

# Trends in Regulating Working and Rest Time in Estonia.

## Proceeding from the European Union Law

The Europe Agreement<sup>\*1</sup> obliges us to approximate and harmonise Estonian legislation with the EU law, particularly in the fields of trade, economy and related spheres, *i.e.* in issues concerning protection of employees (articles 68 and 69). Thus, the labour laws applicable in Estonia have to be in accordance with the EU legislative or regulatory provisions, which also serves as a prerequisite for the accession to the EU. Although the Estonian legislation on labour law is basically compatible with the EU provisions, it needs to be substantially supplemented on the basis of the EU law.<sup>\*2</sup> This paper will analyse the conformity of the Estonian legal regulation of working and rest time with the EU requirements and some proposals will be made for amendment of labour laws.

Taking into account the various working forms adopted over the last decades (out-working, distance work, etc.), in many cases it is impossible to precisely regulate working and rest time. According to the latest trends prevalent in the EU member states, the working time of an employee shortens and the working time of an enterprise lengthens. This allows for flexible organisation of work, increase in the complete implementation level of all resources, gradual adjustment to new circumstances, increase in productivity and competitiveness. Flexible organisation of working time also allows for a better linkup of employees' employment and family duties and enables the states to integrate more people into the labour market.

However, the working and rest time of employees has to be regulated as unrestricted working time fosters over-fatigue, occurrence of accidents at work and distress – a working week exceeding 50 hours is hazardous to an employee's health.<sup>\*3</sup> Regulation of working and rest time is also necessary for ensuring a higher level of protection to particular groups of workers (children, women, people engaged in work that poses a health hazard, etc.).

The EU began to regulate working and rest time in the 1990s. To date, three directives on working and rest time have been adopted in the EU – Council Directive 93/104/EEC concerning certain aspects of the organisation of working time, Council Directive 96/34/EC on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC and Council Directive 97/81/EC concerning the framework agreement on part-time work concluded by UNICE, CEEP and the ETUC.

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<sup>1</sup> Euroopa ühenduste ja nende liikmesriikide ning Eesti Vabariigi vaheline assotseerumisleping (Euroopa leping) (Association Agreement between the European Communities and their Member States and the Republic of Estonia (Europe Agreement)) – Riigi Teataja (the State Gazette) II 1995, 22–27, 120.

<sup>2</sup> See M. Muda. Eesti tööseaduste täiustamisest integreerumisel Euroopasse. Magistritöö (About Improvement of Estonian Labour Laws upon Integration into Europe. Master's thesis). Tartu, 1996.

<sup>3</sup> R. Blanpain. European Labour Law. 6<sup>th</sup> and revised edition. The Hague: Kluwer Law International, 1999, p. 299.

The working and rest time of minors and women are also regulated by the Council Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC) and Council Directive 94/33/EC on the protection of young people at work.

On 31 May 2000, the *Riigikogu* (parliament) of the Republic of Estonia ratified the revised version of the Council of Europe (CE) Social Charter<sup>\*7</sup>, including several provisions concerning working and rest time.<sup>\*8</sup> Adherence to the provisions established in the Social Charter is also important with regard to the accession to the EU, as according to article 136 of the Treaty establishing the European Community, the European Community shall proceed, *inter alia*, from the fundamental social rights set out in the CE Social Charter when designing its social policy.<sup>\*9</sup>

In Estonia, the principal acts governing working and rest time are the Working and Rest Time Act<sup>\*10</sup> (hereinafter: WRTA) and the Republic of Estonia Holidays Act<sup>\*11</sup> (hereinafter: HA). By the time the paper is written, a new draft Working and Rest Time Act has been prepared.

## General Standards of Working and Rest Time

The EU member states aim at shortening the working time. Such a principle has also been set out in article 2 of the CE Social Charter, which lays down: with a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake to provide for reasonable daily and weekly working hours, the working week to be progressively reduced to the extent that the increase of productivity and other relevant factors permit (paragraph 1). With a view to ensuring the effective exercise of the right of children and young persons to protection, the Parties undertake to provide that the working hours of persons less than 18 years of age shall be limited in accordance with the needs of their development, and particularly with their need for vocational training (article 7, paragraph 4).<sup>\*12</sup>

According to the Council Directive 93/104/EEC concerning certain aspects of the organization of working time<sup>\*13</sup>, the average working time for each seven-day period, including overtime, does not exceed 48 hours (article 6, paragraph 2). The general established national standard of working time in the EU member states is mostly 40 hours per week and 8 hours per day. The same standard is also set out in § 9 of the Estonian Working and Rest Time Act – the general national standard of working time of employees shall not exceed 8 hours per day and 40 hours per week. Whereas in the EU member states national standards of working time are frequently reduced by means of collective agreements, no such agreements have been concluded in Estonia. On the one hand, the lack of such agreements has been caused by the minor importance of collective agreements in regulating labour relations<sup>\*14</sup>, on the other hand, economic indicators do not allow for reduction of working time, and shortening of working time with collective agreements can obviously not be foreseen in the nearest future.

Subsection 10 (1) of the Estonian WRTA sets out a reduced working time for minors:

- 1) 20 hours per week for employees who are 13–14 years of age;
- 2) 25 hours per week for employees who are 15–16 years of age;
- 3) 30 hours per week for employees who are 17 years of age.

For a five-day working week, the national standard of working time is 8 hours per day for a 40-hour working week, 7 hours per day for a 35-hour working week, 6 hours per day for a 30-hour working week, 5 hours

<sup>7</sup> Parandatud ja täiendatud Euroopa Nõukogu sotsiaalharta ratifitseerimise seadus (Ratification of Revised Council of Europe Social Charter Act) – Riigi Teataja (the State Gazette) II 2000, 15, 93.

