

Working Time

Trends and Prospects
in the New Economy



Edited by
Helena Strzemińska and Marek Bednarski

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PUBLISHER'S NOTE

Work has a fundamental meaning for people, and from both the perspective of the individual, and that of entire societies. In the yet broader perspective work is the source of wealth for entire countries. In the narrower perspective work is the source for maintaining households, but it also fills up a significant portion of the individual's life, and yet in so doing it also creates a space for other undertakings and for relaxation. Hence, the matter of working time holds very basic meaning from many perspectives.

Working time – and thus its length, the time period when it is carried out, and the effectiveness with which it performed – has many determinants. What plays the most surpassing role here is the character of production processes. What, how, and for whom we produce has basic meaning for the way work and working time are organized. Also important is the situation of the labour market (i.e., the level of unemployment), the character of social dialogue, and in particular the role of labour unions and the policy of the state regulator, as that player wields greater or lesser influence on working time, especially by means of labour law.

In recent years all of these parameters in developed countries have undergone intensive change. This was particularly visible in the sphere of production work, where the following phenomenon appeared on a significant scale: globalization and migration, the expansion of small and mid-sized companies, and servitization. We also witnessed the rapid development of the knowledge-based economy (which concerns the emergence of new, revolutionary technologies) at the same time as we observed the spreading of the economy's "grey area".

On the other hand, the recent economic crises have lent to high unemployment and concomitantly the position of labour unions in collective negotiations have weakened. Moreover, the state began to withdraw from the task of shoring up the labour market in response to high unemployment.

One result of this is rising economic uncertainty, which has compelled employers to adopt great flexibility vis-à-vis the demands of the market. Those very employers, in turn, have attempted to pass the hot-potato of uncertainty to their employees, demanding greater flexibility of them, also – including in the matter of working time. In the place of traditional, open-ended work contracts, what began to predominate are short-term contracts for less than full-time employment in the form of civil law agreements or self-employment. It became taken for granted

that employees are at one's beck and call – even during unusual hours, in varying rhythms, and at home.

This indeed facilitated the adaption of companies to the varying demands of their environment, but for employees it entailed a range of problems, ones having not only an individual scope, but also an impact on society. Indeed, this set of circumstances gave rise to a new social group – the precariat. These are people living in conditions of permanent uncertainty, something which entails far-reaching consequences for their incomes, family status, number of children, access to credit (which translates into household conditions), and retirement prospects. These problems are especially difficult for discriminated social groups, above all women.

Of course, there are also those primarily young people having a strong position on the market, for whom employment is not the most important value in life (generation Y), and who are content to be in a situation of often having to change jobs or work flexible hours.

In this setting, questions about the role of the state in this realm have become urgent. Should the state actively regulate working time by means of carefully devised solutions in the field of labour law, or should it accept the decentralization of decisions concerning such matters, leaving them to the level of the given industry, where social dialogue and the market position of parties will settle them?

Understanding these issues and proposing to the state regulator befitting solutions requires comprehension of the existing solutions in the realm of working time in leading countries of the European Union, in countries having in their past a period a transformation to market economies, and in important non-European countries. What is also important here is expert reflection concerning future prospects: how will the processes we have no influence on unfold? – and how should governments, trade unions, and employers act in regard to those processes? In other words, an attempt must be made to describe our ever so complex reality in the realm of working time, and to chart the directions in which we intend to head.

This book offers an attempt to square off, albeit in a modest scope, with precisely these tasks.

It is made up of four parts. In the first our authors highlight the problems pertaining to working time in Europe and North America, especially from an economic perspective, and then endeavour to gaze into the future.

In the second part the authors weigh the social consequences of changes to working time – their influence on work-life balance, the situation of women, and questions connected with equality and social security.

The third part has a legal character. Here the authors address how labour law should respond to the new challenges associated with the increasing flexibility of working time.

The fourth part is devoted to matters unique for Poland, ones that should be of real interest to the body of researchers examining the multifaceted issues of the transformation.

The inspiration to create this volume came from the international conference “The Factor of Time in the New Economy: Where Are We Heading?”, which was held in Warsaw on October 18, 2013 within the scope of the research project of the same name, which was financed by the National Science Center and carried out at the *Instytut Pracy i Spraw Socjalnych* [Institute of Labour and Social Studies], directed by Professor Helena Strzemińska.

This work arose thanks to the efforts of the Friedrich Ebert Foundation and the Institute of Labour and Social Studies. Its editors extend their warm gratitude to the directorships of those two institutions. But above all we wish to thank our authors for agreeing to take up the time-consuming task of drafting the papers we are so proud to present.

It is our fervent hope that our efforts will prove a useful contribution to the discussion on working time during this difficult moment of the new economy's birth.

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**INTRODUCTION:
THE FACTOR OF TIME IN THE NEW ECONOMY.
WHERE ARE WE HEADING? AN OVERVIEW**

While the current development of economies, mainly industry-driven, has been more or less foreseeable, the post-industrial period of servicization and the use of the growing number of new information and communication technologies (along with expanding globalization) have raised a number of questions. Indeed, we are unable to imagine the new inventions and technologies that will be developed in the future, much less how they will influence life and work. We cannot even be sure as to what extent the current trends will continue. How will working time – as an important element of economic and social life – look in the future, in the new knowledge-economy of the network society? Making reliable forecasts is difficult, as the matter is dependent on so many factors (whether demographic, economic, those related to technical and technological progress, and so on), each of which triggers highly diversified consequences.

Working time – as an essential and obvious factor of the functioning of economies, as well as a major determinant of private life – is undergoing significant change at each and every phase in the development of these economies. The salient changes are related to proportions, forms of organization, and methods of regulation, including legal regulations. At the same time, the relation between working time and time outside of work – i.e., areas of non-professional duties (including family obligations) and free time – is being transformed. At the base of this process are transformations in the structures of economies, related to how the predominance of industry is giving way to a progressively broader development of services and to the knowledge economy, which is growing both rapidly and on an unprecedented scale. This contributes to the emergence of radically new conditions, requirements, and expectations regarding working time (its length, positioning), both in terms of calendar time and location of work. Time was shaped differently in the industrial enterprises of the Fordism era (i.e., those based on Taylor's rules of work organization) than in enterprises from the broad sphere of services. This

is dramatically different in modern information society, driven by high level techniques and technologies in times of globalization. In the “old economy” labour was mainly performed within an enterprise’s strictly delimited area and location, in a strictly defined rhythm of shift work, on the scale of a day, a week, or a year – and was largely dependent on external conditions, seasons, natural conditions, as well as cultural factors, traditions, and religion. This is changing together with technical and technological progress, computerization, informatization, new prospects for communication, and other changes that are continuously underway in the current reality.

The deep structural transformation in the world economy, which has reduced industrial sectors to pave the way for the development of service sectors, creates growing needs for transformations in working time organization, breaking away from rigid hourly and shift work in favour of flexibility. This is related both to the length of working time and the workplace in a broad sense, including geography. There are more and more services available around the clock, on bank holidays – and hence the term “night economy” is rapidly gaining popularity. At the same time, labour is often relocated outside the company (outsourcing). The flexibility of time and workplace is becoming attractive for industry, various branches of production, and service companies. In today’s information societies conditions have been made for separating the place of employment from the workplace (work from home, telework, remote work, telecommuting), which may even be on another continent (offshoring). Globalization and the proliferation of new technologies in Asia and Latin America, for instance, has created the bases for cooperation between different continents, i.e., areas belonging to different time zones, for example the “Follow the Sun Project” (L. Gratton, 2010). Outsourcing work from Europe to India or Latin America is thriving. In this way, the twenty-four hour rhythm is fully used without abusing the individual rights of contractors to daily working time standards, in accordance with the legal regulations of the given country. The new economy and the globalization of economies create new conditions for 24-hour and intercontinental cooperation.

In the network society the role of **space** in the distribution of information is diminishing (*death of distance* – F. Cairncross 1997, 2001), whereas **time** has been defined as *timeless time* (M. Castels, 2009). According to the ILO the most frequent suppliers of remote work are the US, Canada, and the United Kingdom. The contractors are mainly based in India or Brazil, Argentina, and the Philippines. Such solutions offer prospects for cost savings (re: cheaper labour force) and saving working time in various forms of business. The economic advantages are obvious when countries with lower labour costs are selected. Therefore, it is possible to talk about “buying” cheaper working time (H. Strzemińska) which is available at a convenient time of the day, for example at night, during holidays – when it is related to placing orders in countries being home to different cultures and religions, located also in different time zones. However, according to Prof. K. F. Ackermann, inter-

continental, multinational enterprises and jobs call for a brand-new working time management strategy (ethnocentric, polycentric, geocentric).¹ Such developments impact the overall volume of time worked on the macro scale in countries outsourcing work, but mainly influence the working time policies and working time economy of enterprises. They also require a knowledge of local conditions and ways for adapting to them. It should be added that Poland is becoming a substantial business outsourcing location, not only in terms of accounting and financial services, but also in relation to more advanced processes (BPO).

Working time is no longer closely related to a specific workplace. Professional obligations spanning different areas and professions may be performed outside the place of permanent employment. Thanks to widely applied IT technologies, a workplace may be located at home, in a means of transport (a train, an airplane), or at any other place with Internet access. The transformations of the workplace are teamed up with changes in organizational forms. In addition to well-known and long applied forms of working time with simple flexibility (such as diversified hours for starting and ending work, part-time work, shift work, weekend work, and job sharing), increasingly complex systems are being developed which bring together autonomy, creativity, leadership, and team work skills. At the same time, these systems are based on trust between the employer and employees. Both in production and in services we see the rise of forms and models that provide employees with ultimate or apparent freedom in the choice of time, method, and place of work, under the condition of full and timely execution of specified jobs (*task-based working time, forms of work based on trust*). The subject literature offers numerous references to such terms as *Vertrauensarbeitszeit*, *Results-oriented Work Environment (ROWE)*, *task-oriented work schedule*, or *KAPOVAZ* developed in Germany. The reference period of working time is extended over longer periods of time (*annualization*) and it is also possible to “deposit” working time to be taken off after a longer period of time (*time banking*). The growth of the service sector in the contemporary and future economies of developed countries – along with the multiplication of various types of services and formats of their provision – will increase the need for adapting the organization of a service company and the people it employs, along with the availability of their time, to the company’s profile and the forms of services it offers.

When talking about the future of working time in the “new economy” one should bear in mind that patterns and relations of industrial economy do remain and will continue to be present for a long time, particularly in industry. German economists argue that features of Fordism will remain visible or even dominant in many sectors of the industry into the future. This is why many standards originating from the period of industrial economy will continue to be relevant for a long

¹ Ackermann K.F., *The future of working time management in the global competition. An uneasy look at new opportunities and threats*. Speech for the conference “The Factor of Time in the New Economy. Where are we heading?”, Warsaw, 18.X.2013.

time, while changes in the length of the working week and its organization may not be happening so quickly, although they are inevitable.

This inevitability of change results from objective reasons also justified by social transformations, mainly demographic processes. Demographic changes – mainly the ageing of societies, the popularization of the professional activity of women in the “old economy”, and a probable increase in the “new economy” – create the need to offer more suitable conditions for employees, especially women, in the face of the growing double burden of responsibilities, both maternity-related and family-related (providing care to elderly family members). The ageing of society will add even more tasks for the so-called “sandwich generation”, for which a flexible work organization that enables them to adapt working time to bigger family needs is extremely important and necessary. The growing share of the senior population in overall professional activity calls for the adaptation of life and work to the needs of the growing force of the “silver economy”, for whom changes in work organization and working time schedules may prove necessary if older age groups will be professionally active after an increase in the retirement age.

New challenges are also fuelled by generational changes in societies which are reflected in the area of work. The expectations of the X and Y generations diverge from those demonstrated by older employees – at least during the first years of professional activity. We will therefore mention only the most rudimentary characteristics and expectations of young people already working or entering the labour market: they expect more freedom at work and flexible working time; task-based accountability instead of the obligation to stay at the workplace; prospects for stopping employment for a given period of time; and they attach more weight to private life and time off than do older generations.

Technical progress – together with an improved standard of living and prosperity – has brought changes in generational lifestyles (generation X and generation Y) and increased nonmaterial needs. To fulfill them, one has to have free time at various times, within flexible working time. Therefore, we need a new approach to shaping working time and free time – and not only within the range of a day, a week or a year, but throughout the entire period of professional activity. Gaps in professional work (“gap years”) are taking place through various phases of life, both during education, as well as during years of professional activity. The *sabbatical* is now popular not only among academics, but also among managers who take time off from their professional career to prevent burnout, stress, pursue personal development, or embrace family life.

The “new economy” stands for new knowledge, new technologies which call for increasingly advanced education, and continuous learning for which time free from work at convenient hours is indispensable. The “new economy” is also equivalent to further development of non-standard forms of work which are, on the one hand, shaped by HR strategies embracing employee preferences, and, on the other, is driven by employers to optimize and boost the operating efficiency. However, the amount and the type of flexibility demonstrated by employers and employees do not always overlap. In this context we are facing yet another prob-

lem – namely, the intrusion of working time into family time and time off and the conflicts arising therein (C. Fagan).²

Given the current state of knowledge and the available literature, important questions related to the future of working time arise. They are difficult to answer, but are worth pondering:

- What is the likely direction of working time transformations in economies, both on the global scale and the scale of countries, for enterprises and individuals?
- Will working time in Europe be changing as in the countries of North America? (A. Zbyszewska)³
- How long will we work (normatively and effectively) in the forthcoming decades?; what forms will work take and where will it be based?
- What will the future role of trade unions and social partnership look like in the shaping of working time?
- To what extent will the assumed development of IT and the unavoidable process of globalization (and its resulting consequences) influence the need for implementing new forms of working time organization?; what forms should that take?
- Which strategy of working time management should be applied or expected in the context of multinational and intercontinental jobs?

Beyond considerations and projections regarding these questions, it is also necessary to weigh what conditions may or should accompany these changes. In relation to the expected development of flexibility both in employment and work organization, as well as in applied forms of working time, it is essential to initiate further analyses and discussions dedicated to the *flexicurity model* to guarantee social security within flexibility writ large. There is also a need for a **new model of work humanization**, one adapted to the needs of the changing economy in the network society in order to answer the question: what forms of work embrace promises of its humanization, and which dehumanize work in the post-industrial economy?

Among further problems worthy of deepened evaluation are the relations between **working time and free time**, as well as the attempt to create a new paradigm of analysis that takes into account not only the dichotomous distribution of these categories, but the blurring division between these two basic values.

The role of labour law – its protective function – has always been and will remain a must. It has to be taken into account in all types of activity. “Protection of workers remains a social must” (R. Blanpain)⁴. Expected changes in working time models require a legal evaluation and formulation of conclusions regarding

² Fagan C., *Gender, occupational class and the redrawing of the “work time” and “free time” boundary in the New Economy*. Speech for the conference “The Factor of Time in the New Economy. Where are we heading?”, Warsaw, 18.X.2013

³ Zbyszewska A., *Visions of the future: Imagining and anticipating tomorrow’s working hours from the North American perspective*. Speech for the conference “The Factor of Time in the New Economy. Where are we heading?”, Warsaw, 18.X.2013.

⁴ Blanpain R., *Legal aspects of working time – future changes*. Speech for the conference “The Factor of Time in the New Economy. Where are we heading?”, Warsaw, 18.X.2013.

the protection of employers and employees in Poland. Another aspect should tackle the role of social dialogue and working time regulations in Poland set against global trends. The diminishing role of trade unions offers food for thought, especially in terms of employee protection.

To recapitulate, foreseeable changes in work organization, as well as related modified working time models, should make work more family-friendly and, at the same time, be adaptable to the needs of employees who no longer work in large-scale industry, but are usually employed by small and medium-sized enterprises (usually their own), and have different individual expectations from work. Such employees, and especially those from the younger generations, long for greater autonomy, flexibility, changes in management style, and even – as the latest research on the Y generation shows – more frequent changes of work and periodical, sometimes yearly gaps. “Freelancing”, “neo-nomad work” and fervently slated “employment on fixed-term contracts” are gaining social approval. The question here arises of whether we will work shorter or longer? Current analyses and statistics indicate that increased autonomy and accountability on the part of employees leads to longer time worked (independent versus paid employees). There are various scenarios possible in the future both in relation to the length of working time as well as to the changes in time over the course of life (the two most probable scenarios are analyzed by S. Lehdorff).⁵

There are many questions and doubts: will legal regulations applicable to working time keep pace with the changes in real life? Does the current labour law, the roots of which go back to the beginnings of factory-based capitalism, take these changes into account? At which level should working time be regulated – central or sectoral? How much freedom should the enterprise have in this respect? We will probably fail to find an answer to the question **how long** we will work in the distant future, but we certainly do know that we will work **differently**. What should we do to make those changes beneficial for society?

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⁵ Lehdorff S., *Working time prospects for the future in Europe*, Speech for the conference “The Factor of Time in the New Economy. Where are we heading?”, Warszawa, 18.X.2013.

CHAPTER I

**HOW DO WE WORK?
WHAT WILL CHANGE IN THE FUTURE?
TENDENCIES IN EUROPE AND IN THE WORLD**

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WORKING TIME TRENDS AND PROSPECTS IN EUROPE

What are the prospects for working-time developments in Europe? To answer this question it would obviously not be possible, let alone reasonable, to predict the future by simply extrapolating past or current trends. What does make sense, however, is to identify major trends or changes and the variables that have impacted these trends. This exercise is most useful when undertaken at an international level. Thus, more general drivers of change can be distinguished from those which may be typical for individual countries alone. This shall be done in a very rough and sketchy manner in the present paper by identifying, first, broad trends in working-time development after WW II in capitalist Europe; second, major variables and drivers behind these trends; and third, potential drivers of changes in the future which are surfacing today as challenges to be tackled by social and political actors in the field of working-time policy at all levels. This will be the background for the draft of two simple scenarios of potential future developments in the concluding section.

1. The 8-hour day and 40-hour week: The coming and the crumbling of a historic compromise

If we look back at working-time developments in the capitalist world in general and in 20th-century Europe in particular, it is easy to distinguish two major long-term trends. The first, and fundamental change at the beginning of the century was the step-by-step establishment of the 8-hour day and, at later stages, the 40-hour week as the legal or widely adopted contractual standard. When this was accomplished by the 1970s or 1980s in most parts of capitalist Europe, the general move toward shorter standard hours lost its momentum. While Central and Eastern European countries and some Southern countries (such as Portugal) caught up with the establishment of legal 40-hour standards during the 1990s and

early 2000s, what has increasingly come to the forefront over the past 30 years is a differentiation of working hours within and beyond the 40-hour standard across countries, industries, and individuals (Lee et al. 2007).

In order to understand the more recent trend it is useful to distinguish between two different, albeit related aspects of working-time standards. The notion of a ‘standard’ may imply, first, a ‘norm’ which can be set up by law or collective agreements, and second, a ‘normality’ to the extent that the norm has gained ground in the actual working-time patterns prevailing in a given society or country. The nexus of these two sides of working-time standards was central to the struggle for the 8-hour day in Europe. As to the norms, the breakthrough to the statutory 8-hour day was brought about by social unrest and revolutions in the years after World War I in many European countries. The making of this norm into a normality in everyday life, however, was a process which took several decades and was basically fostered by three drivers (cf. Hermann 2012; for historical accounts of this process in Britain, Germany, and France cf. Cross 1989, Deutschmann 1985, and Lallement 2003). The first such driver was political pressure fuelled by various motivations, most prominently by workers’ interest in a greater share of time at their own discretion, as put forward by organized labour, but another important motivation was that of health protection as pursued by public authorities such as labour inspectorates. Second, these political and class conflicts led to compromises which were eased by the rationalization and standardization of industrial mass production, as the 8-hour day provided the fixed time-frame needed by Frederic Taylor’s scientific management. This strategic compromise was accompanied, third, by almost universally shared family values as it implied that the 8-hour day should provide the male earner both sufficient family income and spare time, while women, being liberated from the toil of paid labour, could devote their time to the children and the household.

The follow-up to the 8-hour day – namely, the 5-day-week after World War II – was basically a modernized sequel of this norms-normality nexus. In furtherance to the step-by-step generalization of the 40-hour week, the new working-time standard included longer holidays and an earlier retirement age (which, in connection with the rise of tertiary education and its implied later entry into employment, shortened the overall number of hours over the lifespan). The ‘Golden Age’ produced a symbiotic interaction of favourable economic conditions and a new mass culture of consumerism, while the Cold War provided for an equally favourable political background to the historic compromise over the standard work week.

Once this compromise was accomplished, however, the autonomous trade union struggles for shorter working hours below the 40-hour threshold began to run out of steam. This was the turning point towards a new long-term trend in working-time which can be characterized as a gradual departure from the standard workday and workweek, in varying degrees observable across countries (Bosch et al. 1993; Lehndorff 2007). The historic compromise of the ‘Golden Age’ fell un-

der increasing pressure and began to erode with the rise of the service sector, the globalization of value chains and competition, the rise in female labour market participation, the growing share of highly-skilled workers, and changes in work organization towards ‘indirect control’. All these drivers of change have been linked and interwoven with the rise of neoliberalism as the predominant approach in economic thinking and practice, something which put trade unions onto the strategic defensive all over the developed capitalist world. This defensive posture became particularly relevant for trade unions’ approaches to working-time policy because average economic growth continuously decreased, thus constricting both room for manoeuvre on compromises over time and the money which had existed over previous decades, and putting pay rises rather than working-time reductions at the top of the agenda. Hence the shift in initiative in working-time policy from the trade unions to the employers since the 1980s. The overall effect of these interlocking drivers has been a broad trend towards greater differentiation of working hours across countries and by sectors, occupations, and individuals, and towards adapting individual working hours more flexibly to business needs.

2. Working-time changes since the 1980s: overriding trends and divergencies across Europe

Looking at the average weekly working hours of full-time workers (that is, the traditional focus of statutory and collective bargaining working-time policies), the overall trend in Europe appears to underscore the ongoing relevance of the 40-hour week — irrespective of its legal status in individual countries¹ — as a widely accepted and practiced standard in the society.

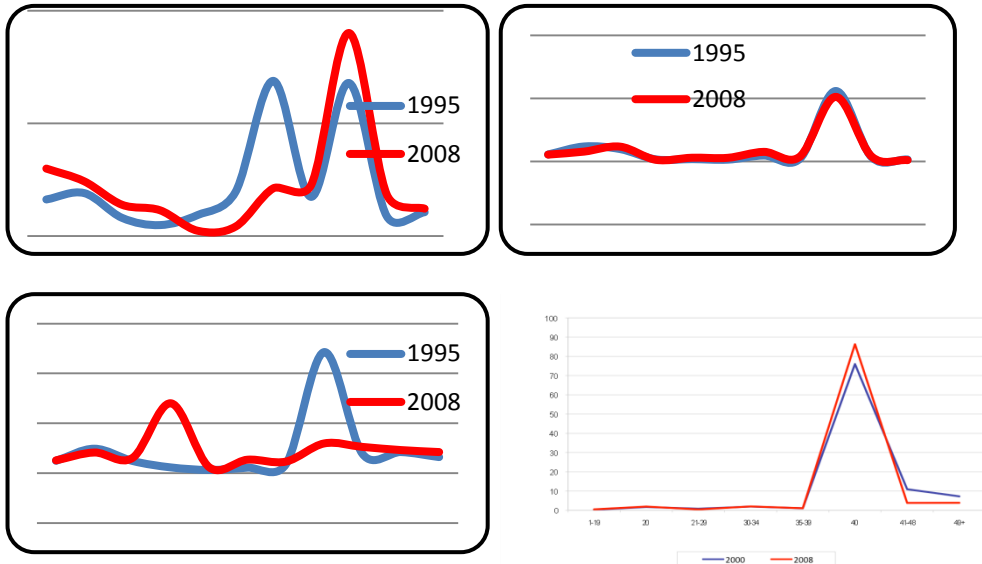
The EU average of roughly 40.5 hours per week has remained largely unchanged since the mid-1990s.² The average, however, reveals diverging country-specific changes. In some countries, most markedly in the western part of Germany, the average hours of full-time workers have gone up, while in some other countries average hours steadily dropped (the UK stands out here, although the level of average hours is still very high). Most Central and Eastern European countries are

¹ The legal norm in Europe is, roughly speaking, the 8-hour day and 48-hour week as the normal work day or week. This norm, as established by the European working-time directive with its specifications and exceptions, is a minimum standard which is accompanied by shorter norms, such as a statutory 40-hour week, in various EU member states. France stands out with its statutory 35-hour week. In what follows, I refer primarily to hours actually worked, rather than statutory norms or contractual standards as agreed in collective bargaining. I will come back to the potential importance of the latter norms in chapter 3.

² For the data and information in what follows cf. Lehdorff et al. (2010) and the references given there. The data base of this report was the European Labour Force Survey with its details on “hours usually worked per week”.

part of the group of EU countries with slightly declining average hours. If there is any commonality at all, it is that countries with long hours tend to have shorter hours, and vice versa.

Figure 1. Working-time profiles* in Germany and France (left column), Sweden and Hungary (right column)



* Distribution of workers across hour brackets, e.g., percentage of workers who usually work 40 hours per week; 1995/2008 for Germany, France, and Sweden, 2000/2008 for Hungary.

