose of this legal category. Moreover, it distorts and thereby misleads it calling the working day and therefore all working hours are irregular. The peculiarity is that along with the standard basic working time an additional work is allowed in this case called after-working. It is also rated but significantly weaker than overtime [18,65].

Overtime activities and other deviations from the standard working hours have also been the subject of in-depth theoretical analysis with explanation of proposals to improve the Soviet labor legislation. However this aspect is not the subject of research in this article.

Conclusion

Actually, working hours in the Republic of Kazakhstan and in the EAEU member states is the most important legal tool allowing rationally distributing working time. The working hours allows to reasonably arrange the course of labor process and ensure free time for employees as well as enable both employer and employee to effectively use elements of flexible approaches in legal regulation of labor relations. Flexible approaches in labor relations should be established exceptionally in terms of rationality during working hours which is based on the ratio and content of work and rest periods at which high labor productivity is

combined with high and stable human performance without signs of excessive fatigue for a long time. Such alternation in periods of work and rest is observed in different periods of time: during the working shift, day, week, and year in accordance with working hours of the organization.

Working hours is a means to improve the efficiency of working time since it allows you to produce the same or more products with less effort on the part of employee. Properly chosen and secured in local regulations the rational working conditions and rest contribute to preserve health of employees, maintain a high efficiency, rational use of working time, meet the needs of production and combine social with private interests.

Thus, when choosing the optimal working conditions, it is necessary to determine such parameters that contribute to the better utilization of production assets and ensure the highest production efficiency. Working conditions are arranged in relation to the most rational production conditions in order to ensure the normal course of technological process, fulfillment specified production volumes, quality and timely carrying out scheduled preventive maintenance and inspection of equipment while reducing its downtime during working hours.

At the same time, it is impossible to arrange working hours without considering human performance and objective need of the body to rest during certain periods of his labor activity. In order to control physiological human capabilities (within the statutory regulations on labor protection and working hours), it is necessary to develop such an alternation of labor time, determine its duration that would ensure the greatest efficiency and productivity.

The working hours should be focused on control and ensuring to a certain extent satisfaction of the private interests of employees and certain categories of employees (women, youth, students and etc.).

The level of productivity as well as economic, management and social efficiency is determined at each enterprise in response to the applied varieties of working hours. As a result of this rational use of the type of working hours the organization succeeds to avoid negative factors of labor process, in particular the severity and intensity of labor, its monotony and negative impact on workers health, their family and social life and etc. Thus, certainly can be said that working hours is one of the fundamental elements in arrangement of favorable living conditions that contribute preservation and strengthening the health of entire working population.

Summing up, we note that comparative and legal analysis of the legal regulation of working hours in the Labor Codes of the EAEU member states has revealed that required legal basis to control working hours was not sufficiently developed. It should be noted that when choosing optimal working hours a comprehensive social and economic approach is needed in all the EAEU member states. The purpose of such approach is a complete and comprehensive assessment of its optimization in terms of control personal, social and industrial interests as well as physiological human capabilities. At the same time, in order to establish appropriate legislative and legal conditions assisting practical implementation of integration processes the legislator should be given an important role to take specific legal and economic decisions in the EAEU member states.

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