<sup>8</sup> Article 2, paragraphs 1, 3 and 5; article 7, paragraphs 4, 7 and 8; article 8.

<sup>9</sup> Amsterdami leping. Konsolideeritud lepingud (Treaty of Amsterdam. Consolidated Treaties). Tallinn: Eesti Õigustõlke Keskus, 1998, p. 214.

<sup>10</sup> Töö- ja puhkeaja seadus (Working and Rest Time Act) – Riigi Teataja (the State Gazette) I 1994, 7, 70; 1995, 12, 120.

<sup>11</sup> Puhkuseseadus (Holidays Act) – Riigi Teataja (the State Gazette) 1992, 37, 481; I 1999, 82, 749.

<sup>12</sup> Valimik Euroopa Nõukogu lepinguid (Selected Agreements of the Council of Europe). Tallinn: Õigusteabe AS Juura, 1999, pp. 109 and 112.

<sup>13</sup> OJ L 307, 13.12.1993, p. 18.

<sup>14</sup> In Estonia, approximately 10% of the employees are covered by collective agreements. See K. Pärnits. On Questions Surrounding Collective Agreements in Estonia. – *Juridica International. Law Review. University of Tartu*, III, 1998, p. 124.

per day for a 25-hour working week and 4 hours per day for a 20-hour working week (§ 12 (1)). According to § 12 (3), upon the recording of total working time<sup>15</sup>, the duration of working time of employees who are 13–14 years of age shall not exceed 5 hours per day, the duration of working time of employees who are 15–16 years of age shall not exceed 6 hours per day and the duration working time of employees who are 17 years of age shall not exceed 7 hours per day.

In the Council Directive 94/33/EC on the protection of young people at work<sup>16</sup>, the standards of working time have been determined considerably more precisely. The directive distinguishes between children<sup>17</sup> and adolescents<sup>18</sup>, regulating their working and rest time in a different manner. If the working time of adolescents may be up to 40 hours per week and 8 hours per day according to the directive, the duration of working time of children has been regulated in a more detailed manner – the working time of children has been bound to the obligation of children to attend school. Thus, for example, the working time of children shall be restricted to two hours on a school day and 12 hours a week for work performed in term-time outside the hours; in no circumstances may the daily working time exceed 7 hours; this limit may be raised to 8 hours in the case of children who have reached the age of 15 (article 8, paragraph 1).

Estonian legislation does not provide for so precise rules, although a more detailed regulation would be certainly necessary with regard to the protection of minors. The draft WRTA does not foresee fundamental changes in this respect because minors who have reached the age of 13–14 may work only during holidays according to the new Employment Contracts Act to be soon adopted. According to the draft act, minors starting from 15 years of age may work throughout a year since basic education has been acquired by that age.

However, some alterations have been made in the draft WRTA concerning the standard of working time. Reduced working time has been, *inter alia*, provided for:

- 1) employees who are 13–14 years of age – 4 hours per day and 20 hours per week;
- 2) employees 15 years of age – 6 hours per day and 30 hours per week;
- 3) employees 16–17 years of age – 7 hours per day and 35 hours per week.

According to § 15 of the draft act, a shift may last up to 12 hours as a rule (§ 15 (1)); upon recording total working time, the daily working time of minors shall be:

- 1) for employees 13–14 years of age – up to 5 hours;
- 2) for employees 15 years of age – up to 7 hours;
- 3) for employees 16–17 years of age – up to 8 hours.

Thus, the standard of working time for minors 13–14 years of age has remained the same, whereas alterations have been made in the standard of working time for employees 15–17 years of age. The regulation of the draft WRTA fully conforms to the requirements of the directive.

For Estonia, also the principle established in article 6 of the Council Directive 93/104/EEC, according to which the average working time for each seven-day period, including overtime, does not exceed 48 hours proves problematic. Subsection 15 (2) of the WRTA allows employees to work overtime for 4 hours per day and establishes 12 hours as the maximum duration of a shift. Consequently, it is possible that the maximum working time per week may exceed well over 48 hours (5 x 12 = 60 hours per week). According to § 14 of the Wages Act<sup>19</sup> (hereinafter: WA), additional remuneration for overtime may be compensated by provision of time off or money, whereas the additional remuneration per hour of overtime paid to an employee shall not be less than 50 per cent of the hourly wage rate of the employee. Although from the viewpoint of protection of employees, it would be more reasonable to compensate for overtime with provision of time off, this option is hardly ever employed in practice as it would render the calculation of employees' working time too complicated. Thus, as a rule, the working time of an employee usually increases in the case of overtime. Also, proceeding from the nature of work, in case of many professions (*e.g.* executive workers, journalists, lecturers, etc.) precise calculation of working time is impossible and frequently considerably more work is done there than prescribed by national standards of working time. In

<sup>15</sup> *I.e.* a longer period than 24 hours serves as a period for calculating working time.

<sup>16</sup> OJ L 216, 20.08.1994, p. 12.

<sup>17</sup> According to subparagraph 3 (b) of the directive, "child" shall mean any young person of less than 15 years of age or who is still subject to compulsory full-time schooling under national law.

<sup>18</sup> According to subparagraph 3 (c) of the directive, "adolescent" shall mean any young person of at least 15 years of age but less than 18 years of age who is no longer subject to compulsory full-time schooling under national law.

<sup>19</sup> *Palgaseadus* (Wages Act) – Riigi Teataja (the State Gazette) I 1994, 11, 154; 2000, 40, 248.

such a case, overtime is not taken into account and a longer working time should be compensated for with higher salaries.