Source: Lehdorff et al. 2010, data base: European Labour Force Survey

While these rough trends appear to have stabilized the traditional 40-hour standard, the changes *behind* the averages are more interesting when it comes to potential developments in the future. A rough insight is provided by Figure 1, which displays the distribution of usual working hours across hour brackets in four countries. The country-specific working-time profiles differ substantially, and so do the trends over time. The two countries in the left column represent diverging shifts in importance of either longer (Germany) or shorter hours (France), whereas the two countries in the right column display much smaller deviations over time from the prime importance of the 40-hour week.

Generally speaking, deviations of working hours from a societal standard may include both longer and shorter hours. In particular when taking the gender dimension of labour on board it should be noted that deviations in both directions

deserve equal attention. While the usual emphasis in looking at working-times is on full-time work, which is displayed at the centre and on the right-hand side of the graphs, an equally pertinent aspect is the importance of part-time work, which is displayed on the left. It is to this I turn first.³

2.1. The gender time gap

The first broad trend in working hours over the past decades to be highlighted here is the continuous rise of part-time work, which is closely linked with the massive increase in female labour market participation in capitalist Europe.⁴ In many, if not all, of these countries part-time work has been the main doorway for women into the labour market. In some countries it has become a pathway towards greater gender equity, in others it implies very much a lock-in effect for many women, establishing what has been called a modernized single-earner family model. Thus, what is interesting for the purpose of the present paper is to look at the distinct differences both in shares of part-time workers (as of all female workers) and in the dynamics of change across countries. To begin with, there is a great difference between low part-time shares in Central and Eastern European countries (CEE) on the one hand, and much higher and mostly further rising shares in the EU-15 countries on the other. However, even within the EU-15 the differences are striking, with low (if increasing) shares in Southern Europe and only modest increases (if still at a high level) in some Northern European countries. What is more, the average hours worked by female part-timers vary across countries, with Sweden at the top with more than 25 hours, and Germany at the bottom with 18.5 hours per week (and corresponding trends towards longer and shorter hours respectively). Thus, in some countries the working hours of women are substantially differentiated. As to full-time workers, in turn, the weekly working hours of women fall below their male counterparts by roughly two hours on EU average. Behind this average, the gap is greatest in the UK (almost 4 hours), but hardly existing at all in Sweden (0.2 hours).

As a consequence, working hours in some countries tend to be substantially differentiated between women and men. The ‘gender time gaps’ and their trends over time in selected EU countries are shown in Table 1.

³ Note that the data presented here reflect mid- to long-term trends. The current economic crisis in Europe may well interfere into these trends, thus, by way of example, stopping or even reversing the rise in female labour market participation or — as was the case in Germany in 2008/2009 — interrupting temporarily the extension of working hours by various forms of work sharing. However, there has been no indication so far that the crisis might bring into question the overall trend of an erosion of the standard work week.

⁴ As to male workers, part-time employment has been of minor importance so far in most countries, with the exceptions of students and retired persons in general, and the Netherlands in particular.

Table 1. Employment and part-time rates of women (15-64) and gender time gaps in selected EU-countries

Countries	Employment rate 2011 (%)	Δ relative to 1995 (ppt.)	Part-time rate 2011 (%)	Δ relative to 1995 (ppt.)	Gender time gap 2008 (hrs./week)	Δ relative to 1995 (hrs.)
EU-27	58.5	+ 4.2**	32.1	+ 3.5**	6.4	+0.2
Czech Republic	57.2	- 1.5 ***	9.4	- 0,5 ***	2.5	-0.2****
Denmark	70.4	+ 3.7	37.6	+ 2.2	4.5	- 0.4
Finland	67.4	+ 8.4	19.6	+ 4.2	3.4	+ 0.9
France	59.7	+ 7.6	30.1	+ 1.0	5.3	- 0.3
Germany	67.7	+ 12.4	45.7	+ 12.0	8.6	+ 1.9
Hungary	50.6	+ 5.4 *	9.2	+ 3.6 *	1.3	- 1.0*
Italy	46.5	+ 11.1	29.3	+ 16.6	6.9	+ 1.9
Netherlands	69.9	+ 16.1	76.7	+ 9.3	10.0	- 1.0
Poland	53.1	+ 1.8 **	11.1	- 2.5 **	3.8	+ 0.2****
Portugal	60.4	+ 6.0	16.3	+ 3.6	3.1	- 1.7
Spain	52.0	+ 20.3	23.5	+ 7.1	5.7	+ 1.3
Sweden	71.8	+ 3.0	39.6	+ 3.8	3.9	- 1.4
UK	64.5	+ 2.8	43.1	- 1.3	9.5	- 3.3

* reference year 1996; ** reference year 1997; *** reference year 1998; **** reference year 2000
Sources: Employment and part-time rates: European Commission (2012); gender time gap: Lehdorff et al. (2010) based on Eurostat data.

The gender time gap is closely correlated with the employment rate and working hours of women in households with children. Broadly speaking, the following groups of countries can be distinguished. First, there is the majority of the CEE countries where the dual full-time model used to be the norm and high employment rates of women with children continue to be connected with relatively long average working hours, in spite of a rise in importance of part-time work over recent years. Equally for the Nordic countries, high female employment rates and comparatively small (or decreasing) differences in working hours between men and women are characteristic. In contrast, in Great Britain and many Continental EU-15 countries — except for France and, partly, Belgium — the gender time gap prevails. In Southern Europe, except for Portugal, full-time employment rates for women, in particular of those with children, used to be the lowest. However, the differences with the Continental European group are decreasing rapidly.

These contrasting gender-specific profiles are arguably the single most important feature within a more general trend of a greater differentiation of working hours.

2.2. Differentiation

In many, if not all countries the differentiation of working hours by industry, occupational status, qualification, and partly by income has been gradually re-shuffled since the 1980s. This tendency has primarily involved both female and male full-time workers, but has been extended increasingly to part-time workers, as well. In many cases, this is closely linked with more flexible hours, both in terms of duration and of distribution over time (to which I will turn in the following sub-section)

Differentiations of working hours are more relevant amongst men as compared to women, and their incidence varies substantially across countries. As to working-time differences across occupations, the easiest indicator in this respect is qualification levels (low/medium/high). In some countries, highly qualified workers (i.e., having tertiary education) work — on average — the longest hours. In Germany, this gap amounts to 1.2 hours per week as compared to the average for all full-time employees. In many Central and Eastern as well as Southern European countries, in contrast, highly qualified employees have shorter working times than the average for all full-time workers. While the average is very much determined by the working-times of workers with intermediate qualification (such as manufacturing or clerical workers with vocational training), working hours of workers with low or no qualifications are in most countries the opposite of their highly qualified counterparts.

We have, in fact, a multifaceted picture, and one which is arguably rooted in the multitude of country-specific configurations. Relevant factors with partly contradictory implications include:

- the supply-demand situation on the labour market, e.g., the potential shortage of particular qualifications;
- income levels and income distribution, e.g., the need for low-wage earners (with, in many cases, low qualification levels) to work extra hours to make ends meet;
- the coverage or non-coverage by collective agreements, e.g., workers in manufacturing industries with high coverage may benefit from working-time agreements stipulating shorter hours;
- the existence or non-existence of workplace representatives with the capacity to reinforce existing collective agreements or individual labour contracts, and their proximity to workers across occupations and statuses (and vice-versa, the willingness of workers to benefit from these representatives);
- similarly, the importance of collective agreements as well as of customs and practice in public services, providing for beneficial working conditions e.g., of civil servants and other public service workers as compared to workers in many private service industries;
- specific work and working-time cultures amongst highly qualified white-collar employees, either tending to regard their status as a privilege which includes shorter hours than for ‘normal’ workers (which used to be a concept e.g.,

in large parts of Southern Europe, but has been dwindling markedly over the past two decades), or conversely, regarding their privileged status as an obligation to work extra-long hours — a concept characterized by Gershuny (1995) ironically as “busyness as a badge of honour”.

In some countries (including Germany and even more so France) the latter attitude, or culture, has proven to be fertile ground for a more general move towards ‘self-managed’ working-time which entails greater time pressure and, in many cases, extra-long hours. This more recent approach to working-time organization is part of the broader shift from direct management control towards more indirect forms of control (c.f. for various service activities Lehndorff/Voss-Dahm 2005). Today this management practice applies primarily to white-collar workers at higher qualification levels, but it is being moved gradually into white- and also blue-collar core workforces. The latter move is closely linked with the broad trend towards more flexible working hours.

2.3. Flexibilization

A new feature to be observed in some countries with advanced practices of flexible working-time organization, most notably in Germany, is the emergence of a ‘grey zone’ of both flexible and longer working hours. Arguably, the predominant driver of flexibilization is the employers’ interest in a better, and cost efficient, fit of individuals’ working hours with companies’ needs, in particular the adaptation of working hours to fluctuating business demands over the week, the year, or even the business cycle. From the employee’s perspective this kind of flexibility may entail a greater subordination of the individual’s time to business needs, but also greater leeway to reconcile temporal business needs with individual needs and preferences. For the time being the first aspect prevails, but the latter one has to be taken into account, too, when looking at future working-time developments.

Working-time flexibility, however, includes more than just flexibility of working-time duration over time. Flexibility also includes the question of *when* to work, i.e., at what time of the day or week, and of the regularity and reliability of the working-time schedule. The issues involved here are, first, the so-called unsocial hours of working, which is inevitably entailed by the trend towards extended operating hours in manufacturing and opening hours in services; and second, the challenge of irregular and unpredictable hours. Both issues are on the rise, and in many cases — in contrast to the issue of the ‘grey zone’ of both longer and flexible hours — the workers involved here include primarily part-time workers. Thus, there may be an accumulation of risks of low pay, irregular and unsocial hours, and other features of ‘bad jobs’ (Holtgrewe and Sardadvar 2012).

A final more recent working-time feature worth mentioning is the trend of reversing the reduction of working hours over the lifetime. Given the increasing pressure on public pension systems, the strategic compromises over the retirement age which date back to the ‘Golden Age’ are being cancelled in many countries. While the mainstream rationale behind this move is that of demographic change,

it should be kept in mind that the pension problems of ageing societies are simply shifted onto the private financial sector which, as has been demonstrated over recent years, does not make things any better. Thus, it should be acknowledged that the problem of working-time over the course of life in an ageing society remains basically unresolved and must be regarded as a salient challenge for the future.

3. Intervening variables

If we want to understand the overall trend towards more differentiated and flexible working times and the absence of any overriding political or social quest for shorter hours, it is useful to look at both commonalities and differences across European countries.

As to the commonalities, this is just to summarize what has been mentioned before. Major structural changes (or ‘megatrends’) include:

- the decline of manufacturing, most prominently of the mass production industries, and the rise of the service sector
- the rising share of white-collar workers and, in particular, of highly-skilled workers
- the rise in female labour market participation in close interaction with the aforementioned changes
- the globalization of competition and of value chains
- the dominance of ‘free market’ approaches in economic and labour market policies
- and (again in close interaction with the latter feature) the decline of trade unions’ organizational, structural, and political power resources.

It is within these commonalities that country-specific divergent features or developments point at the importance of various intervening variables. For instance, the introduction of the statutory 35-hour week in France has been one of the rare examples demonstrating the capacities of state intervention in favour of a general working-time reduction (for an overview on the literature cf. Lehdorff et al. 2010; for analyses of historical backgrounds and drivers behind French working-time policy approaches cf. Fridenson/Reynaud 2004). Looking at its effects on *actual* hours, the lesson taught by this experience is twofold. First, policy continues to matter. The structural changes outlined above are not a fundamental barrier to further reductions of standard weekly hours, and political will may countervail to a greater or lesser extent the dominance of ‘free market’ pressures. Secondly, however, a one-time initiative is far from sufficient for changing societal standards. Perhaps even more so than in the past, a strong long-term commitment would be needed in order to lead to new far-reaching compromises over working-time organization in society. In the case of France, this challenge is demonstrated by an increase in working-time differentiations by occupational sta-

tus and qualification level. So, how can the most salient intervening variables be summarized?

The *first* variable to explain working-time differences across countries is the existence and rigidity of *regulations*. Such rigidity may consist in strong statutory working-time regulations, but also, or alternatively, in standards set by collective bargaining with high coverage rates. Hence, what matters here is the relevance and the architecture of collective bargaining systems on the one hand, and labour law and its enforcement on the other. True, the emphasis put on the rigidity of regulation may sound outdated. However, citing one reservation may calm concerns, and giving one example may underscore the continuing relevance of regulation. The reservation to be made is that rigid statutory regulations may define a certain leeway for collective bargaining actors to strike deals over industry- or company-specific adaptations or derogations, thus giving a boost to collective agreements over working-time organization (this is the recent experience in France, for instance). One of the many examples for the continuing relevance of working-time regulation, in turn, is cross-country evidence on working hours in industries such as IT, where long hours of highly qualified and flexible white-collar workers are allegedly ‘inevitable’, but may as well be adapted to custom and practice once certain standards are taken for granted in a given society, thus making it normal for their employers to accept these standards (such as in the Netherlands or some Northern European countries). Similarly, within a country such as Germany, the working hours of IT workers may differ substantially across companies, depending on the relevance of collective agreements and of employee representations. The same applies to the far end of working-time practices, i.e., the alleged ‘need’ to adapt individual working hours of retail trade workers to business fluctuations by means of marginal part-time contracts. Again, standards set by either statutory or collective bargaining regulations may force, or make it attractive for, employers to organize flexibility on the base of longer part-time or even full-time contracts (for empirical evidence cf. Lehndorff/Voss-Dahm 2005).

The latter case points at a *second* variable. While the usual understanding of working-time regulation is about ‘direct’ regulation, e.g., statutory limits to normal hours, ‘indirect regulation’ by the *welfare state* is equally or even more important. Most of the cross-country differences in the gender time gap and in the working-time gaps amongst women outlined above are attributable to welfare state provisions (for evidence cf. Anxo/O’Reilly 2000 and Lehndorff et al. 2010). These welfare state provisions include the availability and quality of social services, but also the tax and social security systems which influence the volume of female labour market participation. They may be seconded by labour market and product market regulations, such as the importance of the privatizations of formerly public services (likewise, labour market regulations affecting privatized services), or statutory provisions for public procurement of services, which impact employment conditions, including working-times, in both public and private service industries.

A *third* variable is the quantity and quality of *labour supply* and *labour demand*. It is more than obvious that bottlenecks in labour supply may give way to longer hours, or more generally speaking, that mismatches between supply and demand on the labour market may open the doors to working-time differentiations by occupational status or qualification. But things are more complicated as long working hours for some workers may well go together with underemployment (i.e., involuntary part-time) or even zero hours (i.e., unemployment) for others. This is where policy approaches come back in again. Whereas the labour supply will be influenced, among many other factors, by the education and training systems, but also by policy drivers such as the aforementioned welfare state provisions, labour demand is influenced by an arguably even larger array of factors, which, again, include policy approaches on various fields. By way of example, a strong emphasis on the provision of social services by the state may entail a narrowing of the gender time gap by fostering both labour demand and female labour supply. In the longer run, a smaller gender time gap in market (i.e., paid) labour may entail a narrowing gender gap in unpaid work, too, thus promoting a broader move towards gender equity in society (Anxo et al. 2013).

A *fourth* variable, which again is closely linked with the previous one, is *income distribution*. Income poverty may be a strong driver for longer hours on the employees' side, fostering either paid overtime or second jobs (the working-time structures in the UK used to be a classic case here). However, two reservations have to be made. First, the long hours of low-pay workers must be beneficial for employers, too. This cannot be taken for granted, as it depends on the overall labour market situation and such factors as the direct or 'indirect' labour market regulation features mentioned earlier. And second, as far as labour supply is concerned, a higher income does not necessarily reduce the propensity to work long hours. However, what has to be kept in mind irrespective of these reservations is the fundamental fact that a less unequal income distribution which makes it possible to make ends meet for an overwhelming majority of workers relieves these workers from the financial necessity, or coercion, to work long hours. Hence the crucial implication of pay for individual discretion over working hours.

This leads us to a *fifth* variable, which is arguably as basic as it is fuzzy: the appreciation given in a society to what may be called 'time wealth', as compared to the pursuit of happiness within an ever growing consumer goods economy and culture. This issue is very much connected to debates about the limits to economic growth imposed by the scarceness of natural resources, but also to long-standing controversies about the moral foundations of the 'good life' in capitalist or post-capitalist societies (for a recent discussion cf. Skidelsky/Skidelsky 2012). It is not possible to go into this debate here, but it should be mentioned that, beyond the ethical or moral dimensions of the issue, there are also more practical aspects and social experiences which are easier to dwell on when it comes to assessing potential future developments. Again, they are linked to the gender equity issue. There is some indication that greater gender equity on the labour market (including a narrowing of the gender time gap) fosters the revaluation of leisure (or 'family')

time by men who are the usual suspects when it comes to long working hours (Anxo et al. 2013). That is, to put it both bluntly and daringly, the greater the gender equity in a given society, the greater may be the appreciation of ‘time wealth’ by women *and* men. This may turn out to be one of the crucial drivers behind future working-time developments.

4. Challenges and scenarios

For a concluding look at the future I want to try and identify major challenges confronting social actors that may impact working-time developments to come. Two particularly pertinent and long-term challenges to be highlighted here are the ageing of most European societies and the quest for gender equity.

In theory, neither challenge is controversial. The views on their practical policy implications, however, are far from being shared universally. As to ageing societies, many governments have begun to increase the statutory retirement age to improve the sustainability of public pension funds. While these measures continue to be controversial in many countries, a universally shared view is that the *actual* retirement age should be extended up to the existing statutory threshold in the respective country. The predominant instrument implemented to this end is the abolition of early retirement schemes. The effects of such measures differ across countries. By way of example, in Germany the employment rates of older workers are on the rise, but the same applies to unemployment rates and long-term sickness rates in the same age groups (with the consequence of lower pensions for the latter). This experience has given rise to a public debate about ways to improve employability until retirement. Within this context it is widely accepted (again, in theory) that health-friendly working conditions are a fundamental requirement for that matter. In contrast to this general acknowledgement, however, stress at work has been rapidly increasing over recent years. The number of work days lost for reasons of mental stress and strain is soaring. Amongst men, such problems have become the second most important reason for early retirement due to occupational disability, and amongst women even the most important one. The cleavage between acknowledgement in theory and workplace policy in practice is widening. Any future strategy aimed at improving health at work will most presumably include working-time measures.

The relevance of working-time policy is even more striking with respect to gender equity at work. Again, in theory the public debate about the so-called ‘reconciliation of work and family or private life’ acknowledges the need for greater possibilities to adapt working hours more flexibly to individual needs. As indicated earlier, however, in many countries the practical implication continues to give priority to female part-time work. While this tends to be a temporary choice in a small number of countries, what is more common is a ratchet effect which keeps many women within part-time careers, thus limiting their occupational develop-

ment (and income) for the rest of their lives. The more pro-equity alternatives to this model are either continuous full-time work for both men and women, as used to be practiced in many CEE countries as well as in France, Finland, and Portugal, or the promotion of part-time phases as temporary interludes for both women and men. For many European countries the latter variant appears to be closer to established customs and practices, or ‘cultures’, than the former. Its longer-term implication would be to understand varying working hours over the lifespan of individuals as ‘normal’ – that is, socially accepted and widely implemented working-time practice.

The concept of *variations of working hours over the lifespan* may be regarded as the core of future working-time standards. In contrast to the traditional 40-hour week standard which has been crumbling in many countries over recent decades, this concept implies the potential for individually controlled variable hours below the threshold of a certain number of maximum hours per week, rather than a roughly equal number of hours for all workers. The concept is obviously relevant for gender equity, but equally for health at work. It has already become a crucial concept in debates about ways to improve ‘time wealth’ in developed capitalist economies (for the German debate cf. Groß/Seifert 2010).

This reasoning provides a background for two simple scenarios of future working-time developments. The *first* one would be a progressive answer to the demographic and gender equity challenges based on the concept of variable hours over the lifespan, with the implication of a gradual reduction of average working-times of full-time workers. The latter would not just be a consequence of temporary working-time reductions but also, and most probably to a greater extent, a necessity when it comes to balancing the increase of average hours of women. Equally, it would be a necessity within a strategy of ‘healthy ageing over the work life’, given the substantial increase in mental stress at the workplace, the impact of which on limited employability for health reasons has been mostly externalized by firms onto social security systems so far. This is an option which could be called a ‘modern equity’ scenario, as its implications for both social and gender equity would go well beyond the ‘Golden Age’ concept which was based on a conservative or traditional concept of the gender division of labour.

It is understood that the employment effects of this process of an inter-gender re-balancing of working hours and of reshuffling working hours over the lifetime depend very much on the overall volume of labour demand. Given the low rates of economic growth in Europe, and in spite of low rates of productivity increase due to the rising share of personal services, it is fair to assume that a further increase in unemployment can be avoided only by an overcompensation of working-time extensions of women by working-time reductions of men. This would be, by the way, very much in line with the working-time preferences of both men and women (Bielenski et al. 2002). Moreover, it is also understood that a broad process of reshuffling working hours over the lifetime and between men and women would require a large array of accompanying strategies and measures — from a greater importance of functional flexibility in work organization to a new

emphasis on education and training policies which prepare the grounds for the former. Not the least, a boost given to public social services would produce both favourable conditions and the additional labour demand needed for the broad inter-gender reshuffling of working-times. Having said this, it is fair to assume that the social actors likely to push forward a ‘modern equity’ scenario would go, and indeed would *have* to go, far beyond traditional protagonists of general working-time reductions such as the trade unions.

The *second* option would be the continuance of recent working-time trends. This can be called a *free-market* or *inter-individual competition* scenario as it implies a deepening of cleavages across groups of workers. Most presumably, it would also imply a further deepening of the gap between those in employment and the vast number of unemployed. While the working hours of the former would increasingly vary with business cycles and the ups and downs on the labour market, including extra-long hours amongst both low-wage earners and the highly skilled, the gender time gap would remain untouched. While this scenario would presumably imply the continuation of stark working-time contrasts across countries, it is an open question as to what extent the predominant clustering of working hours around the 40-hour standard in some (primarily CEE) countries would survive the overall social structural change under the conditions of an ongoing predominance of neoliberal policy approaches.

For the time being, the latter scenario is obviously much more realistic than the former. There can be no doubt about the macro-economic environment of working-time policy approaches in either direction. In his short essay on “The long-term problem of full employment” written 70 years ago, J.M. Keynes (1980: 320 ff.) outlined three phases of economic development in post-WW II Britain. After the phases of recovery and “useful investment”, he identified a third phase in which “investment demand is so far saturated that it cannot be brought up to the indicated level of savings without embarking upon wasteful and unnecessary enterprises.” This essay reads as if Keynes had foreseen the wasteful and unnecessary enterprises of the financial industry most marked in the 2000s, i.e., the financial bubble which burst in 2008. As can be observed in the world economy, but with particular urgency in Europe, the roots of this crisis have remained untouched so far as the unequal distribution of income and wealth continues to produce the amount of savings which feed the ongoing crisis. At the same time, this wealth continues to exert the economic and political power to protect its agents from bold government responses which would replace austerity policy and labour market deregulation by an employment-, environment-, and social equity-friendly public — and in consequence also private — investment strategy (for a discussion of this problematic cf. EuroMemo Group 2013). Keynes himself pointed at the importance of working-time policy within his scenario when he wrote that it would become “necessary to encourage wise consumption and discourage saving” which, in turn, would depend on “the propensities of a community with a distribution of taxed income significantly different from any of which we have experienced”. It is under these conditions that he assessed it as necessary, for the sake of

full employment, “to absorb some part of the unwanted surplus by increased leisure, more holidays (which are a wonderfully good way of getting rid of money) and shorter hours.”

These considerations have arguably become ever more relevant, given the ongoing crisis with its soaring unemployment, most dramatically among young people, in various EU countries. True, shorter general working hours could be an important contribution to employment growth in particular within a growing economy – albeit no more than a contribution (as was demonstrated in France in the early 2000s). Nevertheless, a fundamental review of established working-time policies and their implications for public services could be a crucial element within a broader reversal of the dominant economic policy approaches which are driving an increasing number of EU countries deeper into crisis. These are extremely controversial issues, but nevertheless they should be kept in mind when thinking about future working-time developments.

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THE FUTURE OF WORKING TIME MANAGEMENT (WTM) IN GLOBAL COMPETITION: A MICROECONOMIC PERSPECTIVE

1. Working Time Management: a Microeconomic Perspective

International research on working time tends to prefer the macroeconomic perspective, while the microeconomic perspective, which offers a look at working time from the company and plant level, seems to be of minor concern.

The present paper seeks to shift this focus and applies the microeconomic perspective through an analysis of management decisions on working time, referred to as working time management (WTM)¹. Since the 1980s, WTM has developed and become a crucial part of HR management in global competition.² Tying in with this development, the following analysis focuses on the future of WTM.

1.1. Measuring Working Time Flexibility

One of the results of a company's WTM is working time flexibility. This can be measured in different ways. We follow the recommendations of the European Commission (2010). to distinguish two main dimensions:

(1) "Flexibility in the length of working time", measured by several indicators such as

- share of employees working part-time (less than 40 hours per week, including "mini jobs" and "midi jobs");
- share of employees working overtime (more than 40 hours and up to 48 hours per week);

¹ Early handbooks on WTM were published by Marr (1987, 2001), Ackermann/Hofmann (1990), Wildemann (1995), Fauth-Herkner (2001), and Seifert (2004, 2005).