In addition to the above-mentioned options, according to § 37 of the Employment Contracts Act<sup>\*20</sup> (hereinafter: ECA), a person may have a second job.<sup>\*21</sup> According to § 17 of the WRTA, the working time of a person with a second job shall not exceed 20 hours per week at the second job; if a person with a second job works part-time at his or her principal job, the total working time in the principal job and the second job together shall not exceed 60 hours per week. Conflict with the directive here is obvious, working for more than 48 hours per week is absolutely legal.

As a person holds a second job usually with the same employer, where the employee has his or her principal job, one of the aims of establishing this regulation was the precise calculation and limiting of the working time of an employee. Working in a second job has also been caused by a practical necessity. The living standard in Estonia is not comparable with that of the other European states, where the income received for reduced working time enables employees to afford normal living. According to a variety of international instruments (the Universal Declaration of Human Rights, European Social Charter, etc.), remuneration shall ensure satisfaction of the needs of an employee's and his or her family on a human level. As the wages paid in Estonia in many cases fail to conform to this requirement<sup>\*22</sup>, an opportunity has been provided to employees to increase their income by overtime and working in a second job. There is no doubt that such regulation is not justified with regard to the safety of employees and protection of their health. In addition to that, limited working time would contribute to the reduction of unemployment. Due to that, the new draft ECA and WRTA provide for a different regulation of these matters. According to the draft ECA, working in a second job will no longer be possible. If an employee works on the basis of several employment contracts, all the rights arising from an employment relationship shall apply to him or her in the case of each and every contract. The draft WRTA sets out that if an employee works under several employment contracts, the total of his or her working time with various employers shall not exceed the national standard of working time (§ 4 (3)).

In addition to that, the draft WRTA imposes restrictions on overtime: an employer is not allowed to use an employee for overtime for more than 4 hours per day. The duration of a shift together with overtime shall not exceed 12 hours. The working time and overtime per week shall not exceed 48 hours per week (§§ 9 (2) and (3)). As the actual need to work more in order to increase income does not cease when restrictions are imposed on the working time of an employee, the maximum rate of overtime has been increased from the previous 200 hours per year to 240 hours per year in the draft act.

In the WRTA, the regulation of breaks during a working day needs to be supplemented, particularly with regard to occupational health and safety of minors. According to article 12 of directive 94/33/EC, where daily working time is more than four and a half hours, young people are entitled to a break of at least 30 minutes, which shall be consecutive if possible. According to § 24 (2) of the WRTA, a break for rest and meals shall be provided not later than after 5 hours of work. Subsection 24 (1) of the WRTA sets out two hours as the maximum duration of the breaks, the minimum duration of the breaks should also be laid down. According to § 16 of the draft WRTA, an employer shall be obliged to provide to an employee a break for rest and meals not later than after 4 hours of work. A break for rest and meals shall last from 30 minutes to 1 hour (§§ 16 (1) and (2)).

According to § 27 of the WRTA, the duration of rest time between shifts shall be at least 11 hours (§ 27 (1)). This provision has been specified in the draft WRTA in order that it be expressly in compliance with the principle provided in directive 93/104/EEC, according to which every worker is entitled to a minimum daily rest period of 11 consecutive hours per 24-hour period (article 3), and the requirements of directive 94/33/EC, according to which for each 24-hour period, children are entitled to a minimum rest period of 14 consecutive hours and adolescents are entitled to a minimum rest period of 12 consecutive hours (subparagraphs (a) and (b) of paragraph 10 (1)).

<sup>20</sup> Töölepingu seadus (Employment Contracts Act) – Riigi Teataja (the State Gazette) 1992, 15/16, 241; I 2000, 25, 144.

<sup>21</sup> Working on the basis of another employment contract outside the working time spent in a principal job with the same or another employer shall be considered as working in a second job. People working in a second job do not have several guarantees (people holding a second job are laid off in the first order, they lack guarantees upon termination of the employment contract, etc.), which have been ensured to people working in principal jobs.

<sup>22</sup> The minimum monthly wage in Estonia at the moment is 1,400 kroons or approximately 86 USD and the average monthly wage is 4,500 kroons or approximately 276 USD.

According to § 20 (1) of the draft WRTA, a minimum of 11 consecutive hours of daily rest shall be provided to an employee. The duration of daily rest shall be:

- 1) for employees 13–14 years of age – a minimum of 18 consecutive hours;
- 2) for employees 15 years of age – a minimum of 16 consecutive hours;
- 3) for employees 16–17 years of age – a minimum of 15 consecutive hours (§ 20 (2)).

According to directive 93/104/EEC, per each seven-day period, every worker is entitled to a minimum uninterrupted rest period of 24 hours plus the 11 hours' daily rest. If objective, technical or work organisation conditions so justify, a minimum rest period of 24 hours may be applied (article 5). According to directive 94/33/EC, for each week, young people are entitled to a minimum rest period of no less than 36 hours (article 10, paragraph 2).

Section 28 of the WRTA establishes as a minimum duration of weekly rest time 36 hours (§ 28 (3)). Exceptions from this standard may be made (with regard to adult employees) with the consent of a labour inspector (§ 28 (4)). Proceeding from directive 93/104/EEC, the regulation of weekly rest period has been specified in the draft WRTA. Namely, when making exceptions to the minimum weekly rest period standard of 36 hours, one has to take into account that the duration of the rest period shall under no circumstances be less than 24 hours (§ 21 (4)).

There are no problems involved upon applying international standards laying down annual paid leaves. Both the CE Social Charter (article 2, paragraph 3; article 7, paragraph 7) and directive 93/104/EEC (article 7) set out the duration of a paid annual leave as at least 4 weeks. The Estonian HA provides for 28 days for annual holiday and lays down an extended base holiday<sup>\*23</sup> (from 35 up to 56 days) and additional holiday<sup>\*24</sup> possibilities.<sup>\*25</sup> Directive 94/33/EC establishes a following principle with regard to the annual rest of children: a period free of any work is included, as far as possible, in the school holidays of children subject to compulsory full-time schooling under national law (article 11). The Estonian HA does not set out such requirement and there will be no need for such regulation upon the entry into force of the new ECA, according to which minors under 15 years of age may work only during school holidays.

## Part-time Working Time

In addition to the overall reduction in working time, part-time working is widespread in the EU member states. In the EU, part-time working time has been regulated by Council Directive 97/81/EC concerning the framework agreement on part-time work concluded by UNICE, CEEP and the ETUC.<sup>\*26</sup> According to clause 3.1 of the agreement, a part-time worker is an employee whose normal hours of work, calculated on a weekly basis or on average over a period of employment of up to one year, are less than the normal hours of work of a comparable full-time worker, whereas a comparable full-time worker is a full-time worker in the same establishment having the same type of employment contract or relationship, who is engaged in the same or a similar work or occupation (clause 3.2). According to § 18 of the Estonian WRTA, part-time working time is working time which is shorter than the established standard of working time at the place of employment and which is applied by agreement of an employee and employer (§ 18 (1)).

The most important principle of directive 97/81/EC has been set out in clause 4: in respect of employment conditions, part-time workers shall not be treated in a less favourable manner than comparable full-time workers solely because they work part time unless different treatment is justified on objective grounds (clause 4.1). As there is no special regulation in Estonia concerning the employment relationships of part-time workers, full-time workers and part-time workers shall generally have equal rights and obligations – no restrictions have been set out with regard to part-time workers proceeding from their standard of shorter working time. Neither have restrictions been established concerning the calculation of remuneration or implementation of a social care system; equal conditions have been ensured to part-time employees

<sup>23</sup> An extended base holiday is granted to minors, disabled persons, state officials and local government officials, heads, researchers, academic staff, teachers, educators and other pedagogical specialists of universities, institutions of applied higher education, research institutions, schools and other child care institutions and pedagogical specialists of medical institutions, children's sanatoriums and adult welfare institutions (§ 9 (2) of the HA).

<sup>24</sup> Additional holiday is granted in case of underground work, persons engaged in work which poses a health hazard or work of a special nature (§ 10 (1) of the HA).

<sup>25</sup> Sections 9–11.

<sup>26</sup> OJ L 14, 20.01.1998, p. 9.

concerning the protection of motherhood, termination of employment relationships, annual paid leaves, public holidays, sick leaves and other guarantees.

According to the WRTA, people holding a second job also work part-time. According to § 95 of the ECA, the guarantees prescribed in §§ 87–94 do not apply upon termination of an employment contract with a person in a second job. Consequently, the employer may terminate the employment contract of a person in a second job as an employee working part-time for any reason without prior notification, payment of compensation and disregarding other guarantees (prohibition to terminate an employment contract at the time of disability to work, leave and parental leave, etc.). Upon terminating an employment contract with a person in a second job, pregnancy of the employee or a fact that he or she raises a child under 3 years of age are of no importance. Serving as a representative of employees does not grant provision of guarantees.<sup>\*27</sup> Thus, no benefits or compensation are ensured to an employee in a second job as a part-time employee upon termination of his or her employment contract. As working in a second job precludes the existence of a principal job, the implementation of the above-mentioned guarantees to such employees should be ensured via their principal job. However, one cannot rule out a situation where the employment contract with a person working in a second job has been terminated in his or her principal job and the employee works only in his or her second job. Cessation of a labour law relationship in one's principal job does not transform work performed in a second job into the principal job. Work performed in a second job transforms into the principal job only through the making of amendments to the employment contract upon agreement between the parties.<sup>\*28</sup> In order to provide equal protection to all employees irrespective of the duration of their working time, a possibility to work in a second job has not been provided for in the new ECA and upon the entry into force of the act, equal treatment of full-time employees and employees in a second job should be ensured.

According to § 18 of the WRTA, part-time working time has been provided for pregnant women and persons raising a child – at the request of the pregnant woman and a woman raising a disabled child or child under fourteen years of age, an employer is required to apply part-time working time with respect to such person (§ 18 (3)). In practice, this provision is applied extremely rarely, as the employer is in most cases unable to employ the woman for a part-time job. Employees themselves are frequently not interested in part-time working either, as this automatically entails reduction in remuneration. Therefore the above-mentioned provision has been left out from the draft WRTA.

Although according to directive 97/81/EC, as a rule, equal treatment of part-time and full-time employees shall be ensured, provision of all guarantees arising from an employment relationship to extremely short-time employees is not always justified. According to the directive, where justified by objective reasons, member states and/or parties to the employment relationship, where appropriate, make access to particular conditions of employment subject to a period of service, time worked or earnings qualification (clause 4.4). The labour laws applicable in Estonia do not prescribe such restrictions. According to § 6 (2) of the draft WRTA, guarantees granted to an employee may be restricted by law, if his or her standard of working time remains below 12 hours per week. The draft WRTA does not specify what guarantees may be restricted in case of employees whose standard working week is below 12 hours because this does not fall within the area of application of this act and these fields will be regulated by special acts. As working time limit has not been established with regard to the guarantees granted to part-time employees earlier, no relevant restrictions are prescribed by applicable acts; however, making of exceptions with regard to annual leave, termination of an employment contract, and other guarantees may be justified in future.