² See Bundesministerium für Familie, Senioren, Frauen und Jugend (1998); Deutscher Industrie- und Handelstag (2000).

- share of employees working “long hours” (48 hours per week or more).
- (2) “Flexibility in the organization of working time”, measured by the share of employees
 - having access to “flexible working time schedules” (staggered working hours, flexitime arrangements, and working time banking);
 - working “atypical hours” outside the standard working time from Monday to Friday between 7am and 5pm (for example shift work, working on Saturday and Sunday, at night or in the evening);
 - working from home, which includes homework with a PC and homework excluding telework.

This shows that the more employees work part-time, overtime and long hours, have access to flexible working time schedules, work atypical hours, or work from home, the higher the working time flexibility provided by WTM. The underlying premise is that, *ceteris paribus*, the competitiveness of a company correlates positively with working time flexibility (Ackermann, 2008a, pp. 38-56).

1.2. German Working Time Management as an EU Benchmark

WTM in Germany is one of the models in the EU which are sometimes regarded by other countries as a benchmark for their further development. For them, it might be of special interest to get to know the current state of the art of WTM and how it is expected to change in the future.

According to convergence theory (Meyer et al., 1975, pp. 223–246), existing differences among EU member states gradually become smaller over the course of time. Learning from best practices certainly accelerates this process and should help to avoid failures and dysfunctional consequences resulting from a lack of experience. WTM as discussed in this paper can serve as an example of this.

It must be noted, however, that some country-specific characteristics of WTM exist, and they can complicate learning from each other. Despite general directions and standards for working time in Germany, management is given a wide scope for decision-making on the company and plant level regarding the length and organization of working time and is restricted only by the co-determination rights of the workers’ council. Co-determined WTM is the attempt to consider the divergent requirements of a company’s management, its labor force as a whole, and the individual employee concerning working time (Ackermann, 2008b, pp. 57–72).

1.3. Select Approaches to an Analysis of the Future of Working Time Management

A few years ago, the author applied the scenario technique in order to explore possible future working time concepts in the German metal and electronic industry as far ahead as the year 2015 (Ackermann, 2010, pp. 365-382). A significant result of this study was that no radical change was to be expected between 2009

and 2015, except an increased application and use of already available flexible working time concepts.

Besides the scenario technique, other methods of future-related research are known (see e.g., Steinmüller 1997). In the face of a growing variety and complexity of changes, however, forecasting what will happen in the area of WTM in the long term requires further in depth analysis. Based on former studies, this paper deals with four approaches:

(1) Statistical approach, investigating expected changes of the present measured working time flexibility;

(2) Issue-response approach, looking at future challenges which WTM must overcome;

(3) Strategic design approach, focusing on the strategic level of WTM and analyzing the quality of present and future working time strategies;

(4) Employee perspective approach, studying the employees' (dis-)satisfaction with the working time conditions in their companies, how important this is for the overall work satisfaction, as well as what could be done in the future in order to reduce discrepancies between the contractual and the desired working time.

A comprehensive summary at the end will link the results of each approach, hoping to create a mosaic of how WTM will look in the future.

2. Statistical Approach: the Measured Extent of Present and Future Working Time Flexibility

Taking the current extent of working time flexibility as a starting point, this paper then asks how much working time flexibility would be possible under the legal and other restrictions in Germany today. Subsequently, long-term trends are analyzed.

2.1. Present Measured Working Time Flexibility in German Companies

Flexibility in the length of working time and in the organization of working time are studied separately in a comparison of German and Polish companies. The results of the EU Commission study of 2010 are used (European Commission 2010). as the only database, acknowledging that other sources may offer slightly deviating data.

a) Current Extent of Flexibility in the Length of Working Time

The share of employees who work less than the standard working time of 40 hours per week (in part-time) and the share of those who work more (in either regular overtime or long hours) differ significantly by country and gender (see Figure 1 below).

Figure 1. Present flexibility in the length of working time by gender in Germany and Poland

Indicators	Shares of employees*	
	in Germany	in Poland
(1) Part-time work	9% (46%)	4% (9%)
(2) Working overtime	15% (9%)	6% (4%)
(3) Working long hours	8% (2%)	22% (9%)

*Males (females in brackets)

Source: EU Commission study 2010, pp. 98–103

The figures show that part-time work is much more frequently applied in Germany than in Poland, especially considering female employees. Essentially this is also true for working (regular) overtime, but not for working long hours, where the percentages in Polish companies clearly exceed those in German companies.

b) Current Extent of Flexibility in the Organization of Working Time

The shares of employees with access to flexible working time schedules or to working atypical hours also differ substantially by country and gender (see Figure 2 below).

Figure 2. Present flexibility in the organization of working time by gender in Germany and Poland

Indicators	Shares of employees*	
	in Germany	in Poland
Flexible working time schedules		
(1) Staggered working hours	5% (5%)	9% (8%)
(2) Flexitime arrangements	7% (7%)	9% (5%)
(3) Working time banking	40% (35%)	2% (2%)
Working atypical hours		
(4) Shift work	22% (26%)	
(5) Working on Saturday	12% (14%)	15% (11%)
(6) Working on Sunday	.	6% (5%)
(7) Working at night	27% (23%)	.
(8) Working in the evening		10% (8%)
(9) Working from home	2% (2%)	.

* Males (females in brackets)

Source: EU Commission study 2010, pp.39–63

Most strikingly, when compared with Polish companies, working time banking among flexible working time schedules would seem to be the standard in German companies. Therefore it is all the more astonishing that, currently, other examples of flexible working hours and flexitime arrangements are obviously less applied in Germany than in Poland.

With regard to working atypical hours, flexibility is considerably higher in all defined categories within the German subsample compared with Poland.

c) Open Questions Regarding the Future of WTM

Compared with the past, when working time in Germany was strictly regulated and highly standardized³, both of the above figures indicate a tremendous change towards more flexibility on the company and plant level. There is no doubt that a high extent of working time flexibility is one of the cornerstones of outstanding competitiveness for companies in both national and international markets.

One of the most interesting questions, however, is whether working time flexibility will increase, decrease, or remain constant in the future. Since this is a very complex issue without a simple answer, we shall first analyze the potential for future working time flexibility and then the main trends that appeared in recent discussions.

2.2. Potential for Increased Working Time Flexibility

Regarding the future of WTM, it seems to be even more important to explore the maximum extent of working time flexibility possible under current legal restrictions, labor agreements, or company agreements.

a) How much flexibility is possible in the length of working time?

Generally speaking, if needed and required, it would be possible to apply much more “part-time work”, “working overtime“ and “working long hours” than is currently exercised (see fig. 1 above).

(1) Part-time work. Establishing part-time work can be achieved in two ways: by splitting an existing full-time job into two or more part-time jobs, or by creating new jobs, especially designed for part-time workers. Evidence suggests that most of the jobs which a company traditionally reserves for full-time workers could be made available to part-time workers, as well (Vollmer, 2001). This is also true for management jobs (Dellekönig, 1995; Koch, 2008, pp. 612–618), although strong prejudices from within and outside the companies still remain against part-time managers.

No legal restrictions exist, however, regarding the share of employees who work part-time. Each company will decide for itself how many part-time workers to employ and will also define the specific conditions regarding the length and distribution of working time across a week or a month. A company’s employment expectations and requirements as well as the individual employee’s wishes are the most important influencing factors to be considered in WTM.

Employees will have a strong impact on future part-time work. Since the “Act on Part-time and Temporary Work” from January 2001 (in German: Teilzeit- und

³ See “Comprehensive History of Working Time Management and Working Time Flexibility in Germany” (Appendix 1).

Befristungsgesetz), every employee, after at least six months of employment, can claim the right to a change from full-time to part-time work, regardless of whether this is in the interest of the company (Ackermann/Heckel, 2001, pp. 663–666). The company is only allowed to reject such a demand if the decision is based on one of two grounds: the change to part-time is expected to threaten the work processes or the work security to a considerable extent, or would result in an excessive increase of costs. As a rule, the application of the employee, which must be addressed to the company's HR department at least three months before the start of the desired part-time work, is the only formal prerequisite and must indicate the desired length of the weekly working time and its distribution across the week. Generally, a later return to full-time work is possible, but cannot be claimed by the employee.

Whoever wants to change from full-time to part-time work agrees to reduced pay. This means that, in fact, the "Act on Part-time and Temporary Work" is an offer to those who can afford to work part-time. Part-time practices in companies are heavily criticized by trade unions and social scientists when they result in forced part-time without a say in the matter for the individual employee or precarious positions like "mini jobs" and "midi jobs".

(2) Regular overtime work. Following the national "Working Time Act" (in German: *Arbeitszeitgesetz ArbZG*), which defines a week of 48 hours (6×8 hours) as the traditional standard, collective agreements between employers' associations and trade unions from different industry sectors provide generous overtime regulations. Where workers' councils exist, individual company agreements specify details regarding such regulations, addressing issues like when and to what extent overtime can be ordered on demand of the superiors. Sometimes superiors tolerate overtime work of employees whose motivation is an increased income by working longer hours in exchange for extra pay rates. Compared to current numbers, far more employees (theoretically even all or nearly all if needed) could work regular overtime.

Trade unions and other critics of overtime work point out the negative influence of permanent and excessive overtime work on the employees' health, on their work-life balance, and finally also on the level of work productivity, which tends to decline beyond the threshold of an 8-hour working day. Those consequences, together with increased personnel costs due to extra pay, are the main reasons why WTM aims to curtail overtime work in companies rather strictly.

A recent IAB research project on flexibility in the labour market through overtime and overtime accounts comes to the following final conclusion:

"Actually paid and unpaid overtime as well as transitory overtime are widespread in Germany. They are used as instruments to increase working time flexibility. With the increasing use of working time accounts the importance of transitory overtime increased, whereas paid overtime lost in importance." (IAB 2012, p. 5).

Obviously, "working time accounts", also called "working time banking", a rather wide-spread form of flexibility in the organization of working time, is extreme-

ly helpful in the long run in balancing working time credits from overtime on the one hand, and working time debts from working less than 40 hours per week on the other hand, while, at the same time, the employees' income remains stable.⁴

(3) Working long hours. The above criticism on working regular overtime between 40 and 48 hours per week appears to be even more valid considering the potential for working long hours of more than 48 hours per week. Although the national Working Time Act legitimizes a maximum of 60 hours per week (namely – 10 hours per day from Monday to Saturday, under specific conditions), working long hours will always remain an emergency reaction to temporary special requirements and is expected to be minimized in the future.

b) How much flexibility does the organization of working time allow for?

Compared to the current extent, future flexibility in the organization of working time is expected to increase.

(1) This is primarily true for “flexible working time schedules”, including “staggered working hours”, “flexitime arrangements”, and “working time banking” (see fig. 2 above). No restrictions exist regarding an expanded application of such schedules if needed and desired by the companies.

(2) Predictions differ, however, in the case of “working atypical hours”. Current discussions stress the negative impact on work-life balance and on the employees' quality of life. Therefore only small increases, if any, are expected in the future.

2.3 Long-term Trends in Working Time Flexibility

The following overview illustrates and summarizes the first results regarding future working time flexibility in comparison with the present state:

Flexibility in the length of working time

(1) Part-time work: ↑

(2) Paid overtime: ↓

(3) Working long hours: ↓↓

Flexibility in the organization of working time

(4) Flexible working time schedules (staggered working hours, flexitime arrangements, working time banking) ↑

(5) Working atypical hours →

Out of the different types of working time flexibility listed above, two will increase, two will decrease, and one will remain more or less unchanged. The extent

⁴ See Raab/Pochadt (2009); Hildebrandt et al. (2009); Zeitbüro NRW (2008); Hans Böckler-Stiftung/Böcker (2007); Röder/Baier (2007); Kümmerle et al. (2006); Lorenz/Schneider (2005).

of these changes will strongly differ depending on the economic sectors in which they will occur.⁵ Taken as a whole, the high (and slowly increasing) importance of flexible working time systems in Germany is expected in the future.

3. Issue-Response Approach: Opportunities for and Threats to Future Working Time Management

The second approach to future WTM explores the opportunities and threats that lie ahead and which are expected to require proper responses in order to develop and sustain the global competitiveness of companies.

3.1. Empirical Research on Future HR Challenges

In 2012, the Boston Consulting Group and the World Federation of People Management Associations published the study “Creating People Advantage” on world-wide key topics for future HR management based on a total sample of 4,288 executives from more than 100 countries.⁶ In the German subsample, the following challenges ranked highest:

- (1) “Managing demographics”, including an aging workforce, women in management, etc.;
- (2) “Managing talent” as a critical success factor;
- (3) “Transforming HR into a strategic partner”;
- (4) “Managing change and cultural transformation”;
- (5) “Improving leadership development”.

Other aspects such as “Recruiting and Staffing” and also “Managing work-life balance” ranked lower in the study. The question remains to be answered as to what role WTM must play among the concepts and tools of HR management directed to cope with the challenges.

3.2. Mastering Future Challenges by Means of Working Time Management

a) WTM and Work-Life Balance

Unfortunately, the study “Creating People Advantage” largely neglected WTM as a tool to master the identified challenges, with but one important exception: managing work-life balance.⁷

⁵ Sage HR Solutions AG (2011), p. 31.

⁶ Boston Consulting Group/World Federation of People Management Associations (2012a), p. 108.

⁷ An earlier pilot study on flexible working time shows that family-friendly working time regulations do not contradict competitive advantages of the company; see Bundesministerium für Fami-

Nine specific WTM actions in managing work-life balance are recognized in the study and are described in some detail. Among them are:

(1) “Flexible working hours” and “part-time work”, both already frequently used tools of present WTM⁸;

(2) “Telework”, “sabbaticals”, “job sharing”, “parents’ sabbaticals” and “employment for spouse/partner” (career couple programs), which should receive growing consideration as WTM tools in the future in order to master work-life balance issues.

All other challenges to future HR management in the study “Creating People Advantage”, mentioned above under 3.1, seem to be irrelevant for WTM responses. From our point of view, this is a significant weakness of the study, as the following analysis shall confirm.

b) WTM and other Future HR Challenges

It becomes clear that WTM has an important role to play, not only in mastering work-life balance issues, but also in mastering other HR challenges

(1) Managing demographics will have to include WTM tools, among them the design of age- and gender-specific working time arrangements.⁹

Example 1: As the standard working time will vary according to age groups, younger staff members are encouraged to work more hours than their senior colleagues. They are expected to accumulate time credit on their working time accounts, allowing them to work less at a higher age without a reduction in income.¹⁰

Example 2: Introducing and extending flexible part-time work for managers supports the promotion of women in management. The special situation of qualified women with young children and other family duties could thus be addressed more properly.¹¹

(2) Managing talent is supported when reasonable time budgets are provided for self-studies and also for on-the-job, near-the-job, and off-the-job training.¹²

Example 1: Time accounts are reserved and used exclusively for the studies and training of selected high talents in the company.¹³

lie, Senioren, Frauen und Jugend (1998). For more recent information see Kastner (2004); Bundesministerium für Familie, Senioren, Frauen und Jugend (2008).

⁸ See fig. 1 and 2 above.

⁹ Demographic change as a challenge to HR management and alternative strategies to react are analyzed in Prezewowsky (2007); however, a focus on WTM is not provided therein. The same topic is studied in Deller et al. (2008).

¹⁰ Ackermann (2009); Zeitbüro NRW (Hg., 2008); Röder/Baier (2007).

¹¹ European Commission (2010); Bäcker et al. (2007).

¹² For an empirical study on talent management in Germany see Ackermann/Wehner (2012), pp. 28–31. Another study, provided by HR blue AG (2012), reports that roughly 52% of all HR managers accept their responsibility as talent managers.

¹³ Individual time accounts, established for the special purpose of long-term or lifelong learning of the employees, are called “learning time accounts” (Lernzeitkonten). They help to finance personnel development in companies. See Seifert (2002a; 2002b; 2001, pp. 43–55); Dobinhat/Seifert (2001), pp. 92–101.

Example 2: On request, high talents are allowed to take a long-term sabbatical to start and/or finish advanced studies at a university or another institution for higher education.

(3) Transforming HR into a strategic partner should include WTM.¹⁴

Example 1: The board of directors orders the HR department to design a company-specific strategy for future working time regulations and to stipulate it in a company agreement with the workers' council.¹⁵

Example 2: The HR department is the organizational unit responsible for the translation of the company's working time strategies into action programs, e.g., the introduction of individual working time accounts.

(4) Managing change and cultural transformation opens up new opportunities for WTM.¹⁶

Example 1: Changing structures, processes, products, and services of a company will also alter the requirements regarding working time. The result is an increased need for a change of the existing working time arrangements in favor of new provisions that are more in line with the latest requirements. This could mean, for instance, that former working time regulations prescribing the duty to be present during a defined core time, e.g., from 10 to 12 a.m. and from 2 to 4 p.m., become obsolete and should be revoked as soon as possible.

Example 2: A strong company culture is one of the reasons why the introduction of new working time regulations, such as "working time on trust" replacing working time measurement, or "working time banking" for increased flexibility, cause resistance to change among the employees and even among their superiors.¹⁷ The latter have become accustomed to having all staff members on board during a set standard working time and tend to defend the status quo. In such cases, cultural transformation is a prerequisite for innovative WTM initiatives.

(5) Improving leadership development requires reasonable working time and the competence of superiors to execute WTM.

Example 1: Leadership development requires time budgets reserved for on-the-job, near-the-job, and off-the-job management trainings. Without additional time available for systematic learning and training, leadership development will not succeed in the face of increasing time pressure in everyday work. It is one of

¹⁴ "Strategic partner" is one of the more recent roles that HR managers should fill in addition to their traditional roles of "administrative experts" and "employee champions"; see Ulrich (1997); Ulrich et al. (2009). According to a recent HR image study by Haufe Studien Reihe (2011), 46% of all HR managers have already accepted the role of being a strategic partner compared with 70% who define themselves primarily as employee champions.

¹⁵ See chapter 4 below.

¹⁶ "Change agent" is another rather recent role of HR managers, specified by Ulrich (1997); Ulrich et al. (2009). Following the HR image study mentioned above, a majority of 60% of all HR managers believe to achieve the role of a change agent.

¹⁷ For "working time on trust" see e.g., Lorenz/Schneider (2005); Hoff (2002); IG Metall (2000); Verdi (no publication date given).

the tasks of WTM to enable leadership development by providing proper working time arrangements.

Example 2: Leadership development includes the competence of superiors to cooperate with their staff members in a flexible working time setting. WTM is a key topic of leadership development and will be even more key in the future when working time arrangements become more and more individualized and flexible.

(6) Recruiting and staffing are still considered one of several minor challenges, but will be of growing concern in many companies, which will increasingly suffer under the ongoing demographic changes. WTM should offer alternative provisions to HR marketing in order to cope with the present and future war for talents.

Example 1: Empirical research on employers' attractiveness for university graduates and highly qualified job seekers has identified employee-oriented, flexible working time as one of the most important criteria in the selection process. When bottlenecks exist in the labor markets, companies simply cannot ignore the individual working time wishes of the applicants, lest they fail to cover their manpower needs.

Example 2: WTM can also help to strengthen the employees' organizational commitment by meeting individual working time wishes. The latter might change in the course of time and will, therefore, require the permanent attention of the responsible working time managers.

3.3. Conclusion: Sketching Future Working Time Management

WTM will remain an important tool for companies in realizing work-life balance. It is also clear, however, that the economic goals of WTM will become equally or even more important, as they contribute to the management of demographics and talent, to the transformation of HR into a strategic partner, to the management of change and cultural transformation, to improving leadership development, and, finally, to successful recruiting and staffing. In the face of the challenges ahead, WTM will move from the periphery to the centre of HR management.

4. The Strategic Design Approach to Future Working Time Management

The Strategic Design Approach analyzes future working time strategies.¹⁸ They belong to the so-called subfunctional strategies, which are directly subordinated to the higher ranked overall HR strategy below the level of corporate and

¹⁸ The strategic dimension of WTM was discussed early on in special HR literature on WTM, e.g., by Ackermann (1990), pp. 5–28, and Berger (1990), pp. 29–41, but has been widely neglected in strategic management research. To this day, working time strategies in many companies are not well developed; piecemeal WTM seems to be far more applied than strategic WTM.

business strategies.¹⁹ As a consequence, working time strategies should be designed and translated into action in line with higher and equally ranked strategies of the company. Although this requirement is well known, realizing it still poses a challenge.

When it comes to the application of working time strategies in companies, one has to distinguish between two types of strategy:

- (1) High quality strategies (planned and written)
- (2) Low quality strategies (emergent)

4.1. High Quality Working Time Strategies: Planned and Written

a) A General Description of Strategy

What we call a high quality working time strategy follows the classical definition of strategy by the Harvard Business School (See Chandler, 1962):

- “the determination of the basic long-term goals and objectives of the enterprise
- and the adoption of courses of action
- and the allocation of resources necessary for carrying out the goals”

Such a strategy is carefully planned and documented. Therefore, it is expected that the result will be of high quality. This is also true for working time strategies as will be illustrated by a best practice example (see chapter 4.2).

For practical purposes, a strategy is sometimes interpreted as a guideline or framework for decision-making. It is either elaborated in detail and written down in the form of a special strategy paper or a company agreement between the board of directors and the workers’ council, or it is unwritten and emergent.

A well-known six-step model describes the design of a high quality strategy. This general model is used below to design a working time strategy, fully aware of the fact that the described procedure is yet rather uncommon in companies.

b) Designing a High Quality Working Time Strategy

The following best practice example for the design of a working time strategy derives from a large company in the automotive industry.²⁰

First step: A project team is established to design new flexible working time arrangements for the company within a period of six weeks, if possible. The project team is headed by the central HR manager. It is composed of a top-level management representative, HR specialists from the HR department, representatives from line management and from the workers’ council, and, in addition, an external working time consultant who moderates the weekly group meetings.

¹⁹ The notion of working time strategies as a special type of subfunctional strategies follows the hierarchical strategy concept first suggested by Hofer/Schendel (1978). For general trends in strategic HR management see Ackermann (2012), pp. 24–44.

²⁰ Research on rational planning in WTM dates back to the 1980s; see Ackermann (1990, pp. 183–211; 1987, pp. 654–662; 1986, pp. 328–335), and, more recently, Hofmann (1991) and Vollmer (2001).

Second step: Strengths and weaknesses of the company-wide working time regulations are reviewed, identifying the dramatic increase of time credit on the employees' individual time accounts as a major weakness. Perceived future opportunities and threats are also discussed, including ideas and recommendations on how to react properly by means of a redesign of working time. Two concepts are analyzed in more detail: "working time on trust" (abolishing "work-time recording") and "improved flexitime regulations" (abolishing core time).

Third step: Taking the results of the above-mentioned SWOT analysis as a basis, goals for future WTM are defined in line with the overall strategy of the company. In this phase of designing a working time strategy, line managers from research and development, production, and sales provide additional information by formulating specific requirements towards future working time regulations.

Fourth step: "Working time on trust" and "improved flexitime regulations including core time" now become the subject of flexibility and benefit-cost analyses taking into account various criteria. Among those criteria, expected reactions by the employees and their superiors and consequences for customers and suppliers as well as for the desired cooperation between the different organizational units prove to be of highest importance.

Fifth step: It is decided that "improved flexitime regulations including core time" should be elaborated in more detail in order to harmonize them properly with the strategic guidelines for future working time and other defined criteria.

Sixth step: A company agreement on "improved flexitime regulations including core time" between the board of directors and the workers' council is reached, including the arrangement that superiors should be offered a training focusing on how to handle new working time arrangements with regard to their staff members.

c) State of the Art and Forthcoming Trends

When working time strategies are designed, large companies sometimes apply procedures similar to the ones described above. They usually seek to combine various single instruments and tools of WTM and aim to optimize their use within a system.²¹ A growing number of examples for high quality working time strategies and outstanding WTM systems can be found in different industry and service sectors. Nevertheless, "low quality working time strategies" tend to prevail in the majority of small and medium-sized companies.

4.2. Low Quality Working Time Strategies: Emergent

In his book "Strategy Safari" Henry Mintzberg lays out a typology of strategies that are not the result of strategic planning (Mintzberg et al., 2002). We call them "low quality strategies" in opposition to "high quality strategies" as described above.

²¹ Note that, in the context of WTM, the term "strategy" is frequently substituted by company-specific terms.

a) The Mintzberg Typology of Emergent Strategies

A quick look at the following categories highlights what we mean when we speak about “low quality strategies” in a WTM-specific context. They all have in common that they do not result from strategic planning.

Figure 3. Types of emergent strategies

Mintzberg categories of organizational strategies	Short description
(1) Entrepreneurial Strategy	Manager’s vision or good idea regarding direction
(2) Ideological Strategy	Collective vision of all members of the organization, regulated by strong norms
(3) Umbrella Strategy	Strategic targets or boundaries are defined within which others must act
(4) Process Strategy	Process aspects of the strategy are controlled while the actual content is left for others to decide upon. This might occur by defining standard procedures.
(5) Unconnected Strategy	Members or subunits loosely connected to the rest of the organization produce strategies of their own in the absence of or in direct contradiction to the central or common strategy of the organization.
(6) Consensus Strategy	Through mutual adjustment, various members converge on strategies that pervade the organization in the absence of a central or common strategy.
(7) Imposed Strategy	The external environment dictates strategies either through direct imposition (e.g., by law or collective agreement) or through implicitly preempting or limiting organizational choice.