According to directive 97/81/EC, the member states and parties shall identify and review obstacles of a legal or administrative nature which may limit the opportunities for part-time work and, where appropriate, eliminate them (clause 5.1). As restrictions on working time and implementation of part-time working time significantly contribute to the reduction of the expanding unemployment, the EU precepts concerning the encouragement of part-time working time are reasonable. Estonian labour laws make no exceptions as to implementation of part-time working time – part-time working time is implemented upon agreement between an employee and employer, whereas similar guarantees as to a full-time employee have been provided for a part-time employee. Unlike in the EU member states, part-time work is not widespread in Estonia. Neither employees nor employers are interested in implementing part-time working time. For an employee, part-time working would entail reduction of his or her income, which would considerably

<sup>27</sup> Töölepingu seadus. Kommenteeritud väljaanne (Employment Contracts Act. Commented Edition). Commentary by I.-M. Orgo, H. Siigur, G. Tavits. Tallinn: Õigusteabe AS Juura, 1997, p. 106.

<sup>28</sup> *Ibid.*, p. 46.

deteriorate his or her economic situation. For the sake of practicability, employers also prefer to employ one full-time employee instead of several part-time ones. As the opportunity to work part-time is seldom used in Estonia, there are no grounds to fear that part-time employees will be discriminated against. The regulation set out in the EU will probably become relevant to Estonia only after several years when the economy and labour market have reached a particular level of stability and people aim at ensuring an increasingly better quality of life.

## Night Work

According to the generally accepted rules of international labour law, people working at night need particular protection, as night work demands greater effort from an employee than working in daytime. According to article 2 paragraph 7 of the CE Social Charter, the parties undertake to ensure that workers performing night work benefit from measures which take account of the special nature of the work. The EU has regulated working at night with several directives, setting out the general rules of working at night and establishing detailed standards of the night work performed by minors and women.

According to directive 93/104/EEC, nighttime shall mean any period of not less than 7 hours which must include in any case the period between midnight and 5 a. m. (article 2). The Estonian WRTA distinguishes between the evening and nighttime. According to § 19 of the WRTA, evening time is the time between 18:00 and 22:00, and night time is the time from 22:00 until 6:00 (§ 19 (1)). According to § 17 of the WA, additional remuneration of at least 10% of the hourly wage rate of the employee shall be paid to an employee, additional remuneration for each working hour at night shall not be less than 20 per cent of the hourly wage rate; also, several restrictions have been imposed on working at night.

Subsection 19 (2) of the WRTA prohibits the use at night work of pregnant women, minors, and employees who are not allowed to work during nighttime by the decision of a doctor. Work performed by minors at night has been prohibited with the CE Social Charter (article 7, paragraph 8) and directive 94/33/EEC, according to article 9 of which children shall not work between 8 p.m. and 6 a.m. and adolescents either between 10 p.m. and 6 a.m. or between 11 p.m. and 7 a.m. (subparagraphs 1 (a) and (b)). On the basis of the directive, exceptions may be made with regard to the prohibition of adolescents from work at night: in such a case, work shall continue to be prohibited between midnight and 4 a.m. (paragraph 2). As minors of 13–14 years of age may not work starting from 8 p.m., a provision has been included in the draft WRTA, according to which performance of work by an employee 13–14 years of age is prohibited during evening time (*i.e.* from 6 p.m. to 10 p.m.) (§ 11 (2)).

Another group which has had night working restrictions imposed on it with international instruments is pregnant women, women who have recently given birth and women nursing their infants. According to the CE Social Charter, the parties shall be obliged to establish rules concerning the night work of these employees (article 8, paragraph 4). Prohibition of women to work at night has been set out in Council Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding<sup>29</sup>, according to article 7 of which the member states shall take the necessary measures to ensure that workers are not obliged to perform night work during their pregnancy and for a period following childbirth which shall be determined by the national authority competent for safety and health, subject to submission, in accordance with the procedures laid down by the member states, of a medical certificate stating that this is necessary for the safety or health of the worker concerned (paragraph 1). The measures referred to in paragraph 1 must entail the possibility, in accordance with national legislation and/or national practice, of transfer to daytime work or leave from work or extension of maternity leave (paragraph 2).

As mentioned above, the Estonian WRTA does not allow the working at night of a pregnant woman or an employee who has been prohibited from working by a decision of a doctor. Section 63 of the ECA sets out that pregnant women have the right to request temporary easement of working conditions or temporary transfer to another position based on a certificate for sick leave prepared by a doctor. If the employer is unable to ease the working conditions of the pregnant woman or transfer her to an easier job, she shall be released from work for the period prescribed in the certificate for sick leave and paid a compulsory medical insurance benefit (§§ 63 (1) and (2)). As a result of the amendments made to the ECA on 9 December

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<sup>29</sup> OJ L 348, 19.10.1992, p. 11.

1998<sup>\*30</sup>, the above-mentioned amendment is not provided for with regard to a woman who has recently given birth to a child or a breastfeeding employee. The existence of such a guarantee would undoubtedly be necessary and it should be restored in its previous form<sup>\*31</sup> in the act. The fact that an employer may not require a woman breastfeeding her child to work during pregnancy and maternity leave (which lasts up to 8 or 10 weeks after the childbirth) does not provide sufficient guarantee to her because the breastfeeding period may last considerably longer.