Source: Mintzberg 2002

b) Working Time Management in the Light of Mintzberg’s Typology of Strategies

Mintzberg’s classification of general strategies will now be applied to WTM in order to describe present WTM in a differentiated way and to provide grounds for a look into the future.

Ad (1): WTM following the “Entrepreneurial Strategy” is very common in small and medium-sized companies when the owner family makes the decisions. Their personal vision as to which working time conditions should apply in their company will determine more or less exclusively the set of rules for WTM.

Ad (2): An “Ideological Strategy” of WTM exists in companies where culture in terms of shared norms and values is the major criteria in deciding which changes in working time would be accepted (because they fit the culture) and which would be rejected. To give an example, the opportunity to work atypical hours might be established in a culture and would, consequently, be defended against any hint of criticism stressing that “in this company, whoever wants it, is allowed to do it”. As a matter of fact, it becomes difficult to reduce or to abolish working atypical hours when this possibility is perceived as a company-specific privilege.

Ad (3): An “Umbrella Strategy” of WTM is practiced in companies where WTM has to observe rather general directives and guidelines provided by the top management. Besides those parameters, WTM is free to initiate changes in working time on demand and following individual wishes of the employees.

Ad (4): A “Process Strategy” of WTM is designed, for example, when the HR department as the responsible unit does not determine the content of WTM, but only the standard processes regarding how to proceed when new directives for overtime work are to be established for the company or for a part of it.

Ad (5): “Unconnected Strategies” of WTM are produced when the company fails to design a central or common working time strategy. In this case, it is expected that each organizational unit develops its own working time strategy without being forced to adjust it to the strategies of the other units.

Ad (6): A “Consensus Strategy” of WTM compensates for the lack of a central or common working time strategy and is based on the silent consensus of opinion leaders, which has developed over a long period of cooperation.

Ad (7): An “Imposed Strategy” of WTM provides working time regulations for the company that derive from laws, e.g., from the “Act on Part-time and Temporary Work”²²

4.3. Conclusion: Envisioning Future Working Time Management

It is expected that future WTM will focus on high quality working time strategies much more than today. In short, an increased quality of WTM in terms of more and better strategic planning will constitute the major difference between current and future WTM. This will be caused by the higher effectiveness and efficiency of carefully scheduled working time strategies compared to emergent strategies as described above (see e.g., Hofmann 1991 and Vollmer 2001).

An improved quality of WTM should be more important for tomorrow’s competitiveness of companies than further increases in measured working time flexibility following the statistical approach.²³

5. Employee Perspective Approach: Working Time Conditions from the Employees’ Point of View

While the statistical approach, the issue-response approach, and the strategic design approach all build on an underlying company perspective, the following employee perspective approach considers WTM and the resulting working time conditions exclusively from the employees’ point of view. Three questions arise:

²² “Imposed strategies” are described in Ackermann/Heckel (2001), pp. 663–666; Bäcker et al. (2007).

²³ See chapter 2 above.

(1) How satisfied are the employees with the current working time in their companies and how important is this for them?

(2) To what extent do the employees perceive a discrepancy between the contractual and the desired working time?

(3) What do employees expect from future WTM?

The employees' feedback on current WTM and working time conditions plays an important role in considering future WTM. The underlying premise is that trade unions, workers' councils, and other institutions that represent employees' interests are eager to change working time conditions in favor of their clients. Therefore, employee-driven changes in working time are an important factor for future WTM alongside employer-driven changes, which also, in part, rely on the employees' feedback that is gathered by means of organizational surveys.

5.1. Employee Satisfaction with Present Working Time and Their Importance Ranking Thereof

The research findings of the author, taking into account anonymous organizational surveys in 64 companies that are based in Germany and a total sample of $n = 32,600$ respondents, indicate that 47% of the employees are "satisfied" and 23% even "very satisfied" with their working time conditions. Most of them agreed that their individual needs and expectations are "completely" (32%) or "rather completely" (44%) fulfilled; they also agreed either "completely" (35%) or "rather completely" (46%) that proper opportunities for working part-time or joining a flexitime program exist in their companies.²⁴

Working time satisfaction is one of the most important factors of overall work satisfaction. According to the research above, this is the result of an importance ranking of 15 working conditions. Almost all respondents of the surveys rank working time as "very important" (57%) or "important" (37%). Considering the combination of high satisfaction and high importance, working time is clearly an extremely strong influencing factor on overall work satisfaction.

5.2. Perceived Mismatch Between the Employees' Contractual and Desired Working Time

Despite a high percentage of satisfied and even very satisfied employees regarding working time conditions, mass statistical studies by the IAB (Institut für Arbeitsmarkt- und Berufsforschung) show strong mismatches of contractual and desired working time among different employment groups (Wanger, 2011), pp. 1–8).

²⁴ These research findings are the subject of an unpublished report of the author on aggregated organizational surveys in various companies from the metal industry and other sectors in 2013, which serve as a benchmark for participating client companies of ISPA consult.

The following fig. 4 presents the main results of the IAB study based on the German Socio-economic Panel SOEP with a representative sample of nearly 9,500 employees.

Figure 4. Mismatches of contractual and desired working time of the employees

Employment groups	Share of employees who wish to change their current working time		
	“working less” (in %)	“working more” (in %)	Total (in %)
1. Employed full-time			
• Males	30%	21%	51%
• Females	45%	11%	56%
2. Employed part-time*			
• Males	8% (7%)	64% (58%)	72% (65%)
• Females	14% (6%)	45% (64%)	59% (70%)

* Regular part-time work (mini jobs in brackets)

Source: IAB 9/2011 p. 6

It must be asked how it is possible that nearly 80% of the employees state that they are satisfied or even very satisfied with their current working time, while at the same time a majority of them either want to work more or desire to work less than they presently do. The following is a consideration of only the most striking results.

(1) Obviously, many part-time workers would like to work more. 64% of all male employees working part-time and 45% of the females express this desire. Some of them might still be satisfied with their current working time when there is hope for them to change to a full-time job at the same or another company in the foreseeable future. Note that the “Act on Part-time and Temporary Work” provides the possibility to claim a change from full-time to part-time, but not vice versa. Nevertheless, well-advised HR managers will do their best to offer adequate full-time jobs in order to avoid demotivation or labor turnover to other companies, provided that the qualification profiles of the candidates meet the available job profiles. Other employees, who work part-time because they never had the choice and do not perceive an opportunity to alter their working time, are and will be dissatisfied with their working time conditions, particularly, if the work is precarious.

(2) Astonishingly, given the “Act on Part-time and Temporary Work”, strong minorities of 30% (male) and 45% (female) of full-time workers want to work less, probably leaning towards part-time. The reason for this considerable mismatch is unclear considering that, in principle, all of them can claim to work part-time. Either the company has rejected such a claim, or the full-time worker cannot afford the lower pay resulting from part-time work or does not want to risk experiencing difficulties in a later return to full-time. In each of the above-mentioned cases, full-time workers might take such a situation as an opportunity to express feelings of limited satisfaction or even dissatisfaction.

5.3. Requirements for Future Working Time Management from the Employees' Point of View

The unexpectedly large discrepancy between the employees' contractual and desired working time has stimulated discussion on how to direct present working time conditions towards more employee orientation in order to reduce mismatches and to prepare the ground for even higher satisfaction with working time.

A promising solution is the suggestion of a more flexible working time that takes into account individual needs and desires that do not only vary from one employee to the other, but may also change during the lifetime of the individual, as he or she passes through different age groups and family responsibilities, e.g., care for children, for elder family members, etc. Two initiatives deserve special attention:

(1) more openness of WTM on the company and plant level to the working time needs and desires of the employees;

(2) a reform of the "Act on Part-time and Temporary Work" and of other legal restrictions to WTM.

6. Summary

Four approaches were applied in order to look at the future of WTM. These included the "Statistical Approach", "Issue-Response Approach", "Strategic Design Approach", and, finally, the "Employee Perspective Approach".

(1) The result of the "statistical approach" is that the importance of flexible working time will remain high and will tend to increase the taking of small steps rather than making leaps. The structure of flexible working time will change, however, while the extent of change will differ from one sector of the economy to the other.

(2) The "issue-response approach" draws the attention to the forthcoming challenges to WTM, including "managing demographics", "managing talent", "transforming HR into a strategic partner", "managing change and cultural transformation", "improving leadership development", and, in addition, "recruiting and staffing" and "managing work-life balance". It is argued that future WTM will no longer be restricted to "managing work-life balance", but will be applied to master all other important challenges mentioned above. Therefore, the application area of WTM will become much larger than it already is today.

(3) The "strategic design approach" stresses the point that effective and efficient WTM in companies needs a strategic perspective well in line with the overall HR strategy and the other levels of the company's strategic concept. It is shown that the future is expected to bring a strong move from "low quality working time strategies", which prevail at present, to "high quality working time strategies", which result from strategic planning and will typically be presented in a written form.

(4) The "employee perspective approach" asks for future employee-driven changes in WTM in addition to the employer-driven changes discussed under the

labels of the “statistical approach”, the “issue-response approach”, and the “strategic design approach”. Astonishingly, the employees’ satisfaction with their present working time is rather high, while at the same time the perceived mismatch between the employees’ contractual and desired working time is also very large. Although this discrepancy cannot be fully explained, a turnaround in WTM is suggested: facing global competition, WTM will move towards a higher employee orientation where possible. More employee-oriented WTM in the future means to still increase the flexibility of working time in order to meet the varying needs and desires of the individual employees. By making these changes, the observed mismatch between contractual and desired working time will be reduced and satisfaction, as a prerequisite for high motivation and commitment, will be increased. A reform of the legal restrictions to WTM might support the suggested turnaround.

The four approaches summarized above do not offer a clearly scheduled and straightforward direction to future WTM, but rather form a mosaic of different thoughts and trends that are expected to play an important part in determining the future of WTM.

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Appendix 1: Comprehensive History of Working Time Management and Working Time Flexibility in Germany

Phase 1: Closely restricted working time flexibility before 1984

➤ Nearly all employees were working full-time based on open-ended employment contracts, often resulting in lifelong employment with a single employer. The weekly working time was originally from Monday to Saturday, later on from Monday to Friday, beginning and ending each day at equally fixed points of time in the morning and in the evening.

➤ Atypical work, such as overtime, part-time, shift work etc., was rather the exception than the rule and concentrated on specific sectors and companies.

➤ WTM on the company and plant level was closely restricted by the national Working Time Statute (in German: Arbeitszeitordnung AZO), collective agreements on the sectoral level, and, finally, by the co-determination rights of the workers' councils, resulting in working time practices with very little flexibility. Only one challenge was left that needed special attention: the step-wise shortening of the length of working time from 48 to 40 hours per week and from there to 35 hours per week in accordance with the trade unions' requirements.

Phase 2: Employer-driven rise of working time flexibility after 1984

➤ In 1984, the regional Employers' Association, demanding more flexible working time, and the Trade Union of Metal Workers, requiring shorter working time, reached a compromise for the metal industry, called "Flexibility Collective Agreement". This opened the way for much more working time flexibility on the company and plant level compared to what had been allowed before. This agreement was quickly adapted by other sectors of the economy.

➤ The Working Time Act (in German: Arbeitszeitgesetz ArbZG) from 1996 substituted the former Working Time Statute with more flexible standards and the enforced delegation of working time regulations to the sectoral and company level.

Phase 3: Employee-driven working time flexibility after 2001

➤ According to the "Act of Part-time and Temporary Work" (in German: Teilzeit- und Befristungsgesetz) from 2001, employees may claim reduced working time from their employer. Other claims can include parental leave, for example. At present, an advancement of employee-driven rise of working time flexibility is discussed.

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VISIONS FOR THE FUTURE: IMAGINING AND ANTICIPATING TOMORROW'S WORK HOURS FROM THE NORTH AMERICAN PERSPECTIVE

1. Introduction

What are the future frontiers of working-time regulation in North America? Will average Americans and Canadians work less or more in two or three decades, or will they simply work differently? Despite the wealth of research and writing on historic and contemporary developments in working-time organization and regulation, literature that specifically tackles questions about the future of working time is far less developed in the North American context. Nonetheless, comments on anticipated shifts in the hours and patterns of work can be found in works that take a broader perspective on the future of work and/or its role in sustainable economic development. In line with forward-gazing contributions such as Lynda Gratton's *The Shift: The Future of Work is Already Here*,¹ or the 21-hour workweek proposals recently advocated by the United Kingdom-based New Economics Foundation (NEF),² a number of North American scholars and policy think tanks have been elaborating their own visions of the future. Drawing on long-term social, economic, political trends and developments in technology, organization of work, globalization of markets, and climate change these visions anticipate how the policies of today are likely to shape the world of tomorrow. They also imagine the world that could be possible should decision-makers opt for very particular shifts in policy direction. As such, these future-gazing visions provide a glimpse of how Americans and Canadians might work and live in the year 2025 – or even 2084.

¹ Lynda Gratton. *The Shift: The Future of Work is Already Here*, Collins, London, 2011.

² New Economics Foundation (NEF) Online: <http://neweconomics.org/>. See NEF's report entitled *21 Hours: Why a shorter working week can help us all to flourish in the 21st century* (13 February 2010), available online at <http://neweconomics.org/publications/21-hours/>. See also, Anna Coote and Jane Franklin (eds.). *Time on Our Side: Why we all need a shorter workweek*, New Economics Foundation, London, 2013.

In relation to the issue of working-time, a review of this literature suggests broad agreement on the need to reform the regulatory frameworks and organizational practices that are currently in place in Canada and the United States (US). This is not surprising, since mismatch between regulatory models inherited from the past and the needs of contemporary firms and employees has been long diagnosed by researchers, stakeholders, and policymakers in most developed economies, and efforts at their reform have been ongoing at most levels of governance. In the context of futuristic scenarios, much as in the realm of concrete policy, there is less agreement, however, on what changes are necessary to bring about optimal working-time regimes – and indeed, on what those ideal regimes should be. For some, including American sociologist and economist of time Juliet Schor or the US-based Tellus Institute,³ only a drastic reduction and redistribution of work hours can foster the transition to a sustainable and “time affluent” world (Schor 2005, 2010, 2013; Stutz 2006). For others, the answer lies in deregulation and technological advancement. In the view of the consulting firm Deloitte and the Canadian Human Resources Professionals Association (HRPA), for instance, protective limits that are an integral part of existing Canadian working-time regimes should be abandoned in favour of self-regulation and technology-enhanced flexibility; a move that will foster long-term competitiveness and economic sustainability (Deloitte-HRPA 2012). Clearly, both alternatives follow well-established policy paths long present in discussions on working time. They also take a very specific view on the role and value of employment regulation.

This chapter outlines in more detail the two forward-looking scenarios just presented as ideal-types of anticipated working-time regimes of the future (section 2). It also assesses the likelihood that either will come about by placing them in the context of the regimes that currently exist in Canada and the US (section 3), as well as recent and ongoing policy efforts that seek to adapt them (section 4). The chapter concludes with a reflection on the affinity between policy recommendations and the two “big visions” of the future discussed at the outset.

2. Imagining the Future – Where is North America heading?

2.1. Sustainability and “time affluence” through reduction and redistribution of hours

That hours of work will be gradually reduced is one of the original long-term forecasts for the evolution of working time. In the 1930s John Maynard Keynes famously predicted that with growth in productivity, twenty-first-century workers would spend no more than fifteen hours per week in paid labour (Keynes 1963).

³ Tellus Institute is an independent, non-profit institute focusing on environment and sustainable development policy and research. See <http://www.telus.org/>.

Keynes was wrong, as the latter part of the twentieth century saw a reversal of the downward trend in work hours, and a policy shift away from working-time reductions towards working-time flexibility. Review of contemporary future-oriented scenarios makes apparent, however, that shorter workweeks have not lost their appeal. For some scholars and advocates, only reduction and redistribution of working hours can foster wellbeing, productivity, and curb the excessive consumption and consumerism that drive North American economies – a necessary step to ensuring long-term social, economic, and environmental sustainability.

While the recent 21-hour workweek proposal made by the UK-based NEF is the best example of this approach in Europe, the Boston-based Tellus Institute has been an ardent proponent of short working times in North America. The Institute's Great Transition scenario envisions the world of the future – 2084 to be precise – as a post-state “planetary society” where consumerism, individualism, and the dominance over nature have been replaced by a new triad of universal values: quality of life, human solidarity, and ecological sensibility (Raskin 2006, p.1). The exact expression of these values varies across the world's primary regions of Agoria, Ecodemia, and Arcadia (Raskin 2006, pp. 3–4), but all three focus on fostering social equality, wellbeing, commitment to sustainability, and moderate material consumption. The new organization of time is an important aspect of this new world, with pursuit of time affluence being one of the key popular goals of Ecodemia's “workplace democracy,” as well as Agoria and Arcadia's “time-rich... people's economies” (Raskin 2006, pp. 3–4; 8–9).

This emphasis on time affluence in Tellus Institute's projections is closely linked to: 1) the Institute's conception of wellbeing (Stutz 2006; see also Stutz and Mintzer 2005), which is seen as a key objective in human development, and 2) its effort to decouple wellbeing from continuous growth. Tellus Institute conceptualizes individual wellbeing as a composition of welfare, contentment, and freedom, all of which are affected by and related to the broader context of economy, society, and physical environment (Stutz 2006, p. 11). At present wellbeing tends to be correlated with income growth, yet Tellus Institute researchers draw on data demonstrating that once a certain level of income is attained, the correlation between income growth and wellbeing becomes negative. On this basis they advocate that we pursue wellbeing directly, rather than treat it as a by-product of income (something that can be purchased). Trading off income for time (i.e., by allocating less time to paid work so as to free up time for a range of unpaid activities that allow one to live well) is one example of a strategy that not only maximizes individual and community wellbeing, but also better aligns with broader objectives of ecological sustainability and global equity (Stutz 2006, p. 2). This new bargain is integral to the Tellus Institute's envisioned way of life in the Great Transition.

How exactly would this time affluent way of life be achieved and supported at an institutional level? Tellus Institute projects that paid weekly work time in the three regions of the planetary society would range from 20 to 30 hours, with Arcadia's hours being shortest while Agoria's hours falling just under 30 (Raskin 2006, 15). With reduced workweeks, “jobs [would be] structured so that those

who work full time can pursue career, civic, and personal life in a full and satisfying fashion” (Stutz 2006, 12). Time affluence and work-life balance will not appear on their own. Rather, both will be a result of concrete policy choices, as well as a range of other factors, including “moderate living standards, productivity increases, the dramatic reduction of wasteful practices and sectors (such as military expenditures), and participation in the workforce of all who can” (Raskin 2006, p.13). Other contributors will be changes in the organization of work and a shift to integrated settlement patterns that place home and work in convenient proximity. Long commutes to work will be a thing of the past. People will either live closer to work or will not need to commute on a daily basis because virtual workplaces networked by advanced telecommunications will be widespread (Raskin 2006, p. 13). In addition to institutional, infrastructural, and organizational changes, trade-offs between income and time will become possible and further strengthened by profound cultural and psychological changes. According to Tellus Institute researchers, citizens of the 2084 “planetary society” will *prefer* lifestyles that combine “material sufficiency” with “qualitative fulfillment,” and so will readily accept lower incomes in exchange for more time (Raskin 2006).

To be sure, accepting the sort of trade-off proposed by Tellus Institute’s scenario outlined above will require significant adjustment. Juliet Schor, American sociologist and economist of time and another avid proponent of working-time reduction as an integral component of long-term development strategies, projects that the adjustment costs of new schedules and temporal rhythms will be highest in wealthy countries, such as the US, where the culture of long working hours and excessive busyness is well entrenched (Schor 2010, p. 91). Nonetheless, it is in these contexts that “downshifting” is crucial and would bring the broadest range of benefits. From a societal perspective, adoption of more sustainable patterns of time use and a “slower and more humane pace of life” would have far reaching social benefits to family, community, and individual wellbeing, as it would improve social cohesion, community involvement, happiness, and work-life balance (Schor 2010, p. 91; de Graaf 2010, pp. 174-175).⁴ From an ecological sustainability perspective, such a shift would lower excessive consumption levels and, thus, help to reduce the substantial carbon footprints of Western economies. Indeed, Schor urges that adoption of stringent sustainability practices must begin in the developed world so as to help set an example for rapidly developing economies in the global East and South (Schor 2005, 2010, 2013).⁵

⁴ The case for working-time regimes that better accommodate social reproductive activities such as care, education, volunteering, participation in community life been long made by feminist scholars who posit that such regimes would foster a more equal distribution of paid and unpaid work between women and men, and thus, have positive impact on gender equality (Fredman 2005; Fudge 2005).

⁵ Indeed, Schor argues that reduction and redistribution of work hours in Western developed economies like the US is also required from a global solidarity perspective. Not only must Americans reduce how much they earn and consume to minimize their own ecological footprints; they must also do so to prevent the mass ecological degradation that would likely come along with rise in

2.2. Progressive, technology-enhanced flexibility

The promise of time affluence is alluring and the sustainability cases presented by Schor and Tellus Institute are rather compelling, but theirs is by no means an unchallenged vision for the future in North America. The obvious alternative lies on the path of flexibility, along which working-time reforms have been proceeding for some time and which has been favoured by employer advocates, organized business, and neoliberal reformers at different levels of governance.

A recent policy paper co-authored by consulting firm Deloitte and the Canadian HRP provides an instructive example of such flexibility-focused future-gazing narrative. Entitled *The Lost Decade, Unsustainable Prosperity or the Northern Tiger? Canada Works 2025*, the Deloitte-HRP paper presents three fictional scenarios written from the point of view of the year 2025. Two of them are “dark” alternatives, which the authors contend are plausible if Canadian economic and social policy continues on its current path. Against this backdrop, the third scenario is presented as a beacon of hope, its likelihood contingent on a wholesale rethinking of Canada’s current economic and social development strategies in line with the Deloitte-HRP recommendations. Among other matters, the scenario includes the sketch of an ideal-typical working-time regime of the future.

Termed “Lost Decade” and “Unsustainable Prosperity”, the first and second scenarios of the Deloitte-HRP paper paint Canada’s future labour market as severely segmented, characterized by tensions between labour market insiders and outsiders, the shrinking core of standard workers, and the proliferating contingent, precarious, flexible workforce on the periphery. In both scenarios, this segmentation is a result of major mismatch between skills and available jobs. In the “Lost Decade”, the problem stems from the lack of alignment between Canada’s educational systems (focused on training knowledge workers in conditions of underdeveloped technological capacity) and its actual industrial mix (over-reliance on the resource industry). With few opportunities for the tech-savvy Generation Y, Canada will be a place full of “people without jobs and jobs without people” and underemployment will be common (Deloitte-HRP 2012, p. 13). The slow adoption of network infrastructures and technology means that workers are unhappy and improperly equipped to achieve the productivity gains required to remain globally

wealth and consumption in developing economies, whose increasingly affluent populous will seek to emulate Western consumption patterns and lifestyles (Schor 2005, 2010). For reasons of global equity, Schor urges that rather than impose more stringent sustainability practices on the developing South, the effort to reduce or “downshift” must be undertaken in countries such as the US, whose carbon footprints are significant and lifestyle patterns infectious, yet utterly unsustainable on a global scale (Schor 2005, p. 48). In insisting on the need for adoption of more sustainable working-time practices – i.e., shorter workweeks – Schor rejects the argument of some economists that the increase in the use of resource efficient technologies will alone be sufficient to bring about more sustainability (Schor 2005, 2013). She posits that so long as productivity growth will be channeled into incomes, technological innovation will not advance sufficiently fast to overcome the ecological impacts of the rapid growth in affluence and consumption (Schor 2005, p. 48).

competitive. To address this lack of productivity and competitiveness, “organizations [seek] to avoid out-of-date labour laws still focused on protection of a dwindling number of permanent employees” (Deloitte-HRPA 2012, p. 11). The result is a Canada of 2025 in which large numbers of workers are marginalized and contingent, and where income disparity between the richest and the poorest is on the constant rise (Deloitte-HRPA 2012, p. 13).

The Canadian workforce will be equally segmented and stratified according to the “Unsustainable Future” scenario, with the division between high-demand professional employees commanding top wages – the “knowledge class” elite – and those who do not qualify for jobs requiring high technical skills – the “transactional class” (Deloitte and HRP 2012, pp. 21–22). The relatively small elite of talented and technically savvy employees rises to the top, while other, even highly educated workers who nonetheless lack the desired skills, remain underemployed. The former benefit from the best in technology and flexibility; they are able to work from anywhere and at any time, as rich media contact enables remote collaboration. The “Results Only Work Environments,” in which this “knowledge class” thrives, provide them with unsurpassed flexibility and substantial autonomy, while the ability to work without distractions means that these employees can excel creatively and be very productive (Deloitte and HRP 2012, pp. 21–22). By contrast, the “transactional class” of employees on temporary, insecure, poorly paid contracts, has little access to the flexible and autonomous work arrangements. The good life available to the “knowledge class” is in plain view, yet unattainable for these “modern serfs” (Deloitte and HRP 2012, p. 22). As the disparity between the haves and have-nots deepens, the “Unsustainable Future” scenario predicts that by 2025 Canada will lag behind most OECD nations in terms of income equality. The scenario also predicts, that the work environments of 2025’s “Unsustainable Future” scenario are damaging for both classes of workers, and the promise of work-life balance remains unfulfilled. While knowledge workers have flexibility, they never actually have to (or can) stop working; those in the transactional class are pressured to submit to the work discipline by their lack of security and employer’s readiness to rely on contingent work to remain flexible (Deloitte and HRP 2012, p. 23).

The antidote to these two “darker” scenarios is the alternative labelled the “Northern Tiger”, the achievement of which is possible with a significant shift in current Canadian policy. The “Northern Tiger” is a thriving example of a progressive, dynamic economy, characterized by a diverse industrial mix that includes the high tech and green energy sectors. This economy is supported by educational policies that are closely aligned with skills demand, employment contracts that fit the needs of employers and employees, and immigration policies that attract to Canada and retain top talent from around the world.

One of the support pillars of this change is Canada’s “new deal” – a wholesale rethinking of the employment contract and employment standards legislation agreed to in careful and constructive negotiations between labour and management organizations (Deloitte and HRP 2012, p. 43). The key feature of this

“new deal” is maximized flexibility – as sought by employers to ensure profitable deployment of the human capital, and by employees to ensure balance between work and life. As part of the new deal, new employment rules dispense with provisions that restrict work hours, while granting Canadians rights to request flexible working arrangements. Consequently,

Regularly scheduled rest periods have become difficult to track for a workforce that is increasingly distributed, and employers are no longer held to strict standards. Overtime pay has also fallen out of the legislation, though many employers still find creative ways to reward employees for productive effort (Deloitte and HRP 2012, p. 43).

Contingent work continues to be significant, yet employment law in the “new deal” extends to workers outside traditional permanent employment who now also have a national safety net that guarantees rights such as disability insurance and employment insurance (Deloitte and HRP 2012, p. 43). Workplace flexibility, including in the organization of hours, and relaxation of pension rules also enable retired workers beyond 65 years of age to continue contributing (at reduced wages) by passing on their valuable knowledge and skills as “employee emeriti,” while supplementing their pension income (Deloitte and HRP 2012, p. 44).

The Northern Tiger and the Great Transition “big visions” of the future – and their respective conceptions of ideal-typical working-time regimes – are based on very particular assumptions about the meaning of sustainability and the role that regulation can play in fostering development that is most sustainable. What is the likelihood that either of these idealized working-time regimes will emerge in Canada or the US? To assess this, it is crucial to first look at existing working-time practices, regulatory regimes, and policy reforms that have been proposed or undertaken in order to adapt them to contemporary workplace needs.

3. Working time in North America – Key figures and current regulatory arrangements

3.1. Hours and patterns of working time

Americans spend more time in paid work than Canadians do, although the difference is not very substantial when considered against the backdrop of other developed economies. According to the 2013 *Better Life Index* compiled by the Organization of Economic Cooperation and Development (OECD),⁶ annual working hours in Canada, at 1702, fall somewhat below the OECD average of 1776, while those in the US are, at 1787, just above that average. The index also shows that comparatively, Americans and Canadians work more than most West and

⁶ OECD Better Life Index Online: <http://www.betterlifeindex.org/> (Better Life Index 2013).

North Europeans,⁷ yet are not nearly as busy with paid work as Koreans, South Europeans, or workers in some of the transitioning economies of Central Eastern European (CEE) or South America, where average annual hours hover closer to the 2000 mark and even above it (Better Life Index 2013). In terms of weekly figures, American and Canadian workers tend to spend respectively, just under 40 and about 37 hours per week on paid work; again, showing Americans working slightly longer than Canadians.

Not all Americans and Canadians work equally, however. Focusing on national averages obscures patterns of polarization that characterize working-time distribution in both countries (Jacobs and Gerson 2004; Negrey 2012). Polarization is a process by which hours of work have increased for some workers and decreased for others as a result of changes in workplace composition, shift from manufacturing to services, and growth in part-time work and temporary work on the one hand, and progressive professionalization of services as well as increase in the use of overtime and long hours of work, on the other. Incidence of workers engaged in paid work below 30 hours per week – which is defined as part-time – currently stands at 13.4 and 18.1 percent in the US and Canada, respectively; once again, just below and just above the OECD average (Better Life Index 2013). At the same time, weekly work hours in excess of 50 – which are considered to be “long” hours – are reported by 11 percent of Americans and four percent of Canadians (Better Life Index 2013). Additionally, many Americans work in excess of the standard 40 hours per week yet short of 50 (Negrey 2012). Indeed, most men reporting “normal” work hours fall into this last category while women’s “full-time” hours tend to be below 40; a gendered pattern which is also present in Canada, albeit with comparatively shorter hours than in the US. In both countries, men are also more likely to work very long hours – in excess of 50 – than women, while more women are employed in part-time work (Negrey 2012).

3.2. Working time regulations

The differences in weekly and annual working time, as well as the incidence of long hours in both countries can be in part attributed to the regulatory models that each has institutionalized. Although, both Canada and the US have legislated 40-hour workweeks – most Canadian jurisdictions in the 1960s, and the US in 1938 – the two took rather different regulatory approaches. Prioritizing unfettered markets and individual choice, the American approach is minimalist and largely leaves organization and regulation of work hours to individual bargains between employers and employees. By contrast, the Canadian model is far more proscriptive

⁷ It should be pointed out, nonetheless, that there are significant differences in annual hours reported by Western European OECD member states. At the lowest end of the spectrum are the Netherlands (1379) and Germany (1413), while the UK (1625) and Finland (1684) have the longest annual hours. Most other Western European countries report annual hours in the range of 1400–1600.

tive and interventionist; it sets a fairly complex framework within which individual and collective working-time arrangements can be negotiated. Below I briefly outline the key features of the two models.

United States

The US regulates working time at the federal and state levels. Federally, the *Fair Labor Standards Act (FLSA)*⁸ sets the standard number of work hours at 40 per week. Crossing this threshold entitles waged employees to an overtime premium of 150 percent (of the normal hourly compensation) for each hour worked beyond 40. Beyond setting out the “normal” workweek, the FLSA imposes no limits on the actual number of daily or weekly hours an employee may be asked to work, nor does it mandate daily, weekly or annual rest provisions to which they may be entitled. Indeed, as the Act does not prohibit excessive work per se, the only factors that delimit the number of hours an employee can be lawfully required to work are the overtime premium “penalty” (serving as an employer disincentive) and the employee’s personal choice to refuse overtime work.

This particular model of limiting overtime and excessive work is largely ineffective for a number of reasons. First, the employee’s choice to refuse overtime – and hence, to protect their right to leisure or time away from employment – is largely circumscribed by lack of statutory prohibitions (in the FLSA or otherwise) on dismissing or otherwise sanctioning employees unwilling to work beyond the statutory 40 hours. Absence of protection from potential retaliation renders the notion of free choice meaningless and overtime work becomes practically mandatory. Second, the usefulness of the premium penalty as a limitation on overtime abuse is vitiated by the fact that many American workers are not covered by the FLSA regulations in the first place. The Act applies only to wage workers and excludes a long list of occupations. For instance, managerial staff, professionals, technical workers, and hospital and nursing home staff are excluded from the Act’s purview; an exemption that was broadened in 2004 by changes to the “duties test” used to determine whether an employee fit one of the exempt categories, as well as introduced new exemptions for “learned professionals” and “creative professionals” (Negrey 2012). While additional working-time regulations (such as provisions for meal breaks, weekly rest, and some limits to overtime) exist in a number of individual states, these regulations are similarly limited and subject to many exceptions.

Canada

Compared to the very liberal US model, the Canadian model of working-time regulation is more proscriptive in terms of placing limits on normal work hours and permissible overtime, and specifying the means of achieving organizational flexibility within an overall protective framework. Canada also regulates working

⁸ The Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 201.

time federally and provincially, with the *Canada Labour Code (CLC)*⁹ setting federal norms and each province and territory having its own employment standards statute. The CLC regulates the normal working day and week at eight hours and 40 hours respectively, and, unlike the US-FLSA model described above, the CLC also sets the maximum number of permissible weekly hours, including overtime, at 48. In further distinction from the US-FLSA, the Canadian federal working-time rules also require that employees be given at least one full day of rest per week, preferably on Sunday, and two weeks of vacation for every completed year of employment.

Generally, like in the US, Canadian federal employees are eligible for overtime compensation set at 150 percent for hours worked in excess of the 8/40-norm. However, in practice, work in excess of these limits does not always count as overtime and attract overtime premiums. Daily and weekly statutory limits can be temporarily varied (without the need to pay overtime premiums) through a number of flexibility mechanisms such as averaging schemes, reference periods and special permits, which are prescribed by the CLC in the interest of preserving organizational efficiency and adaptability. Moreover, the CLC sets different working-time norms and limits for certain sectors (i.e., rail, road, sea, air transport) and allows for some variations from the basic norms to be agreed to between workers and management by collective agreement. Finally, like the US-FLSA, the CLC also exempts some employees from statutory standards altogether; this includes federal public service employees, as well as professionals and managerial staff.

The federal model of working-time regulation is more or less reflected at the provincial and territorial level. Weekly thresholds beyond which employees are entitled to overtime compensation of 150 percent are set by all provinces and territories and range from 40 to 48 hours. However, daily limits for calculating and compensating overtime are only set in three provinces and two territories (with six provinces not having such a limit). Likewise, only half of the provinces have legislated maximum limits for total hours of work (including overtime), with the respective ranges being eight to 16 daily and 48 to 60 weekly hours. Most provinces that do not impose a numeric limit on maximum hours have legislated general provisions that effectively “ban” excessive overtime, and three provinces provide employees with a right to refuse overtime. Moreover, as at the federal level, the vast majority of provincial and territorial jurisdictions guarantee weekly rest periods, which range from 24 to 48 hours, and most employees are entitled to annual leave ranging from two to three weeks (going up to three and four years after a given number of service years, which vary from five to 15 depending on the province or territory). In most Canadian jurisdictions, however, vacation has to be “earned”, thus employees with job tenure under one year are entitled to vacation pay and one day of vacation for each month of work.

⁹ Canada Labour Code, Part III, R.S.C. 1985, c L-2.

Much as the federal model, the provincial and territorial working-time regulations provide different forms of flexibility in scheduling work hours. These include flexible work schemes, averaging agreements, opt-outs, exceptions in special circumstances (i.e., emergencies, particular needs of the employer), as well as derogations or exemptions for some occupational categories, sectors or work types. Professionals, managerial personnel, babysitters and domestic workers, farm workers, forestry or mining workers, truck drivers, and so on, are either not covered at all or are subject to different norms set by separate statutes or regulations.

4. Recent proposals for working-time reform in Canada and the United States

4.1. The United States

In the US, concerns about rampant long-hours culture, labour market inequalities, and escalating work/family conflicts prompted academics and researchers to advocate a wholesale reform of the existing working-time model (Negrey 2012). Recommendations for change have ranged from calls for legislation on shorter limits on weekly and daily work hours, development of a more strict approach to regulation of overtime (elimination of mandatory overtime), and implementation of family-friendly measures (Gornick and Meyers 2003; Jacobs and Gerson 2004; Negrey 2012)¹⁰. In the interest of reducing gendered polarization of work hours and gendered labour market inequalities, researchers have also advocated better regulation of part-time work and improving its quality, as well as enacting an actionable employee right to request movement between part-time and full-time work hours (Gornick and Meyers 2003; Jacobs and Gerson 2003; Negrey 2012). Combined, measures that improve part-time on the one hand, and curb overtime on the other, would also facilitate more equal sharing of responsibilities for paid and unpaid work between women and men (Figart and Mutari 1998, 2000), helping to move the US towards a more egalitarian “dual earner/dual caregiver” model (Gornick and Meyers 2003).

Outside academia, organizations like Take Back Your Time and the Centre for the New American Dream have been working on shifting public perceptions, with the latter’s “Beyond Consumerism” campaign incorporating a strong focus on “reclaiming” time and suggesting a range of strategies that individuals can adopt to do so.¹¹ Moreover, these organizations have lobbied the US government to introduce more incremental reforms including mandatory paid vacation (annual

¹⁰ For a comprehensive review of different reform proposals advanced in the United States, particularly from the perspective of work-family reconciliation, see Cynthia L. Negrey, *Work Time: Conflict, Control, and Change*, Polity Press, Cambridge, 2012.

¹¹ <http://www.newdream.org/programs/beyond-consumerism/reclaiming-our-time/>.

leave) law and legislation guaranteeing a minimum number of sick days for all Americans. The US is the only developed nation without a law entitling employees to paid annual leave, albeit the first proposals for such a law were introduced by the US Department of Labor's Committee on Vacations with Pay some 70 years ago. According to statistics cited by the Take Back Your Time coalition's Right 2 Vacation campaign, in 2011, 57 percent of American employees took a week-long vacation, while only 14 percent took a vacation of two weeks or more. Yet the Right 2 Vacation campaign's lobbying efforts to bring US standards in line with other developed and even developing countries have thus far been unsuccessful.

Similarly, US federal law does not guarantee paid sick leave to all employees. The 12-week leave currently proscribed by the *Family Medical Leave Act*¹² is unpaid and available for only certain medical conditions. Moreover, leave entitlement is limited to workers with a 12-month job-tenure working for an establishment with 50+ employees. In an effort to expand this leave, in 2009 and again in 2011 Democratic representatives in the US House of Representatives introduced proposals for a *Healthy Families Act*¹³ that would allow American workers to earn up to seven paid sick days a year to recover from short-term illnesses, care for a sick family member, attend medical appointments, or seek assistance from domestic violence, stalking, or sexual assault issues. However, both proposals failed to pass.

Likewise, a long-standing policy proposal known as the *Working Families Flexibility Act*¹⁴ represented another effort to make American workplaces more employee- and family-friendly by providing for an employee right to vary working-time arrangements. Among other matters, the bill sought to introduce an employee right to request temporary or permanent changes to the terms and conditions of work, including: (1) the number of hours the employee is required to work; (2) the times when the employee is required to work or be on call for work, (3) where the employee is required to work, and (4) the amount of notification the employee must receive of work schedule. Importantly, this right to request, as proposed, was paired with an employer's duty to comply. Unfortunately, the 2007 and 2009 proposals for the *Working Families Flexibility Act* were also unsuccessful. Instead, in August 2013, the House of Representatives adopted a Republican-sponsored bill by the same name. The *Working Families Flexibility Act* of 2013¹⁵ does not include proposals from the bill's previous versions, but rather amends the FLSA to authorize employers to provide compensatory time off for work in excess of 40-hours per week in lieu of the 150 percent overtime premium. Justified by its proponents as a measure to assist working parents who might prefer more time with their families instead of pay, the bill has nonetheless been criticized by

¹² Family Medical Leave Act of 1993, U.S.C. 2601, *et seq.*

¹³ H.R. 1876, previously H.R. 2460.

¹⁴ H.R. 4106; initially introduced in 2007 as H.R. 4301 and then again in 2009 as H.R. 1274.

¹⁵ H.R. 1406.

labour organizations; the Barack Obama administration also issued a statement of opposition, declaring that it would veto the bill if it were to pass a Senate vote (Executive Office of the President 2013). In the view of the Democratic administration the bill not only undermines the existing right to overtime pay, it also contains no guarantee that employees accruing compensatory time will be able to request earned time off in a way that actually suits their needs (Executive Office of the President 2013).

With resistance to legislative action blocking even the most incremental change (albeit in the case of the *Working Families Flexibility Act* of 2013 such resistance may be justified), comprehensive reforms aimed at working-time reduction are highly unlikely in the US context. To facilitate individualized solutions, the Barack Obama administration and the US Department of Labor Office of Disability Employment Policy recently launched a database named “Workplace Flexibility Toolkit”.¹⁶ The toolkit provides employees, employers, policymakers, and researchers interested in the issues of time and place with information about mutually beneficial flexibility practices. It includes case studies, fact and tip sheets, issue briefs, reports, articles, websites as well as answers to frequently asked questions. While valuable and informative and, “a start”, the toolkit is ultimately a database of resources rather than a concrete and actionable set of policies or entitlements.

4.2. Canada

In contrast to the American preference for the non-interventionist approach, reforms of the statutory frameworks that govern working-time organization have been ongoing since the 1990s in a number of Canadian provincial jurisdictions. Nonetheless, the dominance of neoliberal policies during this time period, which emphasized de-regulation and elimination of rigidities in the interest of competitiveness and efficiency, meant that many of these reforms aimed to relax and flexibilize the existing frameworks. In some Canadian provinces, such as Ontario or British Columbia, protective limits on weekly work hours have been *de facto* weakened by the introduction of measures that make it easier and cheaper for employers to vary work hours and utilize overtime¹⁷ (Fudge 2005; Fairey 2005). At the same time, efforts to make workplaces more family friendly resulted in the adoption of some flexibility measures to help working parents better negotiate the interface between work and family and to support women’s labour market engagement.

Despite the dominance of flexibility in mainstream policy discourse, reform proposals that advocate reducing and redistributing work hours are still not com-

¹⁶ <http://www.dol.gov/odep/workplaceflexibility/>.

¹⁷ In Ontario, see Employment Standards Act, 2000, S.O. 2000 c-41. In British Columbia, three bills (Bills 48, 37 and 56) were introduced between May 2002 and May 2004, the effect of which was to inject significant flexibility into the BC Employment Standards Act.

pletely out of vogue. Some feminist scholars, for instance, have questioned the sufficiency of working-time flexibility measures adapted in provincial jurisdictions and insist that only a combination of strictly enforced limits on working time, limitations on overtime, and measures that give *employees* more flexibility and control over their schedules can facilitate working-time regimes that are egalitarian and socially sustainable in the long-term (Fudge 2005). Moreover, calls for stricter working-time regulation have also been prompted by goals of job creation, improved quality of life and social equity.

The Canadian Centre for Policy Alternatives (CCPA), for example, has recently proposed strengthening provincial hours of work standards, overtime rules, and annual leave regulations in the province of Nova Scotia, which was deemed to have the lowest standards of all Canadian jurisdictions (Buott, Haiven and Haiven 2012). The CCPA-NS proposal builds on a background paper evaluating the regulation and organization of working-time in the province from the perspective of their likelihood to foster/support “genuine progress” (Panozzo and Colman 2004). The study examined exiting working-time patterns and the potential impact that reorganization of working time could have in addressing the challenges facing Nova Scotia’s labour market, redressing labour market inequalities, and supporting job creation efforts. Utilizing a Genuine Progress Index (GPI) – which aims to calculate progress and quality of life through an expanded system of accounting that includes measures of human, social, and natural capital, such as improvements in productivity, health, free time, and equity (Panozzo and Colman 2004, pp. 379–380) – renders values such as “freedom” and “free time” integral to the overall calculation of progress and quality of life. From this perspective, Panozzo and Colman suggest that:

[...] reducing and redistributing work hours can avoid costs at both ends of the polarization spectrum. Those who are overworked or “over-employed” can reduce their hours and their work stress, and thereby increase their free time, and improve their health and work-life balance. At the same time, the underemployed can take on more hours, and jobs can be created for the jobless, thereby reducing the well-documented health, justice and family breakdown costs of unemployment and job insecurity (Panozzo and Colman 2004, p. 380).

Authors note that a reduction and redistribution of work to minimize current polarization of hours can be achieved through an array of alternatives: work and job sharing schemes, compressed workweeks, reduced workweeks, overtime reduction, flexitime, telecommuting, early or phased-in retirement, increased vacation time, sabbatical and extended leaves (Panozzo and Colman 2004, pp. 380–401). Also important is limiting the attractiveness of long work hours by way of overtime restrictions, increases in overtime premiums, and shortening the standard workweek. While the authors recognize that reduction in work hours is not a panacea for the social and labour market challenges faced by Canada and Nova Scotia, they suggest that a policy mix that tackles polarization of work hours through models of work reduction and redistribution can contribute markedly to improv-

ing productivity, creating jobs, improving the life of citizens, and making a more equitable society (Panozzo and Colman 2004, pp. 412–419).

Given the current political and economic climate in Canada, however, the CCPA proposals for Nova Scotia are unlikely to be adopted or to set an example for other Canadian jurisdictions. A more likely route for reform will be one that fosters better control over working time without necessarily resorting to further reductions of work hours or imposition of stricter overtime limits. Such a vision emerges from *Fairness at Work*; a 2006 report authored by Harry Arthurs, a prominent Canadian labour law scholar and arbitrator. Arthurs' work summarizes findings from a comprehensive review of federal labour and employment standards (CLC) he conducted in broad consultation with workers, employers, community representatives, researchers, and staff of the Federal Labour Program.

Broadly speaking, the report advocates that the federal standard be revised with a view to fostering a “regulated flexibility” approach that is balanced, negotiated, and consensual, and gives both employers and employees a degree of “control” over time (Arthurs 2006). According to Arthurs, fairness requires that flexibility and predictability must be combined within the framework of federal standards in a balanced way, so that the distinct, and at times conflicting interests of employees and employers can be met. As these goals and needs change over time, the framework must also provide for a mechanism that enables periodic re-adjustment of the flexibility-predictability equation, so as to avoid unnecessary workplace conflicts, inconvenience, and injustice. The key elements of such a mechanism would be: balanced employer and worker input, expeditious operation, fairness and transparency, and conformance with key principles underlying labour legislation (Arthurs 2006, p. 54).

How would such a model “regulated flexibility” look in practice? Opposing calls for adoption of more stringent daily and weekly standards on the one hand, and doing away with such limits on the other, Arthurs recommends maintaining the existing standard workday of eight hours and workweek of 40 hours (48 hour maximum) as important benchmarks against which variations can be measured (Arthurs 2006, pp. 135–137). Likewise, rejecting proposals for a universal application of CLC standards to all federal workers, Arthurs suggests keeping existing exclusions on the basis that “particularities of the technologies, markets, working procedures, physical environments” inherent in different sectors require a differentiated approach to working-time regulation, and one that would be best determined through a sectorial conference model, not by universal standards (Recommendation 7.34). Similarly, he advises retaining the existing averaging schemes and modified work schedules that enable temporary variations to the weekly and daily limits, but recommends institutionalization of a consultative model within all workplaces to ensure that flexibility and predictability are balanced.

The report also makes a number of recommendations for the introduction of new CLC provisions aimed at strengthening workers' rights to predictability and control of their work schedules. Predictability could be improved, according to Arthurs, if employees had the right to refuse overtime work beyond 12 hours per

day and 48 hours per week (Recommendation 7.37); but, in accordance with the principle of balance, he recommends that such a right be limited (not absolute) to ensure that it has no deleterious impact on employers, their customers, and the Canadian economy in general (Arthurs 2006, p. 145). In recognition of the fact that overtime work can have particularly negative effects on employees and their families, Arthurs also recommends adoption of additional (stronger) rights to refuse overtime work where such work would conflict with significant family-related commitments (that the employee cannot reasonably be expected to alter or avoid), pre-scheduled educational commitments, or in the case of part-time workers, with pre-scheduled employment at another workplace (Recommendation 7.38). To provide employees with better control over their schedules and a wider choice of working-time arrangements, Arthurs also recommends amending the federal standards to ensure that schemes such as modified work schedule (Recommendation 7.39), time banking (Recommendation 7.4-2), time swaps (Recommendation 7.43) are available, and that employees have a right to request changes in their working-time arrangements, albeit only once per calendar year so as to minimize the impact of such changes on employers. Such a right to request, it is recommended, should be paired with an employer obligation to accommodate. Also in the interest of predictability, Arthurs advises that employees should be entitled to a 24-hour notice of shift changes, unless otherwise specified by a collective agreement. At the same time, in accordance with the report's fair and balanced approach, employees seeking to refuse overtime requests made by the employer should also be obligated to provide that employer with as much notice as possible, so that alternate scheduling plans can be made (Recommendations 7.49-50).¹⁸

5. Conclusion

Will policies promoting reduction and redistribution of work hours foster sustainable time affluence or will further technological advancement and deregulation bring about working-time regimes based on self-regulation and flexibility for all? Review of current proposals and efforts to enact for policy change suggests that the future of working-time regulation will most likely continue to involve a mix of minimum standards with a good dose of flexibility. In the short term, legislation of significantly shorter workweeks, particularly of the sort envisioned by the Tellus Institute, is not probable in either Canada or the US, but neither is complete deregulation, such as that proposed by the Deloitte-HRPA vision of total flexibility. While the case for time affluence and redistribution of work for the sake of more equality between workers (particularly women and men), work-family

¹⁸ In addition to recommendations related to the basic working-time rules and flexibility to vary work hours, Arthurs made a series of recommendations related to other aspects of working time, including a gamut of leaves, daily and weekly breaks, annual vacations, and holidays.

balance, and ecological sustainability is very compelling indeed, political opposition and current economic orthodoxy pose significant roadblocks to moving in this direction. With legislative solutions of any kind unlikely in the US, and reforms involving working-time reductions in Canada similarly improbable, moving towards more balance and time affluence will have to be achieved within individual workplaces, and it will require major grassroots efforts and personal decisions to “downshift” by trading income for time. In the meantime, visions of activists and policy think tanks that dare to dream big help us imagine what the future may bring and provide potential blueprints for policymakers in the future.

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WORKING TIME AND THE NEW ECONOMY. THE POLISH EXPERIENCE¹

1. The new economy - the perspective of the enterprise

The recent turn of the century brought significant changes in the economies of more developed countries, including Poland. These changes affected so many aspects of the economic processes that their result was defined as “the new economy”. In particular, those changes influenced a variety of work-related issues, including working time.