According to article 8 of directive 93/104/EEC, normal hours of work for night workers do not exceed an average of 8 hours in any 24-hour period; night workers whose work involves special hazards or heavy physical or mental strain do not work more than 8 hours in any period of 24 hours during which they perform night work. The Estonian WRTA establishes a more favourable condition to employees in this respect – according to § 20 (1) of the act, upon the application of general working time, the duration of a shift shall be reduced by one hour during night time. This means that if the duration of a shift is normally 8 hours at daytime, the night shift shall last 7 hours. The duration of a shift during nighttime is treated as equal to that during the day if this is unavoidable due to production conditions (§ 20 (2)). In relation to the application of these rules, a question whether an employee's standard of working time will also be reduced upon reduction in night shift, or the employee must, on account of the reduction in the night shift, work respectively more in a day or evening shift needs to be answered. No single answer can be obtained from the act, but it is logical that reduction in night shifts is a compensation for unfavourable working time regime and the standard of working time has to be reduced accordingly. In opposite cases, reduction in night shift would not have been reasonable. In order to avoid disputes, it would be practicable to remove this questionable provision from the act in future and set out expressly that upon reduction of night shifts, the standard of working time of an employee shall be reduced.<sup>\*32</sup> According to § 11 (5) of the draft WRTA, upon the reduction of the duration of shift at nighttime, the standard of working time shall decrease accordingly.

In the EU directives, several supplementary guarantees have been provided for persons working at nighttime. Both according to article 9 of directive 93/104/EEC and article 9 paragraph 3 of directive 94/33/EC, night workers are entitled to a free health assessment before their assignment and thereafter at regular intervals. Directive 93/104/EEC sets out that night workers suffering from health problems recognized as being connected with the fact that they perform night work are transferred whenever possible to day work to which they are suited (article 9). In Estonia, a person working at night time can demand that he or she be transferred to daytime work on the basis of § 61 of the ECA, which sets out that if, by decision of a doctor, continuation in former position by an employee is not advisable for reasons of health and the employer has other work which the health of the employee allows him or her to perform, the employee has the right to claim transfer to such position (§ 61 (1)). If it is not possible for an employer to transfer an employee to a position which is suitable to his or her state of health, the employment contract is terminated due to unsuitability of the employee to his or her position (§ 61 (3)). In order to ensure the full conformity of Estonian legislation with the requirements of the EU directives, working at night should also be added to the list of jobs where prior and regular assessment of health approved by the Government of the Republic regulation<sup>\*33</sup> is provided.

## Rest Time with regard to Pregnancy and Raising of Children

Additional rest is provided to employees in relation with pregnancy and raising of children according to international instruments. Benefits are provided for, above all, pregnant women and breastfeeding employees as well as persons raising babies.

<sup>30</sup> Riigi Teataja (the State Gazette) I 1998, 111, 1829.

<sup>31</sup> Before the amendments were made to § 63 of the ECA, a woman raising a child under 3 years of age had the right to demand to be transferred to another job on the basis of a decision of a doctor until the child attains 3 years of age.

<sup>32</sup> I.-M. Orgo. *Vaieldavused töö- ja puhkeaja seaduse kohaldamisel* (Disputabilities upon Application of the Working and Rest Time Act). – *Juridica*, 1994, No. 6, p. 145.

<sup>33</sup> Vabariigi Valitsuse määrus 22. juunist 1992 "Eesti Vabariigi töölepingu seaduse rakendamise otsuse täitmise kohta" (Government of the Republic regulation on the performance of a resolution concerning implementation of the Republic of Estonia Employment Contracts Act of 22 June 1992) – *Riigi Teataja* (the State Gazette) 1992, 34, 454.



According to article 9 of the EU directive 92/85/EEC, pregnant workers are entitled to time off, without loss of pay, in order to attend antenatal examinations, if such examinations have to take place during working hours. In Estonia, the right of pregnant women to time off from work for antenatal examinations without loss of pay has not been established and this issue is usually regulated by agreement between an employee and employer. In order to ensure the conformity of Estonian legislation with the requirements of directive 92/85/EEC, the new WRTA sets out a principle, according to which an employer is obliged to provide to a pregnant woman time off for antenatal examinations at the time indicated in the decision of a doctor, which is calculated as working time (§ 18).

As one of the most important guarantees to pregnant employees and women who have recently given birth to a child, international instruments provide for paid pregnancy and maternity leave. Article 8 paragraph 1 of the CE Social Charter sets out the duration of pregnancy and maternity leave as being 14 weeks. According to article 8 of directive 92/85/EEC, employees are entitled to a maternity leave of a least 14 consecutive weeks allocated before and/or after confinement in accordance with national legislation and/or practice (paragraph 1). The maternity leave stipulated in paragraph 1 must include compulsory maternity leave of at least two weeks allocated before and/or after confinement in accordance with national legislation and/or practice (paragraph 2). The Estonian HA establishes for workers provisions which are considerably more favourable than the above-mentioned ones. According to § 28 of the HA, based on a certificate for maternity leave, a woman is granted a pregnancy leave of 70 calendar days before giving birth and a maternity leave of 56 calendar days after giving birth. In the case of a multiple birth or a delivery with complications, a maternity leave of 70 calendar days is granted. Pregnancy leave and maternity leave are added together and granted in full, regardless of the date of birth of the child. Thus, as a rule, a woman has a right to have a pregnancy leave of 18 weeks and in case of multiple birth or delivery with complications 20 weeks. The HA does not establish the duration of mandatory pregnancy and maternity leave, but according to the Republic of Estonia Health Insurance Act<sup>\*34</sup> (hereinafter: HIA), in case of pregnancy and maternity leave a certificate of incapacity for work (certificate for maternity leave) shall be formalised for 126 calendar days (in case of multiple birth or delivery with complications for 140 calendar days) (§§ 7 (2), 8 (2), 9 (3)). According to § 10<sup>1</sup> of the HIA, an employer is prohibited from permitting an employee to work during the time off from work indicated on the certificate of incapacity for work. For the sake of being clear, pregnancy and maternity leave should be set out as mandatory also in the HA.