The changes in working time related to virtually all its dimensions – the length, the flexibility, and the forms of performing work. This raises the question about the origin of this process, which strongly affected the employed and the entrepreneurs.

The direct cause of the assumed changes in working time results from the collapse of the Ford regime present in the economy and its replacement by the Post-Ford governance system (Gardawski, ed. 2009). The Ford governance system prevailing after World War II was the result of the level of technology in the industry characteristic for that time, deliberate state policy aimed at releasing social tensions of an economic nature, and the strong position of trade unions. Its attributes are the mass production of the standardized goods produced in line with the Taylor model in enterprises having an oligopolistic market position and operating under the state protection of customs tariffs and state-run anti-cyclical Keynesian policy. For a substantial part of employees this meant lifetime, full-time employment, in traditional forms (at most in the shift system), and with a defined job title and pay. Working time was not a controversial issue then.

The breakdown of the Ford governance system in the 1970s and the commencement of the Post-Ford era above all entailed the expectation of flexibility

¹ This paper was prepared thanks to the participation of the authors in the research project NCN “The factor of time in the new economy. Where are we heading?” implemented in IPiSS under the guidance of prof. dr hab. Helena Strzemińska.

from all participants in the economic process. Although it was not a comfortable situation, the economic transformations forced the adaptation.

The Ford governance system collapsed for many reasons, with globalization playing the lead role. The reduction of the cost of transport and telecommunication, and of artificial barriers to the free-flow of goods, services, and labour allowed closer economic integration. This took place, however, without systemic coordination on the transnational scale (Stiglitz 2004; Morawski 2010). As a result, the area of competition between companies began to cover the entire world, involving countries with low labour costs and taxes in the fight for the customer. This meant lower prices, but also the destabilization of the enterprises' situation.

The Ford governance system was also affected by the servicization of the economy (Lichniak ed. 2010) and therefore by relative and absolute growth of the service sector in relation to agriculture and industry. This was connected with the enrichment of the societies looking for not only standard goods on the market, but also for customized offers related to the services as well as the development of the business services sector, which resulted in outsourcing and offshoring. And the demand for services is less stable than for goods because their production must occur at the time of their consumption.

This process is also associated with the expansion of small to medium-size businesses in the economy employing an increasing proportion of the working population (Dominiak 2005). They are significantly more dependent on the current market fluctuations than the large oligopolistic firms able to control the market.

Finally, the phenomenon of the expansion of the knowledge-based economy also worked against the Ford governance system (Kubiela 2009). This stands for the rapid flow of the outcome of the research from science to enterprises, and thus a sharp increase in innovation. And this, in turn, leads to the strengthening of the competition – a new product can quickly push out the old product from the market.

In summary, that spelled an increase of unpredictability in the economy and the need for flexibility on the part of entrepreneurs.

At the same time, the traditional Ford system during the period under consideration was poorly defended by the state and employees. The Keynesian intervention tools proved ineffective against the crisis of the 1970s, in particular, against the phenomenon of stagflation. At the same time, in the light of the new theoretical concepts, the stiffening of the economy by the state, especially of the labour market, posed a threat to GDP growth and resulted in rising unemployment (Kwiatkowski 2002). Hence, most governments adopted a liberal approach to the economy.

Meanwhile, workers had a limited ability to defend the existing economic order, as the representative of their interests, the trade unions, were becoming significantly weaker (Czorzasty, Książkiewicz, eds. 2012). There was a significant decrease in the level of unionization, which resulted in their lower ability to impact economic reality. In addition, there appeared the groups of workers, mostly young, who were not looking for long-term and stable employment in the Ford model, but preferred to experience change and freedom (Poławski 2012).

Thus, the uncertainty created by the economy was not amortized by the competent institutions and thus strongly affected the economic reality (Bednarski, Frieske, eds. 2012). As a result, at the enterprise level a sharp conflict between the employers and the employees began to escalate about who would assume responsibility for the growing uncertainty. The employees expected that the employer would do so by amortizing the market shocks at the company level, ensuring stable employment. The employers tried to transfer the uncertainty to the staff by lowering employment standards (Czarzasty 2010), and those referred mainly to working time. The state, being based on liberal doctrines, created a legal space for flexible employment and entrepreneurs tried to take advantage of this, but employees did not have the possibilities to significantly oppose that process. Generally, as mentioned, flexibility is necessary in the Post-Ford economy, as it covers a larger and larger area of the economic system for the reasons stated above.

In this situation, one should ask: how in fact, as a result of those processes, was the working time issue resolved in Poland? Given that the changes were taking place especially rapidly here (because the processes happening in the global economy coincided with the transformation), Poland's economy had to make up for lost time, all the while adapting to the current changes. The centrally planned economy meant mostly the closed economy with limited transfer of technology and a very traditional structure having a low share of the service sector and small businesses. The labour market did not exist here and the trade unions were an instrument used by the ruling mono-party. Hence, the transformations had to be of a radical nature.

The effects of those changes in relation to working time as well as the projections for that region for the upcoming decades we present below using findings collected in the course of empirical study².

2. The present and future of working time – the results of empirical research

2.1. Forms of employment: what solutions are used? why? with what result?

On the Polish labour market different forms of employment exist, resulting from both the Labour Code as well as from, for example, the law on the temporary employment agencies or from the Civil Code (see Bednarski, Frieske eds. 2012, Bukowski ed. 2008 Organiściak-Krzykowska 2013).

² The qualitative research conducted in the spring of 2013 was addressed to the employers and employees in three sectors of the economy: wholesale and retail trade, administration and social security as well as health care and social assistance. In the pre-selected economic entities 30 individual questionnaire interviews (IDI) with the employers were conducted and 60 interviews with the employees. In addition, the case studies in three pre-selected locations were carried out (Kalisz, Siemianowice Śląskie, Łuków), through conducting interviews with the representative of the city government, the local leader, the employers, the workers and the trade unionists.

The empirical studies conducted in the framework of the project “The time factor in the new economy. Where are we heading?” confirmed the growing use of various non-standard ways of organizing work and working time in Poland. They show that it is difficult today to find such workplaces which use only regular staff employment (labour contracts), but there are companies (small workplaces in the private sector) which operate by hiring workers on an irregular basis (task-based contract). In the context of the regular staff employment, the definite labour contracts (for the trial period, or for the substitution, the internship or for the definite period) are used next to the indefinite contracts. In public institutions, their use results mostly from the legally defined rules regulating the employment of workers who first have to undergo a trial period and later the contract for a defined period is concluded with them (from 6 months to 1 year) and only after a positive appraisal during this period, does the employer sign a permanent labour contract for an indefinite period (see Bednarski, Frieske, eds. 2012). It should be noted that employment for the trial period is an option other than internship. The internship agreement is a special form of employment, which – as pointed out in the study – is “eagerly applicable, and rarely rewarded”. Trainees are not always treated as potential future employees.

According to the employers’ declaration, fixed-term contracts are a form for safeguarding the employer’s position during the employee’s trial period. In such cases, as employees stressed, there should not be repeated agreements. In the present economic slowdown, however, particularly evident is the other protective function of the fixed-term contracts: the protection against changes in the demand for the company’s products, to which by way of such contracts (with a short period of notice) the size of the necessary employment is adjusted. The respondents working on the projects pointed out this aspect.

In the light of the many negatives which the employees associate with the instability of their professional and private life in being employed for a defined period of time (see Bednarski, Frieske, eds. 2012) it was emphasized that this kind of contract also has its supporters: *A lot of people, especially the young, come to work in the store with the intention of “surviving” during the period of looking for other work, or expecting something more suitable or simply waiting to start or resume their studies.* They take casual jobs which are currently available and do not want to have a permanent employment relationship with the employer.

Employment as somebody’s substitution in the Polish reality mainly signifies the necessity of replacing workers taking parental leaves. In public administration is the solution of filling in the vacancy quickly, which otherwise requires the carrying out of long-term recruitment procedures (see *Elastyczne formy... 2013*)

The marginally used solution turns out to be teleworking organized in the “code-compliant” form, which requires, *inter alia*, the conclusion of a special agreement on teleworking. More frequently it is an “informal” and flexible version of organizing work on the basis of a simple contract, namely, working from home, in which the employee can also use a computer and the Internet.

Volunteering is also very rarely present in the workplace, although the employers who use this form of working appreciate it very much.

In addition to the employment contracts, various forms of service employment contracts are very widely used in the workplace. In the workplaces covered by this study, the results of which are presented here, service-based employment constituted 3-5% to 70%-80%. This form of employment is also used by the public institutions, however, more seldom than by private entities. In this respect, the public sector is still a more secure place of employment, giving a greater sense of security and professional stability (see *Barometr...* 2013). In public institutions – as the respondents in the above described surveys said – civil law agreements are only temporary supplement to the permanent staff employed on the basis of contracts of employment: *what is critical are the specific skills of the persons who we employ and the temporary nature of a given task.*

Service-based employment became more widespread not necessarily because of the deterioration of the economic situation of the companies, but because of the employers' concerns about the emergence of such a situation. These are, first of all, contracts which are cheaper for the employers and make it possible for employees to keep the bigger portion of their gross revenue (work-based contract or task-based contract). In turn, the contracts or temporary employment similar to outsourcing services commonly used for cleaning or security services, in addition to lower cost and simple settlement of the pay for work (usually an invoice is enough) are also related to the "transfer of responsibility" for example, for the settlement of working time, training, or equipment for work to the external contractors. *We only pay the agreed price for the execution of the order and we get rid of the staff documentation and human resources management.*

In the public sector civil contracts have also become a way of "avoiding" the so-called employment norms, which are inadequate for the real needs of workplaces (task commissioning) and legal restrictions regarding the permitted working time, for example being on duty (contracts) and the obligation to pay overtime – the reaction to the lack of "flexibility" (?) of Labour Code norms.

However, employers and employees point to the need to preserve and strengthen the basis for employment stability, which, in principle, should be based primarily on contracts of indefinite duration, which all other solutions should simply supplement.

2.2. The organization of work and working time

As in the case of the forms of employment, on the Polish labour market there are many different forms for organizing work and working time in companies. Quite often differing solutions co-function in parallel in a single workplace: "Different ways of organizing the work are used; and there exists traditional 1-shift work and 2-shift work in 12-hour system and also there is continuous workflow system. And also we have on-duty system". The least diverse work organization

is in public administration: “As befits a public institution we work in one shift, so far without any special options”. However, in these institutions different ways of organizing working time emerge, particularly the use of individual working time (the need of the employee) and the equivalent working time (the need of the employer). In public institutions there is also the possibility of making up for extra days off by working on Saturdays that fall between the public holidays. The specific organizational arrangements are in the public emergency services (fire brigade, emergency stations, and the like) and in health care where different groups of employees work in various systems of organizing work and working time. “The workplace has long-established solutions of organizing working time and they are: the eight-hour working day; service staff, 7 hours 35 minutes; medical staff, medical administration – five hours’ working day – X-ray laboratories, orthopaedics department, rehabilitation, and similar units. Other forms, such as the individual working time, include variable working hours, i.e., for the disabled and breastfeeding women.”

In the workplaces across various sectors of the economy one can see certain regular, fixed hours of their operations. In public administration it is usually from 7:30 am to 3:30 pm, and on one day of the week, to satisfy the needs of clients working within the same time brackets, work begins and ends later (e.g., 9:00 am–5:00 pm). The possibility of extending working time in the institution or company by individualizing working time or through job-sharing³ is rare. The stores are open at least 12 hours a day and work in a shift system. They also work on Saturdays and often on Sundays. Due to the need to extend the working hours, the shifts which are often 12-hours long, in the equivalent working time, overlap. In order to adhere to the norms resulting from the labour code regulating the weekly working time in those shopping malls in addition to the task-based work and the temporary employment, the work is performed on the weekends by full-time day students who eagerly accept such work. Within the shortened working week, such work is performed by students of evening studies and parents of small children.

The non-standard forms of employment are often a way for the employer to bypass the norms of the working time set by the labour code for time and the principles of remuneration for work (see *Elastyczne...* 2013). The employees doing task-based jobs worked much longer than those employed under the contract of employment. They often performed the daily work for 12 hours non-stop without a break for 6 days a week, working sometimes on Sundays and public holidays. According to their declarations they worked 50-60 hours a week.

The characteristic feature of the private sector companies, regardless of the industry and the size of the employment, is “spontaneous flexibility” in the shaping of working time (see *Elastyczne...* 2013). This expressed itself in a quick re-

³ The study was conducted prior to the enactment of the amendments to the rules on working time, permitting, *inter alia*, the use of the flexible working hours and the extended periods of working time settlements.

sponse without any formal procedure to the sudden and urgent situations. This applies to the needs of workers, such as moving the time of starting work or doing only one shift. In such cases – as pointed out by the respondents from both surveyed groups – the condition of acceptance of the request is only the consent given by the team of colleagues whose work organization will also change for this reason. Also, in certain situations the employers use informal solutions for work organization: “In theory, we do not have to work at home, but in practice - there is no secret that a lot of people work at home.... if it's after hours or at the weekends it.... this is precisely the specificity of our work that we have to react very quickly to what is happening in the politics or the economy”.

A valuable solution for the work organization, as indicated by both employers and employees is the drawing up of *wishes schedules*, taking into account the individual preferences of the employees. This practice applies, for example, to health care centres and large retail chains. “Generally, the opinion of the management is that if an employee has an individual reasonable need for a different organization of work and it is possible organizationally and consistent with the company’s work regulations and the provisions of the labour law, it shall be accepted.” Hence, working time is sometimes individually adjusted, depending, for example, on the possibility of getting to work at a specific time or on the family commitments of the employees.

Generally, however, the staff point out that they have no impact on the organization of their work or on working hours (see: Borkowska ed. 2011). Usually, they also do not have such expectations: by deciding to go into employment, they accept in advance the system of work organization adopted in the workplace and – in their opinion – all the individual needs in this regard are not well perceived by their superiors because they complicate the organization of the work of other employees.

Both employees and employers rarely recognize the needs and possibilities of special organization of work due to the specific expectations of older workers. They have no ideas on what solutions can be applied to meet the specific needs of this generation in performing work. Much more often they see problems with the reconciliation of the work and family responsibilities of the workers (although women’s problems still predominate, and not men’s and women’s problems), as well as the needs of young workers in combining work with learning and use a variety of opportunities for work organization to mitigate the conflict between these spheres of life.

The empirical studies were carried out shortly after the introduction by the government of the regulations on extending the retirement age up to 67 years. The employees and the employers taking part in the survey were asked, among other things, for their evaluation of this decision and for declaring how long they intend to work professionally.

The extension of the retirement age generally met with the acceptance of the participants surveyed. They declared that they understood the arguments formulated by the government, resulting from the inevitable consequences of an aging

population and threats to their pensions⁴. That change was accepted mainly by young workers. The acceptance of the working up to 67 years also was not unconditional: “I guess I have no choice, if of course my health permits”. “I don’t know whether the age of 67 is too much, or not – people say different things. I think that if I stay healthy and there will be something interesting or necessary to do, so why not?”. “I want to work until I can, but I think that the limit of 67 years is already the maximum age up to which I would wish to work. I don’t know in what health I’ll be in some thirty years’ time.”

The employers less often than their employees reported objections to the possibility of being professionally active up to that age. They usually planned that the state of their health or the possibility of handing over the company to their successors will be the determining factors for taking retirement; although they worked very hard and long hours (even – as they declared – up to 70 hours per week). They most feared whether their company would survive to such time.

2.3. The future of the forms of work and its organization. The perspective of the next decade

In the course of the interviews with employers and employees on the current ways of organizing employment, these questions were also asked about the future: How will work be organized in 10 years’ time? What types of contracts will prevail? Will we work shorter or longer hours than now? How will working time be organized? Will the place of work be changed? Will the virtual workplace replace the traditional workplace?

In general, both employers and employees after the lapse of the decade did not anticipate and rather did not expect any revolutionary changes, but rather the strengthening or intensification of the currently observable trends. It was strongly emphasized that employment contracts will disappear and will be replaced by task-based agreements and work contracts. *the range of available contracts will broaden. Maybe something between the employment contract and the work contract will be designed.* In the statements made by employees, especially those who worked on the basis of the service contracts, the worries were accentuated and there was even fear of what the coming years might bring to their employment: “Such a situation on the labour market is not stable... actually today nobody is guaranteed to have a job. And I do not think that in 10 years’ time the labour market can be improved significantly.”... “the trash contracts will dominate.... And everyone will take a job that at any given time will be open to them and the employers will hire the employees at the time when they will be critically needed by them and for example, during off-season period or economic downturn they will simply lay them off. And in my opinion qualifications or education will not have

⁴ The extensive discussion on this issue was held, for instance, on the online forum MojaEmerytura (www.rp.pl).

much meaning here.” “I think more and more that - in order to maintain the position on the market – the employers will offer these the trash contracts...”

The expectations, in which it was emphasized that the basic form of employment will remain a contract of employment were rather occasional: “As for our company, I’m confident that the contract of employment will still be dominating – at least I cannot imagine that it can be otherwise.” “I’ll be able to hire employees on the basis of a contract of employment because the labour costs will decrease and the rules on the employment of workers will become more flexible; simply that the employer will be able to freely fire an employee if they are not going to do their duties in line with the employer’s expectations.”

The logical consequence of the “disappearance of the employment contracts” will be – as noted by the respondents – more frequent job changes, less professional stabilization. “I think there will be the tendency of changing jobs more often because there will be more frequent lay-offs... or people will grab any job and after some time they will conclude that it will not be possible for them to work like this and they will start looking for something completely different.” “You will have to have a few skills to be able to requalify quickly.” “It will not be the same as in my parents’ generation where the first job in about 90% of the cases was also the last job. Nowadays such loyalty to the company is very rare.” It was highlighted that persons with low qualifications will have problems with finding a job and therefore there will also be difficulty in qualifying for retirement.

A lot more optimism was in the statements concerning the organization of work, flexibility, and length of the working time, form, and place of work. In 10 years’ time – in the opinion of respondents – there will be much more advancement and progress in this field. Automation and computerization will be used to a larger extent (especially in industries where it is poorly developed – e.g., medicine). But there were also opinions about the unreliability of the technique and technology, such that people will still be needed.

E-commerce will become universal. Some respondents said that it would lead to a situation in which very few employees taking part in this process will be only virtual advisors and the web guides for the customers. Others have argued, however, that direct contact with the customer will remain as the most effective.

Round-the-clock services will become more and more popular, provided on all days of the week (even though the respondents emphasized, e.g., negative effect of shops working on Sundays on family life).

The use of new technologies will make it possible to work in different places; also at home, which will enable – in the opinion of the employees – more efficient utilization of working time and the reduction of commuting time (these time savings could also be allocated to work!). At the same time, respondents highlighted that the opportunity to work outside the company – the same as the liquidity of the employment – will result in the atomization of employees’ relations, and this, in turn, will weaken the employees’ loyalty to the company and will negatively affect their motivation to work.

With regard to working time, the respondents – both employers and employees expected that in 10 years it will be more flexible, allowing for intensified work (here: the postulate for the abolition of the worker's day and inflexible working time norms set by the labour code), but also for a sufficiently long rest. And in this case the respondents underlined that the individualization of the working time arrangements will contribute to the weakening of the employees' relations. "Maybe it will be that the work will be performed from home – I also don't like this.... the work should be done at the workplace, and the house should be the family place.... otherwise a person will become such a recluse."

Often ideas about the organization of work and working time in the future were compared with the current situation of the respondents, which maybe was not fully favourable and positively evaluated, but it was known. Meanwhile, the future in those opinions was linked to an escalation of the risk that what is bad or wrong today can become even worse in future. Thus, there were responses like this: "I hope that very little will change here... that, first of all, work will be available – because that is the most important".

Conclusions

The qualitative results presented above cannot be generalized to the whole population. This is in-depth diagnosis – by way of individual interviews – of the views expressed by employers and by employees on the current and future forms of work, especially working time, its length and organization.

The information obtained on the vision for the future indicates that the views of both employers and employees in this field are not the "revolutionary, surprising, or unknown". It is rather a vision created on the foundation of well-known and burdensome problems currently appearing on the Polish labour market: the high risk of unemployment and job insecurity, low level of organizational culture, long working hours and low pay, high labour costs and increasing deregulation in terms of the forms of employment. Against this background, the future of work, or working time, is seen primarily as a concern about whether we will ever have a job and only secondarily the impressions or perceptions of its quality, form, organization, place of performance and other aspects will come to our attention.

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CHAPTER II

**SOCIAL ASPECTS
OF THE PREDICTED CHANGES
IN THE ECONOMY**

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**GENDER, OCCUPATIONAL CLASS,
AND THE REDRAWING OF THE BOUNDARY
TO THE WORKING DAY
IN THE NEW ECONOMY IN EUROPE**

Working time arrangements have diversified over several decades in the context of changes in the laws and regulations in many countries to permit more flexible and individualized arrangements (Messenger 2004; Boulin et al. 2006). The expansion of part-time work in many countries is a high profile manifestation of these developments, but this is only one part of the picture. In the ‘24 hour’ digital and globally connected economy more workers – part-timers as well as full-timers – have schedules which include evening, night, or week-end work (Perrons et al. 2006, Parent-Thirion et al. 2007, Anxo et al. 2007, Anxo et al. 2012, Parent-Thirion et al. 2012, Smith et al. 2013). Working-time has become more variable and less predictable in some occupations due to overtime, shiftwork, and new contractual arrangements such as annualized hours. For others, particularly knowledge workers and professionals with ‘self-determined’ working hours, the internet and related technological developments that facilitate remote working and instantaneous communication have eroded the boundary to the working day and encroached on zones previously protected as ‘free’ or ‘family’ time. Temporary contracts and self-employment have also expanded, and bring additional temporal features into the picture: workers with these contracts face more acute uncertainty than employees about their future working time schedules (or indeed employment itself).

Many of these working-time developments have been driven by employers’ operational requirements for more flexible work practices. But part of the impetus has also been shaped by legislation, collective bargaining, and employers’ personnel strategies to provide flexibility oriented towards workers’ preferences and needs for a better fit between the time demands of their employment and their personal life, including family responsibilities. Working-time arrangements designed to enhance the flexibility for workers include flexitime, options to adapt full-time schedules (such as compressed working into fewer days), some part-time

schedules, and the option to work from home for part of the work week. The amount and type of flexibility that employers and workers want does not necessarily coincide (Anxo et al. 2006, Messenger 2004). For example, employers may want their workforce to be available to work longer hours at short notice, or to vary the days on which they work, while workers usually want the type of flexible arrangements that enable them to integrate better the time demands of their employment with domestic responsibilities and other activities.

These working time developments have occurred in parallel with the increased participation of women in the paid labour force. Women's labour market participation and working time are generally more constrained than that of men by care responsibilities for children, elders, and other family members. While certain working time arrangements, such as part-time work, may help women to combine employment with domestic responsibilities, they are 'double-edged' because they can reinforce or even exacerbate gender inequalities and segregation in the labour market and the home (O'Reilly and Fagan 1998, Fagan et al. 2014, Hobson 2014). This is because the need to find working hours that fit to some degree with family care responsibilities helps to channel women into a narrow range of female-dominated jobs, while this gender segregation of employment in turn reinforces the position of women as the primary caregivers within the family (Smith et al. 2013, Bettio and Verashchagina 2009).

Further expansion of some forms of destandardized working can be expected in the 'New Economy', which is typified by new work patterns and occupational restructuring. These new patterns of working are associated with the globalization of markets and production chains, increasing use of information technologies to facilitate remote working and 'around the clock' operations of the so-called 24/7 economy, and the expansion of companies producing knowledge goods and services and of 'dot.com' companies trading via the internet. This is accompanied by a polarization of job opportunities in an occupational structure which is increasingly shaped like an hourglass: jobs at the top of the occupational hierarchy in high-skilled, well-paid professional and managerial positions, and at the bottom in low-paid insecure service jobs (e.g., sales, cleaning, personal services, food service and catering), with a squeezed middle due to contraction in skilled manual manufacturing occupations and some intermediate-level service occupations (e.g., clerical career ladders). In Europe this reshaping of work patterns is interwoven with women's increased presence within the workforce (Perrons 2003; Perrons et al. 2006).

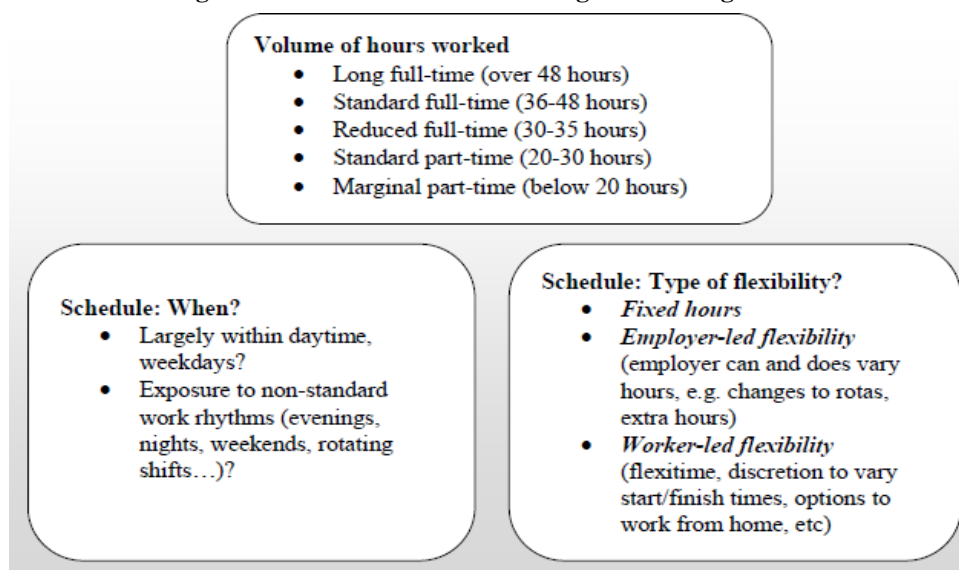
This paper is organized into sections to address the following questions. First, what are the trends in the three dimensions of working time arrangements: volume, schedule, and variability? Secondly, what gender and occupational differences exist in work schedules and in the boundary between 'employment' and 'free time', for example between men and women in routinized service and production jobs compared to those in professional and managerial positions? Thirdly, what is the impact of different working time arrangements on workers' so-called 'work-life balance'? In the fourth section we assess the impact of the recession on

working-time arrangements to date. We conclude by reflecting on future likely trends in working time and the implications for gender equality and gender equity policies¹.

1. The three dimensions of working-time arrangements

The working-time arrangement for any worker has three dimensions: the volume of hours worked, the schedule of when hours are worked, and whether the schedule is fixed or variable, according to the type of flexibility operating in the contract between employer and worker (Figure 1).

Figure 1. The dimensions of working-time arrangements



Source: Fagan et al. (2012)

Working-time conditions are at the heart of negotiations between employers and workers, inextricably linked with wage bargaining. Throughout history, through collective bargaining and legislation, workers and social reformers have

¹ *Gender equality* refers to “the enjoyment of equal rights, opportunities and treatment [...] in all spheres of life. It does not mean, however, that men and women are the same or must become the same”, rather that they should be “free to develop their personal abilities and make life choices without the limitations set by stereotypes or prejudices about gender roles or the characteristics of men and women.” *Gender equity* “means fairness of treatment for women and men, according to their respective needs and interests. This may include equal treatment or treatment that is different but considered equivalent in terms of rights, benefits, obligations and opportunities” (ILO, 2007).

sought to reduce the volume of hours worked and to establish a standard work schedule of daytime, weekday work, with regulatory limits or wage compensations for schedules which are non-standard or variable.

The expansion of non-standard schedules, and more flexibility within schedules, has been the focus of working-time debates since the 1970s' economic recession. This triggered political debate and collective bargaining designed to increase organizational and labour market flexibility in order to compete and thrive within a more globalized market economy. Employers have sought to introduce more flexible working time practices as a means to enhance productivity for one or more of the following three reasons:

- To extend operating hours
- To secure optimal staffing and enhanced operational flexibility to match regular and irregular peaks and troughs in production or service delivery across the day, week or season
- To devise a personnel recruitment and retention strategy attuned to workers' working-time preferences, perhaps in connection with an equal opportunities policy, where the impetus is to design jobs which recruit and retain workers, for example by offering flexitime or part-time schedules.

Concurrently, through collective bargaining and individualized negotiation, workers have sought to increase the quality of their working-time arrangements to provide a better fit with other parts of life. While reductions in full-time hours remain at the heart of many collective bargaining agendas, workers have also sought to negotiate a wider range of working-time options to meet their needs, such as opportunities to switch to different schedules, to take periods of extended leave for family or other reasons, to reduce to part-time hours, and to vary their hours through flexitime or other means which increase personal discretion in working patterns, such as the option to work remotely from home or another location.

According to labour market dualism and segmentation theories, employers may introduce non-standard or flexible schedules in order to create lower-paid, less secure jobs for a 'secondary' and more disposable workforce by bypassing or undermining regulations and collective agreements which regulate and protect wages and working conditions for those in the 'primary' workforce. For example, part-time contracts might be introduced to extend operating hours rather than overtime or shift premia to full-time workers, or to provide short periods of cover during the day without including lunch-time or other rest breaks as part of the schedule. Another impetus to design jobs in this way may be to recruit workers who are available at a cheaper rate of pay because they are unable to take full-time jobs because they are students, have children or elder care responsibilities or have chronic ill-health. Flexible or non-standard schedules may also contribute to work intensification for workers – regardless of whether they have a full-time or part-time contract – by removing the 'down time' of the quieter parts of the working day, by cutting out rest periods or by enabling heavy workloads to spill out of the contracted work period as unpaid overtime.

Alternatively, the main driver for introducing part-time employment and other working-time adaptations might be to increase the range of working-time options available to the workforce to make it easier for parents to combine employment with childcare responsibilities, or to enable gradual retirement for older workers. Other measures which employers may introduce to enhance the so-called 'work life balance' of their workforce include flexitime, working-time accounts ('time banking') in which time can be accrued over a longer period than in flexitime systems, compressed working weeks (such as when workers are able to work full-time hours over four instead of five days), options to work from home for part of the week or shift rosters adapted to take account of the preference of the workforce. Schedules which are regular with predictable hours of work are also more compatible with planning and coordinating other parts of life than a schedule where the employer can vary the hours of work at short notice. The recent increase in employers' use of 'zero hour' contracts in countries such as the UK is perhaps the most extreme example of a job type with unpredictable and irregular working hours and earnings.

Hence, whether schedules such as part-time employment operate to integrate workers and enhance the quality of their working conditions, or to marginalize them into less well-paid and less secure employment, depends on the details of how the work is organized, the pathways for progression, and whether there are other working-time options that are genuine alternatives for the individual to choose from. To take part-time employment as an example to illustrate this point; the better quality part-time jobs are usually generated when they are designed and introduced by employers as part of a human resource 'retention strategy' or a deliberate policy to enhance the 'work-life balance' of the workforce (O'Reilly and Fagan, 1998, Fagan et al. 2012; 2014, Anxo et al. 2006; 2007).

Thus, on the one hand, many of these development in non-standard or variable schedules – such as annualized hours, new shift patterns, increased scope for short notice variation in working hours, some part-time schedules, zero hours contracts – have been driven by employers' operational requirements for more flexible work practices. On the other hand, part of the impetus has also been shaped by personnel strategies to provide flexibility oriented towards workers' preferences and needs for a better fit between the time demands of their employment and their personal life, including family responsibilities. The amount and type of flexibility that employers and workers want does not necessarily coincide (Anxo et al. 2006, Messenger 2004). For example, employers may want their workforce to be available to work longer hours at short notice, or to vary the days on which they work, while workers usually want the type of flexible arrangements that enable them to integrate better the time demands of their employment with domestic responsibilities and other activities. However, in many situations there are compromises or innovations that can yield benefits for both parties, and constructive social dialogue is an important means of securing such outcomes.

2. European trends in the three dimensions of working-time arrangements

What are the trends in European working-time arrangements along the three dimensions of volume, schedule, and the type of flexibility?

Starting with the volume of hours worked, the volume of hours worked over the week, year, and lifetime has fallen in most industrialized countries since the beginning of the 20th century. This has been secured through collective bargaining and statutory reform to set limits on the length of the full-time working week and to extend annual leave entitlements (Bosch et al. 1994, McCann 2004). This includes the EU Working-Time Directive, which sets a framework for member states' to operate within. Full-time average weekly hours have generally fallen over the long-run as a result of these regulatory interventions. There has also been an increase in the rate of part-time employment, which can be traced back to the 1970s in some countries such as the UK, while in others it is a more recent phenomenon. Most part-timers are women. The rate of part-time work has risen for men, largely concentrated on young and older men. The combination of a decline in average full-time hours and the increase in part-time working has produced a decline in the aggregate average working hours recorded for all workers. Thus, average working hours in Europe fell in the period 1991-2010 due to an increase in the percentage of the employed working short part-time (20 hours per week or less) and substantial part-time (21-34 hours per week), to reach 27% of those in employment in 2010, while the proportion of the employed working 48 hours or more declined to 13% over this period (Parent-Thirion et al. 2012).

While the volume of hours worked in employment is lower than a century ago, the distribution of working time is spreading across the life course due to the changing patterns of employment for young and older workers, and for women. The average age at which working life commences is still tending upwards because more young people are continuing in education and training. However, the way in which young people engage in education and the labour market increasingly overlaps rather than being discrete life stages. In some countries it is becoming more common for students to combine education with part-time or seasonal employment to help finance their studies; or to use part-time employment, work placements, or internships to improve their employment prospects once the period of study is complete. The high rates of youth unemployment across most of Europe, which those with low qualifications are most at risk of encountering, provides an additional impetus for young people to remain in education, or to re-engage in education or training schemes, in the hope that this will improve their labour market prospects.

The pattern of retirement for older workers is under pressure to change; to reverse the long-term trend of a fall in the average retirement which was enabled by the introduction and expansion of pensions and options for earlier retirement. The Europe 2020 employment strategy identifies the need to raise the employment

rate for older workers (aged 50 years plus) and for women in order to raise the overall employment rate for the working-age population. To this end, European governments are seeking to extend working lives and 'active ageing' by enacting reforms to pension and retirement systems, combined with equal treatment legislation to counter age discrimination. This has impacted on 'retirees' (aged 65 years and older) as well. Since 2005 the employment rate amongst 'retirees' has risen, from less than 8% in 2004 through the core years of the Great Recession (2008-10) and the subsequent halting recovery to 11% by 2012, most notably in Austria, Finland, Germany, Lithuania, and the UK (Eurofound 2013, p. 6 and p. 13). Around one in five of employed 'retirees' say they are employed purely because of financial need, but non-financial motives play a role for the other four-fifths who consider employment to be a means of staying active and connected and contributing to society.

Women's employment across the life course has changed profoundly since the 1960s. Whereas in some countries it used to be common for women to withdraw from the labour market upon marriage or becoming a mother if they could afford to do so, such a profile is now rare. Instead with each new generation women are more likely to combine employment with raising their children. This has emerged through a combination of women's increased access to education, labour shortages in periods of economic growth and service sector expansion in particular, changing social attitudes which have manifested in equal opportunities campaigns and legislation, and practical reforms which have made it easier to combine employment with raising young children. The latter includes the expansion of child-care services, the introduction of maternity, parental and other family-related leave entitlements, and options to adjust working-time through arrangements such as flexitime or part-time hours.

Another consideration when assessing trends is that the volume of hours worked moves with the economic cycle. In periods of economic recession average working hours tend to fall as overtime is cut back. As the economy recovers overtime rises for some of the employed, while job creation might be largely on a part-time or temporary basis in some parts of the economy. Certainly, in the period following the 2008 Great Recession job growth has coincided with a rise in the proportion of involuntary part-time employment among men and women, increased use of fixed-term contracts, agency work, fragile forms of 'self-employment' start-ups in response to unemployment, and new, more precarious forms of employment such as 'zero hours' contracts and 'clickwork' via digital crowd employment platforms (Smith 2009; Karamessine and Rubery 2014; Bettio et al. 2013, Eurofound 2013, Rubery et al. 2014, Howcroft and Bergvall-Kåreborn 2014).

Long-term trends in work schedules – the second dimension of working-time arrangements – are more difficult to assess because of limited suitable time series data. The expansion appears to have been modest in the period since the 1990s (Evans et al. 2001; Parent-Thirion et al. 2007). The European Working Conditions Survey time series reports that the incidence of non-standard schedules expanded during the 1990s and appears to have stabilized over the 2005-10 period.

Some forms of non-standard schedules have decreased (Parent-Thirion et al. 2012). Nonetheless, and broadly speaking, working-time arrangements have dispersed in both volume and organization away from the ‘traditional nine to five – five days a week’ profile. It is now quite common for people to have schedules which involved working at times other than during the ‘standard’ daytime, weekday arrangement; in other words, for work schedules to be dispersed and to encompass week-end, evening and or night work. This applies particularly for those workers with rotating or fixed shift schedules in continuous production systems in sectors such as health care, hotels and catering, transport and manufacturing. But it also includes workers who are not organized into teams of shiftworkers; for example some managers and professionals have jobs which combine demanding workloads with discretion as to when and where the work is undertaken.

Technological changes and employment restructuring towards knowledge workers and a service-based economy have fuelled changes in work schedules and made the working day more porous in many types of occupations. Over the past two to three decades there has been a rapid expansion in the use of technology, including the internet and email. Work organization has become more reliant on such technology. In 2010 40% of all workers say they use the internet and email in their work, including 30% who use it for most or all of their work time, up from 14% in 1991 (Parent-Thirion et al. 2012). Such technology makes it possible for more tasks in many occupations to be detached from the primary workplace, thus supporting more mobile working patterns. It also tends to blur the boundary which delimits work-time/free time and the working day, making it more difficult to measure actual working time. Some companies have introduced ‘telework’ whereby the work is organized using ICT so that work that could be performed on the employer’s premises is carried out elsewhere on a regular basis.

Eurofound identifies a particular variant of teleworking, estimating that a quarter of European workers are ‘e-nomads’ who use ICT for their work and who do part of their work at sites other than their employer’s or their own work premises (Parent-Thirion et al. 2012). E-nomads have distinct working patterns, they work longer hours, with more variable schedules, often working in the evening and on Sundays and they report having to work in their free time more often than other workers. Such workers are highly educated. They are mainly found in managerial, professional, technical, and some clerical functions and are concentrated in education, public administration, financial and business services, and the ‘other services’ sector (e.g., ICT, leisure services). Two thirds of e-nomads are men.

Hence, while it remains relevant to use the term ‘standard’ daytime, weekday schedule as a benchmark to inform policy and collective bargaining, the label ‘standard’ does not imply that this is a majority or even widespread occurrence. The 2005 European Working Conditions Survey found that over a four-week period over half of the employed in the EU27 had been at work on at least one Saturday, one-quarter had worked on at least one Sunday, 12% had worked between 6–10 pm on at least six occasions, nearly half had been at work at least once be-

tween 10 pm and 5 am and nearly one-fifth had worked through the night at least once (Burchell et al. 2007, chapter 4). The picture was broadly similar five years later in 2010, when the latest and fifth European Working Survey was carried out. More than half of all workers in Europe worked at least one day in the weekend. Nearly one-fifth did some night work (working for at least two hours between 10 pm and 5 am) with ten percent of the workforce involved in night work more than five times a month. Seventeen percent worked shifts and just over one-fifth were 'on call' (Parent-Thirion et al., 2012). Examined from the perspective of the workplace rather than the individual worker, the 2009 European Company Survey of establishments with at least 10 employees in the EU30 found that nearly one in five establishments have some employees working nights, one-quarter have some employees working on Sundays, one-third have at least one shift system in operation, and 42% have some employees at work on Saturdays (see Table 1).

Trends in flexibility is the third and final dimension of working time arrangements to consider. Whether the schedule is fixed, is varied by the employer according to operational needs, for example to work different or extra hours at short notice (employer-led flexibility), or offers some discretion and autonomy for the worker to determine their schedule (worker-led flexibility), this is an important aspect of working-time. The 2010 European Working Conditions Survey found that the majority of the workforce worked regular hours, that this applied for women more than men, and that the incidence (and gender gap) had barely changed in a decade (2000-2010) (Parent Thirion et al. 2012). Nearly two thirds of workers state that their work schedule is known in advance and is predictable (63% men, 67% women, 65% of all workers). Regular schedules generally make it easier for workers to plan and coordinate their employment and private lives. Just over three quarters (77%) work the same number of days each week, 67% work the same number of hours each week and 58% work the same number of hours each day.

This leaves just over one-third of the workforce who work a variable number of hours per day or week, and more than one in five (23%) had schedules where the number of days worked varied between weeks (Parent-Thirion et al. 2012). Some of this variation will be down to the workers' needs given that working-time policies which provide scope for workers to determine their schedules – such as flexible working time and working time accounts, and teleworking options – have become more commonly available. Likewise some will have sought a part-time schedule in order to better combine employment with their private life (Anxo et al. 2007, Fagan 2004, Fagan et al. 2012; 2014). Yet for others, the variation in schedule is driven by the employers' operational needs for flexibility. This can be through explicit requirements to work extra hours – paid or unpaid overtime – or to regularly vary hours, for example under annualized hours agreements or to be available for a schedule change at short notice, such as the recent rapid growth in 'zero hours contracts' in the UK.

Finally, it is important to consider trends in working-time in the context of work intensification. In most European countries the pace of work has intensified over the past two decades, although the increase slowed after 2005, according to the subjective assessment reported by workers (Parent Thirion et al. 2012). In the 2010 European Working Conditions Survey 62% of workers reported that they worked to tight deadlines, and 59% worked at high speed for at least a quarter of their work-time. One worker in three works in their free time to meet work demands once or twice a month and 15% do it once or twice a week. This has become more common, particularly for so-called ‘knowledge worker’ where information processing and communication is a large part of the job and technology has eroded the boundary to the work day. Such pressures are a particular feature of managerial and some professional and administrative roles. There are few gender differences in the propensity of workers to work in their free time to meet their job demands.

Looking beneath the European average, inspection of the details of the contemporary picture reveals variation in working time arrangements between countries and between different groups of workers (Chung et al. 2007, Fagan and Burchell 2002, Burchell et al. 2007, Riedman et al. 2009, Messenger 2004). There are pronounced national differences in the average working hours or ‘typical working week’, in the rate of part-time employment for men and women, and in the proportion of the employed who work long full-time hours of, say, 45 hours a week or more. Within a given country, the proportion of workers who are employed part-time, or long full-time hours varies by gender and between occupational groups in particular, but is also shaped by sector and firm size, as well as the age of the worker. The use of non-standard schedules by employers also varies across countries, which is illustrated in Table 1. The extent and type of flexibility in schedules also varies across countries, including provisions which enable flexibility for employees such as flexitime, working-time accounts, statutory employee rights to request reduced or flexible working hours opportunities for reduce working hours or flexible retirement schemes (Chung et al. 2007, Reidmann et al. 2010, Hegewisch 2009). These national, sector, firm and occupational differences arise from a combination of economic and political factors, including the industrial structure of the economy, state policies and collective bargaining agendas and settlements in relation to working time policy. Working time arrangements in a given society are also shaped by family policy, including childcare and eldercare infrastructure, and the design of social welfare systems for unemployment and retirement. All of these institutional factors shape the detail of working-time arrangements which are created in specific sectors and firms.

Table 1. The proportion of establishments which use atypical work schedules for some of their workforce, by country, 2009

Country	% of establishments with the following schedules:-			
	Night work	Work on Saturdays	Work on Sundays	Shift system
AT	17	36	21	18
BE	20	52	29	31
BG	23	44	35	36
CY	17	59	31	27
CZ	22	33	28	40
DE	16	38	18	31
DK	14	30	25	14
EE	19	37	31	36
EL	12	39	15	31
ES	17	34	17	29
FI	21	38	28	36
FR	19	47	26	36
HU	14	24	16	22
IE	21	54	33	35
IT	11	38	14	27
LT	22	37	29	36
LU	17	47	26	28
LV	31	54	42	41
MT	27	65	36	30
NL	12	36	18	15
PL	25	37	26	44
PT	18	34	18	19
RO	14	29	17	28
SE	19	36	33	27
SI	16	39	24	39
SK	22	32	27	35
UK	24	54	40	36
HR	20	47	29	43
MK	22	62	22	45
TR	36	73	35	36
EU27	18	40	24	31
All 30 countries	19	42	24	32

Note: Base = all establishments with 10 or more employers

Source: European Company Survey 2009; taken from Riedmann, et al. 2010, p. 20

In summary, the weekly, annual and lifetime volume of working hours have fallen across a period of many decades. There are national differences in the volume of weekly hours worked and in the incidence of different types of work

schedules and types of flexibility. But on average, across Europe there are some common trends:

1. Full-time working hours for many men and women are shorter than those worked by their ancestors.

2. Part-time employment has increased and the rate is still rising in some countries. Whereas women can be found working part-time throughout the working life, for men it tends to be concentrated at the beginning and end of their working lives.

3. The distribution of working time is spreading across the life course as more women combine employment with raising young children; more young people combine education with part-time or seasonal employment; and working life is extended for older workers.

4. Non-standard schedules are common with sizeable proportions of the workforce involved in evening, night and week-end working.

5. Work time intrudes on other areas of life for many workers. Around one in three workers have schedules which are variable and unpredictable and another one in three works in their free time to meet work demands once or twice a month.

6. Workers work fewer hours on average than in previous generations but their work has become more intense.

7. Technology is eroding the boundary between work and 'free time', especially for non-manual knowledge/information roles in management and some professional and administrative functions.

8. There have been some innovations in working-time policies which increase workers' capability to determine their schedules. Flexitime and working time accounts and teleworking options have become more commonly available, as have options to request reduced or part-time hours.

9. There is a diversification of working-time arrangements among the population in every country. Some have standard full-time and regular work hours. Others have extended full-time hours, or part-time hours. Both full-time and part-time schedules can involve non-standard or fragmented, or unpredictable and insecure arrangements.

These developments in working-time arrangements have been driven by employers' efforts to introduce non-standard and variable working hours to enhance operational flexibility and productivity; and by attending to their employees' working-time needs and preferences in personnel policies which is stimulated by collective bargaining and state intervention. Developments in communication technologies have also played a pivotal role in changing working time practices and expectations in some occupations by eroding the boundary between 'work' and 'free time'.

The result is that the working-time quality – a key aspect of working conditions – varies between workers. Some have standard hours and schedules with a clear boundary between work and personal time. Others have jobs organized on

the basis of extended full-time hours, or schedules which are fragmented, unpredictable or insecure. Some workers, but by no means all, have working time options which provide them with some discretion and control over how they organize their work, such as flexitime, entitlements to family-related leave, or opportunities to switch to part-time hours. These difference in the quality of working-time arrangements are explored in the next section with a focus on gender and occupational differences.

3. Gender and occupational differences in working-time arrangements and the so-called ‘Work Life Balance’

The employment rate for women in Europe has risen over the long-term, stimulated in part by measures undertaken as part of the European Union’s Employment Strategy. This increase stalled with the onset of the economic recession in 2008 which resulted in significant job loss for women as well as men (Smith 2009, Bettio et al. 2013, Karamessine and Rubery 2014).

On average, in Europe women have a lower employment rate than men, and work shorter hours in their jobs. But there are pronounced national variations. The national variation in employment rates, and the gender gap, is illustrated with a selection of countries presented in Figure 2. The countries have been ranked by the female employment rate. Sweden has the highest female employment rate (72%, shown in the blue section of the column) and the smallest gender gap (3.8% lower than the male employment rate, shown in the red section of the column). At the other end of the graph is Italy, where the female employment rate is only 47%, and the gender gap in the employment rate is the widest (19.4%) for this selection of countries.

These national differences in female employment include differences in the rate of part-time employment, illustrated in Figure three for the same selection of countries. Just under one in three employed women in the EU-27 worked part-time in 2012 (32.1%), rising to more than 40% in three of countries shown (Germany, Belgium and the UK), and higher still in the Netherlands which is not included in this table, where 60% of employed women and 17% of employed men work part-time (Fagan et al. 2014, table 2.1). By contrast part-time employment is much less common in many of the Central-East European countries, such as Poland and the Czech Republic, where the rate of part-time work for employed women is around ten percent or less.