The most important benefit of people raising children is an opportunity to use parental leave. In the EU, matters related to parental leave are regulated by directive 96/34/EC on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC.<sup>\*35</sup> The agreement grants men and women workers an individual right to parental leave on the grounds of the birth or adoption of a child to enable them to take care of that child, for at least three months, until a given age up to 8 years (clause 2.1). To promote equal opportunities and equal treatment between men and women, the parties to this agreement consider that the right to parental leave provided for under clause 2.1 should, in principle, be granted on a nontransferable basis (clause 2.2). According to § 30 (1) of the Estonian HA, a mother or father is granted parental leave at his or her request until the child attains three years of age. If a mother or father does not use parental leave, the leave may be granted to the actual caregiver of the child who lawfully resides in the Republic of Estonia (§ 30 (2)). Parental leave is not granted if the child is wholly or partly maintained by the state (§ 30 (4)). Parental leave may be obtained also upon the adoption of a child less under 3 years of age because according to § 86 (1) of the Family Law Act<sup>\*36</sup>, an adopted child and his or her descendants shall be deemed to be equal with respect to his or her adoptive parents and their relatives, and the adoptive parents and their relatives shall be deemed to be equal with respect to the adopted child and his or her descendants with regard to personal and proprietary rights and obligations.

According to the HA, parental leave can be used by one of the parents by agreement of the parties. Generally, the mother of the child takes parental leave; fathers do not use that opportunity as a rule. Thus, parental leave can be transferred – if the father of a child does not take leave, its mother shall have a right thereto. One possibility to change such a situation would be to set out an equal duration of parental leave for both parents, for example, the mother of a child could use parental leave after pregnancy and maternal leave until the child attains 1.5 years of age; thereafter the father of the child could take a leave and if the latter does not use the leave, the mother shall have no right to extend the duration of the leave. Such an approach would ensure the equal treatment of employees, but would probably entail a reduction in the time of using

<sup>34</sup> Ravikindlustusseadus (Health Insurance Act) – Riigi Teataja (the State Gazette) 1991, 23, 272; I 1999, 29, 397.

<sup>35</sup> OJ L 145, 19.06.1996, p. 4.

<sup>36</sup> Perekonnaseadus (Family Law Act) – Riigi Teataja (the State Gazette) I 1994, 75, 1326; 1997, 3 5, 53.

parental leave until a child attains 1.5 years of age because as a rule, a man's salary ensures a larger income to the family and the taking of paternal leave by the man would substantially deteriorate the economic situation of the family. Thus, equalisation of male and female workers with regard to the use of parental leave in the nearest future is not obviously likely.

According to clause 2.3 of directive 96/34/EC, the conditions of access to parental leave shall be defined by law and/or collective agreement in the member states, whereas entitlement to parental leave may be made subject to a period of work qualification and/or a length of service qualification which shall not exceed one year; also, establish notice periods to be given by the worker to the employer when exercising the right to parental leave, specifying the circumstances in which an employer is allowed to postpone the granting of parental leave. The Estonian HA does not set out any restrictions with regard to access to parental leave. One has the right to take parental leave irrespective of the fact whether the person works full or part time. A mandatory period of working has not been established for access to parental leave – an employee shall have the right to access to the leave irrespective of length of employment. If access to parental leave is bound to the length of service (according to the directive, the mandatory length of service must be at least one year), many Estonian employees may lose the opportunity to use parental leave, because people frequently change jobs due to unstable economic conditions. According to § 30 (3) of the HA, parental leave may be used at once or in parts at any time until the child attains three years of age. It is not possible to obtain parental leave in advance. Also, law does not provide for a requirement for prior notice concerning the parental leave. As the leave may last until a child attains 3 years of age, and it can be used in parts, it is hard for a person using the leave to foresee when, for example, the economic situation of a family demands that the person on leave start immediately working.

As one advantage to pregnant women, women who have recently given birth to a child and employees raising babies, prohibition to dismiss such employees has been provided as one benefit. According to article 8 paragraph 2 of the CE Social Charter, termination of an employment contract on the employer's initiative during the pregnancy and maternity leave shall be prohibited. Clause 2.4 of directive 96/34/EC sets out: in order to ensure that workers can exercise their right to parental leave, member states and/or parties shall take the necessary measures to protect workers against dismissal on the grounds of an application for, or the taking of, parental leave. At the end of parental leave, workers shall have the right to return to the same job or, if that is not possible, to an equivalent or similar job consistent with their employment contract or employment relationship (2.5). According to § 91 (1) 2) of the ECA, termination of an employment contract is prohibited on the initiative of an employer, while the employee is on a holiday (including parental leave and holidays without pay). This principle is not applied upon termination of employment contracts due to the liquidation of a legal person or the declaration of bankruptcy of the employer (§ 91 (2)). The above-mentioned prohibition against dismissal should ensure to an employee the right to return to the same work after parental leave. In practice, problems occur in cases where an employee has been on parental leave until the child attained 3 years of age, meanwhile the work has been reorganised, the employee's position has been laid off and the employer has no other jobs to offer. Thus, return to work may end with a prompt dismissal of an employee, which forces the employee taking parental leave to seek a new job for himself or herself.

An additional restriction has been imposed upon termination of an employment contract also on a pregnant woman and female employee raising a child under 3 years of age. According to § 92 (1) of the ECA, it is prohibited for an employer to terminate an employment contract with a pregnant woman or a woman raising a child under three years of age, except on the bases prescribed in § 86 (1) and (2), (5)–(8) and (11).<sup>37</sup> Termination of employment contracts with employees on the bases prescribed in § 86 (1)–(2) and (5)–(8) (liquidation of a legal person, declaration of bankruptcy of the employer, due to unsatisfactory results of a probationary period, breach of duties an employee, loss of trust in an employee, indecent act by an employee) is only permitted with the consent of the labour inspector of the seat (residence) of the employer (§ 92 (2)).

According to § 11 (1) of the ECA, the benefits prescribed in § 92 for women raising disabled children or children under 3 years of age also extend to persons raising motherless children who are disabled or under

<sup>37</sup> Section 86 of the ECA sets out 12 bases (liquidation of the enterprise, agency or other organisation, declaration of bankruptcy of the employer, lay-off of employees, unsuitability of an employee for his or her position or the work to be performed due to professional skills or for reasons of health, unsatisfactory results of a probationary period, breach of duties of an employee, loss of trust in an employee, an indecent act by an employee, long-term incapacity for work of an employee, age of an employee, hiring an employee for whom the position is a principal job, act of corruption of an employee), when dismissal of an employee by an employer is permitted. An employer may not terminate an employment contract with an employee for any other reason.

3 years of age. Consequently, mostly female employees are protected upon termination of their employment contracts, because the benefit applies to the father of the child only when the latter raises a child under 3 years of age without the mother of the child. Such regulation has been caused by the fact that mostly women use parental leave in practice. However, this is not in accordance with the EU directive 96/34/EC, the main purpose of which is to ensure equal treatment to male and female workers with regard to the use of parental leave. Provision of equal protection to employees raising children under 3 years of age upon termination of an employment contract is possible only if the regulation for the use of parental leave is amended.

## Conclusions

The working and rest time regulation applicable in Estonia generally conforms to the requirements established in the EU and harmonisation of Estonian legislation with the EU law will not entail alterations of principles in this field. When comparing Estonian labour laws with the EU directives, one may conclude that in many matters, the EU acts prescribe a considerably more detailed regulation than Estonian legislation. This concerns, above all, regulation of the working and rest time of women and minors.

The EU directive 94/33/EC divides minor employees (young people) into two groups – employees up to 15 years of age (children) and employees older than 15 years of age (adolescents) and proceeding from that, establishes to minors different standards of working and rest time. Estonian labour laws do not distinguish between children and adolescents, but depending on the age of adolescents, their employment relationships have been regulated in a different manner – more strict rules have been established with regard to employees 13–14 years of age, restrictions are milder with regard to minors 15–17 years of age. According to the new draft ECA to be soon adopted, employees 13–14 years of age may work only during school holidays, and upon entry into force of the act, no problems should arise from the implementation of directive 94/33/EC. According to the new draft WRTA, in addition to the prohibition against night work, restrictions have been imposed also on the working of minors 13–14 years of age during evening time – from 6 p.m. to 10 p.m. they are prohibited from working.

Regulation of the working time of pregnant women, breastfeeding women and employees who have recently given birth to a child also requires some specifications. According to the new WRTA, a pregnant woman shall have the right to obtain time off for antenatal examination, which shall be calculated as a part of working time. In order to ensure the conformity of Estonian legislation with the EU requirements, a principle according to which a breastfeeding employee may claim transfer to another (daytime) job, unless working at night is not advisable to her should be restored.

In most cases, the weaknesses found in Estonian legislation can be omitted through specifications in a relatively simple manner. In relation with the adjustment of the EU directive 93/104/EEC, more significant problems may be entailed by the reduction of weekly maximum working time from 60 hours to 48 hours per week. According to the applicable WRTA, the working time of an employee may be 60 hours per week in two cases. If an employee works overtime, his or her shift may last up to 12 hours, which enables to work 60 hours per week in case of a five-day working week. The duration of a working week may also be 60 hours when working in a second job – according to the WRTA, the working time of an employee in the principal job and the second job together shall not exceed 60 hours per week. Legalisation of a 60-hour working week has been caused by practical needs, as working overtime and working in a second job are extremely widespread in order to increase one's income. From the standpoint of an employee's health, such regulation cannot be deemed appropriate and at least on the national level, regulation should aim at reduction in weekly working time. This principle has been taken as the basis when preparing the new WRTA. According to the draft, working time together with overtime shall not exceed 48 hours per week. According to the draft ECA, the possibility to work in a second job will no longer exist in future, and when an employee works under several employment contracts, all rights arising from the employment relationships shall be granted to him or her. Abolishment of working in a second job is also necessary in order to protect part-time workers, as according to the ECA, several guarantees ensured for employees in principal job have not been provided for employees in a second job as part-time employees. At the same time, provision of particular guarantees to persons working part-time is not justified, as their standard of working time is extremely limited. According to the new draft WRTA, guarantees of a part-time employee may be restricted in cases prescribed by law, if his or her standard of working time is below 12 hours per week.

A significant change is introduced by application of the principle established in the EU directive 96/34/EC, according to which parental leave cannot be transferred. According to the Estonian HA, the mother or father of a child may use parental leave; thus, transfer of the leave is possible according to the applicable regulation and in most cases parental leave is used by the mother of a child. Proceeding from the principle of equal

treatment of male and female employees, this should be rendered mandatory both to the mother and father of a child upon the use of the right to access to leave.

Consequently, the Estonian regulation of working and rest time needs to be amended and supplemented with regard to several matters on the basis of the EU law.