Figure 2. The employment rate (age 15-64) for women in selected European countries, 2012

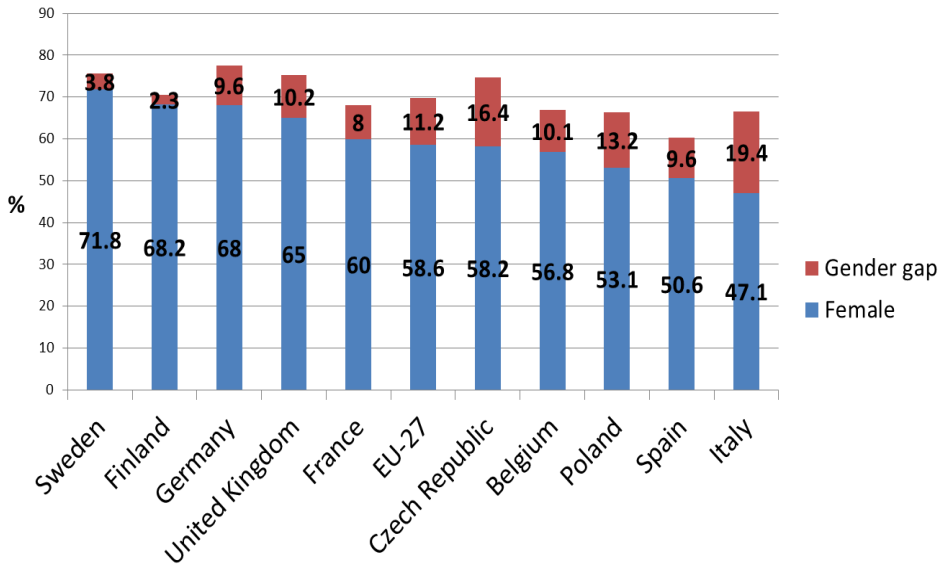
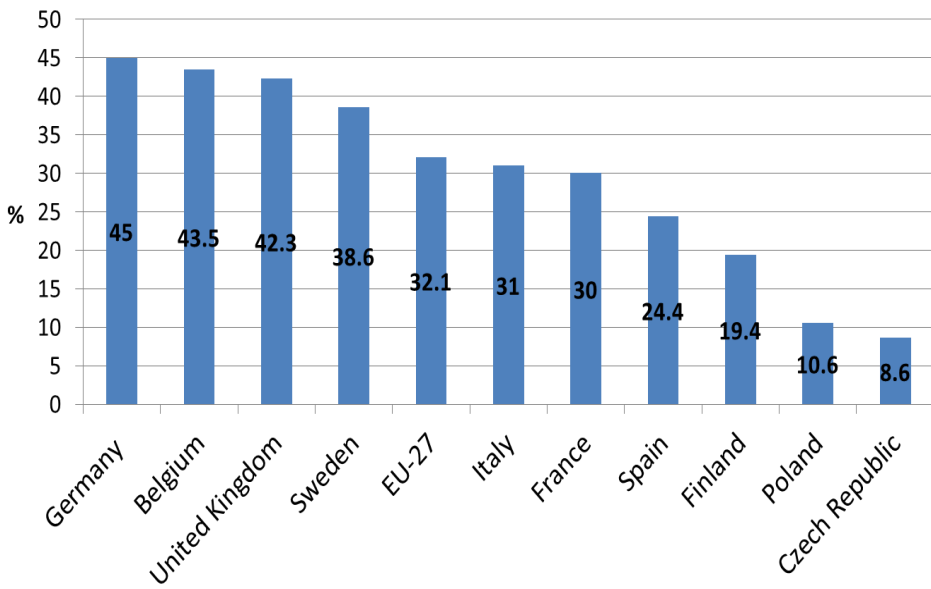


Figure 3. The percentage of employed women who work part-time in selected European countries, 2012



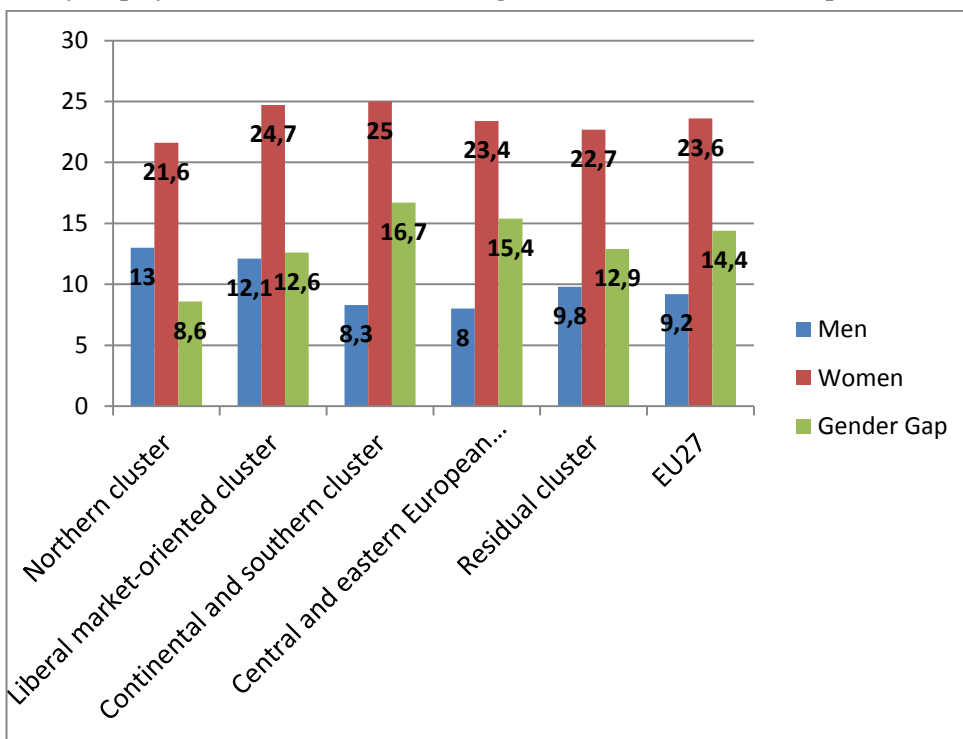
Among full-time employees women worked on average 2 hours less than men in 2012, across the EU28. Again, the picture varies nationally: the gender gap in actual weekly hours was three hours or more in Ireland, the UK and Italy (3.6, 3.4, and 3 hours, respectively), but the gender gap was less than 1 hour in Bulgaria, Croatia, Latvia, Lithuania, and Romania.

Part of the reason why women work shorter hours in employment than men is because of the unequal division of domestic responsibilities within the home. In most households, women devote more time than men to housework (including cooking) and to caring for children and elderly or disabled relatives. When women are employed they work a 'double shift' in their job and at home, in the context that there are now more 'dual earner' working-age couples than in previous generations, as well as more 'no-earner' couples in areas of high unemployment. By 2010 69% of European workers who lived in a couple household were a member of a dual-earner couple: 40% with both employed full-time and 29% with one member of the couple (usually the woman) employed part-time (Parent-Thirion et al. 2012).

On average, full-time employed women allocate more time to cooking, housework, and caring for elderly or disabled relatives than do employed men, more so than even the minority of part-time employed men. Women employed part-time spend notably more time per day looking after their children, more time on cooking and housework, and slightly more time caring for elderly or disabled relatives than women employed full-time (Parent-Thirion et al. 2007: figure 4).

The fifth European Working Conditions Survey reports that in 2010 employed men in Europe spent an average of 41 hours per week in employment, compared to 34 hours for employed women. However, when unpaid work caring for children and elders, doing the housework and other commitments such as volunteering are taken into account women work an average of 64 hours per week, 11 more than the men's average 53 hours (Eurofound 2013b). Analysis of the same survey with a focus on housework and care (omitting volunteering and other unpaid time commitments) shows that the gender gap in the number of hours devoted to housework and care is smallest in the so-called 'Northern' cluster of Norway, Sweden, Denmark, Finland, and the Netherlands, grouped together on the basis that in these countries there are high standards of labour rights and high levels of gender empowerment (Figure 4).

Figure 4: Time spent on domestic activities (housework and care activities) by employed men and women according to cluster and EU27, hours per week



Key to country clusters according to gender empowerment and labour rights standards:

Dimension	High gender equity	Medium gender equity	Low gender equity
High Labour rights standards	Norway, Sweden, Denmark, Netherlands, Finland (Northern country cluster)	Belgium, Austria, Germany, France, Portugal, Spain, Slovenia, Luxembourg, Italy and Greece (Continental and southern cluster)	
Low Labour rights standards		United Kingdom, Ireland, Estonia (Liberal market-oriented cluster)	Latvia, Cyprus, Czech Republic, Lithuania, Slovakia, Bulgaria, Poland, Hungary (Central and eastern European Cluster)

Source: Anxo et al. 2012 based on the 2010 European Working Conditions Survey

The gender division of responsibilities in the home coexists with gender segregated employment. Women and men are mostly employed in different types of jobs. Only around one in five women and men work in a gender-mixed occupation (22% of employed women and 17% of employed men) (Parent-Thirion et al. 2012). Women's employment is primarily located in the types of professional, clerical and manual jobs which provide care-related services and support functions in health, education, public sector administration, hospitality and leisure services, retail and personal services. Men, by contrast predominate in management, in professions related to engineering and IT and in manual jobs in construction and industry (Bettio and Verashchagina, 2009). This gender segregated pattern of employment is associated with some gender differences in work schedules. Part-time and fragmented schedules are more common for women overall, and for women and men employed in female-dominated jobs. Likewise, long full-time hours, night work and shift work are more common for men, but also for women employed in male-dominated jobs. Thus, when the worker's gender as well as their occupation is taken into account we see that non-standard schedules are worked by women as well as men, and by part-timers as well as full-timers, but to varying degrees and largely depending on the type of occupation they are employed (Burchell et al. 2007, chapter 4).

To present this in a somewhat stylized summary, we can draw a contrast in the working-time arrangements between managers and professionals on the one hand, and manual occupations on the other. Many managers and professionals work long hours, albeit under different conditions to those experienced by manual workers when working long hours (Fagan 2001, Fagan et al. 2008). A fundamental difference is that managers and professionals are better-paid for their efforts, even though it is rare for additional hours worked to be compensated with an overtime payment. Where overtime payments are in operation it is largely confined to certain regulated professional occupations working shifts in health, transport and engineering. Most managers and many professionals have some discretion in when they start and finish their work day, when they punctuate their workday with breaks, and more scope to work remotely. However, the spread of the internet and email communication has made the workday more porous in these occupations, blurring the boundary between 'work' time and 'free' time. And as noted in the previous section, the most developed form of this is the 'enomad' manager/professional – mainly found in managerial, professional, technical, and some clerical functions concentrated in financial and business services, ICT services, public administration, and education – where hours are long, schedules are often variable, and work often spills into the evenings and week-ends. In such occupations the rewards of better pay and some working-time autonomy often come with heavy workloads and responsibilities for managing others, and thus the greater degree of autonomy in working-time and work arrangements can be 'double-edged' and fuel long working hours which in turn perpetuate long working hours as the norm for work organization in many areas of managerial/professional practice.

Opportunities for part-time employment as an alternative to long full-time hours have opened up in some professions and some managerial roles. Part-time employment among managers and professionals is more developed in female-dominated occupations and sectors, and in countries where there have been explicit measures introduced to facilitate such innovations. In this regard, the Netherlands is the leader in the expansion of part-time employment in higher-level occupations as well as lower-level ones, and for some men as well as women. Part-time employment in some professional and managerial functions is also more common in countries such as Sweden, Denmark, France, Belgium, Germany, and the UK than European countries with much lower national rates of part-time employment. Part-time professional and managerial jobs tend to cluster at lower seniority levels than the highest grades, and a wide body of research indicates that the decision to work part-time in such occupations is often at the cost of reduced prospects for career development and promotion (Fagan et al. 2014). Nonetheless, the earnings and quality of part-time jobs in this part of the occupational hierarchy are vastly superior to part-time employment in manual occupations.

Turning to focus on manual workers, the working time arrangements have distinct features and are accompanied by quite different working conditions to those found in managerial and professional activities. In this part of the labour when long hours are worked this is driven by low pay and financial pressures to work overtime or hold multiple jobs (Fagan et al. 2008; 2012). Compared to non-manual workers, manual workers are more likely to have working-time arrangements which involve shift work and other non-standard schedules, and to have their hours varied at short notice by their employer. Manual part-time jobs are of much poorer quality than non-manual part-time jobs: they are more likely to involve short and fragmented schedules, to be undertaken on an involuntary basis due to the lack of alternative full-time vacancies and to be low paid or minimum wage jobs. Furthermore, manual workers – particularly those in male-dominated jobs – are more exposed to physically arduous and hazardous working conditions, intense and often repetitive workloads and little work autonomy. Plant and machine operators, craft and trade workers, workers in elementary occupations and clerical support workers report above average levels of work intensity and below average levels of autonomy in the 2010 European Working Conditions Survey (Parent Thirion et al. 2012).

For example, in the UK there has been an increase in the proportion of establishments which offer flexible working options to their employees (such as flexitime, opportunities to switch to part-time hours, working from home). However, the availability and take-up of these working-time options varies (Cully et al. 1999, Kersley et al. 2006, Bell and Bryson 2005, Dex 2003). Broadly speaking, managers and professionals have the most discretion over when they start and finish – because their hours are not directly monitored or because they have formal flexitime arrangements – and they are also more likely to be able to do some of their work from home. Flexitime is common for clerical workers, particularly in the public sector and the financial sector. Conversely routine and manual workers

are more likely to have their hours fixed by their employers, and shiftwork and part-time work feature more often in their schedules (see also Warren 2003). Across Europe flexible working options for employees are more developed in the public sector, in large private sector workplaces, where a union is recognized or where more than half of the workforce is female (Anxo et al. 2006, Riedmann et al. 2010).

Good quality working time arrangements are conducive for enabling employees to achieve a satisfactory fit between employment, family life, and other activities – that is, ‘work life balance’ (WLB). Those who work long or unsocial hours are the least satisfied with the quality of their family time and WLB. Such working time arrangements impact negatively on health as well (Fagan et al. 2012). Long working hours are associated with above average levels of work intensity (Parent-Thirion et al. 2012). Heavy workloads, tight deadlines, and pressurized work environments can create a strain between the demands of employment and personal life, compounding the fatigue caused by long working hours. Working-time autonomy reduces the negative effects of long and unsocial hours but does not eradicate them (Fagan and Burchell 2002, Burchell et al. 2007). The results of the 2010 European Working Conditions Survey (Parent-Thirion et al. 2012) record that nearly one in five (18%) of workers in Europe reported that they had a poor work/life balance (WLB). The incidence is highest among time squeezed workers in ‘dual earner’ households raising children (Parent-Thirion et al. 2012). Workers are more likely to consider they have a good WLB, and have fewer health problems if they:

- work moderate full-time or part-time hours;
- have regular schedules;
- can adjust their working-time rather than having hours set by their employer through measures such as access to flexitime and the ability to take emergency leave at short notice.

The same survey reports that more than half (57%) of workers are satisfied with the number of hours that they work, but 29% would like fewer hours and 14% would like more. Among full-timers, more than half of those who worked more than 40 hours a week would prefer shorter hours. More than a third of part-timers, and 45% of part-timers in short hour jobs would like to increase their working-time, compared to just 10% of those working more than 34 hours per week. While part-timers are more likely than full-timers to report that they have a good work-life balance they are less likely to consider they have good career prospects (Parent-Thirion et al. 2012).

From the above discussion about gender and occupational differences in paid working-time arrangements and unpaid work within the home it is evident that there are gender and socio-economic inequalities in the quality of working-time and in the fit between employment and personal life. The most time-squeezed workers are those who have jobs which demand a lot of their time and are raising children, either as a lone parent or in a couple where both are employed in time demanding jobs. And the time pressures experienced in such households will dif-

fer according to their occupations. For example, in couples where both are employed full-time in managerial or professional roles they will typically work long hours, or encounter workplace pressures to do so, but they will also have more discretion in when and how they do their work and above average salaries which provide resources that can be used to reduce time pressures by outsourcing domestic work: purchasing child or elder care services, eating out, using cleaning and laundry services, or simply being able to rush around the supermarket without having to worry too much about what they can afford to purchase. In contrast in couples where both are employed in manual occupations the lower wage levels mean they have fewer economic resources with which to offset and reduce some of the time demands of their work schedules, while also being more exposed to non-standard and variable work schedules over which they have little control.

4. The impact of the 2008 recession – working-time under austerity

Having assessed the trends in working-time arrangements, and the associated gender and socio-economic inequalities, what disruptive impact occurred with the onset of the Great Recession?

The 2008 economic crisis and its aftermath have had a devastating impact. By the close of 2013 there were six million fewer Europeans in employment than in mid-2008 (Eurofound 2013). The widespread job loss has been accompanied by deterioration in job quality for many more. Job mobility and advancement has decreased. Involuntary part-time employment, informal employment and precarious forms of self-employment have risen. The use of fixed-term contracts has increased in some countries, such as Ireland and some central and eastern Member States, encouraged by changes in labour legislation. In contrast, in countries such as Spain where the use of fixed term contracts was widespread prior to the recession, the proportion of the employed with this type of contract fell because they were among the first to lose their jobs. Informal work has increased in some eastern European countries such as Bulgaria and Latvia, and migration flows for employment have changed in some southern countries.

Job insecurity has increased, as has work-related stress (Eurofound 2013). Workplace violence and harassment has also increased in many countries where information is available (the Czech Republic, Denmark, Italy, Portugal, and the UK), which may be partly attributable to the widespread organizational restructuring that has been triggered by the crisis. Heightened job insecurity reduces well-being and reports of work-life balance. The increase in perceived job insecurity is less pronounced in the Nordic countries than elsewhere in Europe, even in Denmark where the unemployment rate doubled between 2007 and 2011. This is possibly because of the flexicurity model of welfare protection and active labour market programmes.

Pay cuts have been widespread. In many cases, especially at the company level, negotiations have focused on trading wage concessions for saving jobs (Eurofound 2013, p. 12). In 2011–12 45% of residents in the European Union reported that their household had ‘some or great difficulties’ in making ends meet, up from 38% in 2007. Almost one in three reported that their situation deteriorated during 2011, and 35% expected it to get worse (Eurofound 2013, p. 3–4). Low-skilled manual workers and migrant workers, already vulnerable to poverty and social exclusion, are the most likely to report a decrease in earnings and increased job insecurity (Eurofound, EIRO 2013).

The core years of the Great Recession (2008–10) and the subsequent halting recovery has deepened labour market inequalities and accentuated employment polarization in most countries (Eurofound 2013 p. 15). In the initial period job losses were particularly heavy in jobs in the middle of the pay distribution, concentrated in male-dominated areas of work in construction and manufacturing. This hollowing out of the middle level jobs has slowed in the more recent period (2011–12) and shifted to job losses being concentrated on low-paid jobs in the private sector and to low-middle level paid jobs in the public sector, hitting women in particular. By contrast there has been relatively stronger demand for high-paid jobs throughout the period, mostly in knowledge-intensive services in the public (health, education) and private sector. This trend of employment polarization has been broadly similar in every country, in contrast to the pre-recession pattern of employment restructuring (from the late 1990s to 2007) (Eurofound 2013, p. 1).

Average weekly working hours in Europe fell with the onset of the recession for those who still had jobs. This occurred due to reductions in paid overtime, increases in involuntary rates of part-time working, and the implementation of short-time working schemes or partial retirement schemes in some countries to soften the impact of the recession. For some groups of workers unpaid overtime and work intensity has risen as job losses mean smaller teams are covering the work, including any pick up in work as the economy recovers.

The example of the UK illustrates how working-time arrangements have been affected by the recession. According to the UK’s 2011 Workplace Employment Relations Study (WERS)² between 2004 and 2011 there was an increase in the proportion of workplaces which use non-standard working hours arrangements such as shifts (32%), annualized hours (7%) and zero hours contracts (8%). In response to the recession 42% of employers have introduced a wage freeze or wage cut for their workforce, 24% had introduced changes in work organization and 15% had cut basic working hours. More than a quarter had not filled vacancies (28%) and 21% had postponed workforce expansion plans. As a consequence,

² Based on interviews with almost 2,700 managers, 1,000 worker representatives, and more than 21,000 employees.

one-third of employees in the UK reported they had experienced a wage cut, 19% had had their work reorganized, 29% now had a heavier workload and 40% felt their job was insecure (van Wanrooy et al. 2011). This has occurred in the context of an extension of the statutory individual right to request reduced or flexible working and a continued expansion in flexible working options offered by employers – including part-time, flexitime, annualized and compressed hours arrangements and a pronounced increase in teleworking options for at least some parts of the organization’s workforce (Wilson 2012). However, in the context of widespread job insecurity and heavier workloads, it is likely that employees will feel less able to use their ‘right to request’ or other flexible working options to adjust or reduce their work hours for their personal needs. If they do seek a change the employer may be less willing or able to accommodate the change (Fagan and Walthery 2011).

Reforms to facilitate longer working hours were implemented in a few countries (e.g., Hungary, Portugal, and Romania), but in general there have been no major changes in legislation or collectively agreed weekly work hours since the onset of the recession in 2008.

National provisions must, as a minimum, respect the provisions of the EU Working Time Directive (WTD)³. National differences in working-time regulations and the length of the working week persist (Eurofound 2012). Collective bargaining continues to play an important standard setting for working time, even in countries where union density is low. France has the shortest average collectively agreed working week (35.6 hours), connected with the Aubry law which introduced a statutory working week of 35 hours in 2000. The Nordic countries and the Netherlands also have an average agreed normal working week below the EU-28 average of 38.1 hours. In 2012, the EU’s longest annual working hours were worked in Estonia, closely followed by Hungary, Lithuania, Poland, and Romania, while the shortest were worked in France, Denmark, Germany, Italy, and Sweden. In 2012, employees in Estonia had to work 282 hours more on average than their counterparts in France – equivalent to 7 weeks of work in Estonia (Eurofound 2012). Maximum daily hours vary more across Europe than does the weekly maximum. For example it is 13 hours in several countries, including Denmark, Ireland, Italy and the UK which reflects the limit set by the WTD, whereas France stipulates 7 hours.

³ This includes a limit of 48 hours per week on average (over a reference period not exceeding four months); a minimum daily rest period of 11 hours; and a daily hours limit of 8 hours for night workers. Countries can choose to permit individual employees to opt out of the 48-hour weekly maximum; only the UK and Malta have implemented this opt out.

5. Future scenarios – the next 15 to 35 years

What about the future; the next 15 to 35 years? There are some key trends and policy targets which should form the basis of our horizon scanning.

We can be confident about some demographic trends. We will have children to raise and care for. Increased life expectancy means we will have a growing number of elderly persons to care for once their independence is undermined by declining health. Longer life expectancy places pressures on pension systems, and the general direction of policy reform is likely to remain geared to raising retirement ages and promoting partial retirement and longer working lives.

We can be fairly confident that the target to raise the European employment rate – established under the Lisbon process and re-stated in the Europe 2020 strategic document – will remain an objective. It is widely accepted that this can only be achieved from the labour supply side if more women and older workers are retained in the labour market.

It is reasonable to predict that there will be further expansion of reliance on internet-based communication and mobile working in some occupations, which will erode the boundary to the work day for a wider part of the workforce. It is also reasonable to predict that the working-time options, arrangements and pressures will remain differentiated and unequal between the higher and lower levels of the occupational structure.

It will be difficult to secure gender equality in employment unless men become more involved in caring for their children and other family members, and in the housework involved in running a home.

Finally, it will be difficult to reduce the high levels of unemployment which the recession has generated, and this will be particularly acute in some countries. Further technological advances, including automation, combined with increasingly global production and supply chains, reduces the volume of jobs created in Europe through any upturn in economic growth.

Working-time reform cannot resolve all of the above, but it can contribute to the solution. Further innovation in working-time arrangements is needed to support a higher employment rate for women across the life course and to retain older workers in employment until later in life. A more developed life-course perspective is required to inform the design of working-time policies. Essentially this approach recognizes and foregrounds an awareness that workers of all ages, men as well as women, have different working-time needs at different phases of life if they are to be able to combine employment with the other demands on their time: when studying or retraining, undertaking a major voluntary commitment in the community, caring for young children, recovering from serious illness, approaching retirement, caring for older relatives, etc. Policies which permit such adjustments and support transition to different working time arrangements as circumstances change, such as between full-time and part-time working and vice versa, will make an important contribution to securing a higher employment rate. Such an

approach also enables more young people to combine employment with education, training and retraining, thus contributing to the ‘Lifelong learning’ European policy objective. Such working-time options make it more possible for men to adjust their work patterns in order to make a more equal contribution to care responsibilities; particularly when combined with targeted measures such as individual rights to paid parental leave for fathers as well as mothers.

Working-time options are only one part of the jigsaw. A life-course approach to the design of working-time policies also recognized that an infrastructure of enhanced childcare and elder care services are needed to enable workers – men as well as women – to combined employment with care responsibilities in a sustainable manner to the mutual benefit of the worker and his/her employer and in a way which enhances the quality of life for both caregivers and those being cared for.

The final thing we can be certain about is that to secure a working-time policy which curtails long full-time hours and promotes working-time options which enable workers at all occupational levels to secure a satisfactory ‘work-life balance’ is contingent on policy interventions and collective bargaining settlements. National differences in the working-time policies and care infrastructure which is already in place indicates that some countries have further to travel than others, although all countries have some distance to travel.

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THE HISTORY AND FUTURE PERSPECTIVES OF GERMAN WORK LIFE PROGRAMMES¹

*Those who do not learn from history
cannot hope to gain the future*

I. History of German Work Life Programmes 1974–2002

1. The social and historic context

In the late 1960s and early 1970s, the student protest movement and social movements centred on school students, apprentices, women and ecology, led to a wave of sociocultural modernization which, at least in Germany, resulted in 1969's formation of a government coalition between the Social Democrats and the Liberals (SPD and FDP), as well as in a long-term process of political reorientation. Both in politics and in society at large, a combined spirit of optimism, increased citizen self-awareness, and the desire for greater democratic participation were perceptible (as in Willy Brandt's famous announcement to "dare more democracy"). At the same time, the limits of Fordist mass production with its Taylorist organization of labour were plain to see. Companies were looking for

¹ The first part about the history of German Work Life Programmes is a shortened and amended text first published in *Concepts and Transformation. International Journal of Action Research and Transformation*, 8 (1) 2003, p. 43–64. (www.benjamins.com/jbp) There have of course many changes occurred in society and labour markets since 2003, such as increasing precariousness of work, the so called labour market "reform" in 2002 (Hartz IV), growing areas of low wage (21% of employees are low paid in Germany: no minimum wage like in the majority of EU countries up to now (2014), the financial markets crisis since 2008, new post-Fordist forms of market driven work organization in enterprises leading to employees' dependent autonomy at work, etc, etc. The Work Life Programmes after 2000 did not react to or reflect upon these developments caused by unregulated capitalism. That's why the first part of this paper about the historical analysis of work life programmes up to 2002 is still valid. The second part of the paper about future perspectives however was written actually, taking into account the latest social and economic developments.

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skilled workers in order to run production on a more flexible and customer-oriented basis [Oehlke: 2001]. Also, as a result of the education campaigns of the 1960s and early 70s, “education for all”, and the rising investment in schools and colleges, the education system was indeed supplying the qualified workers required. Nevertheless, these were awkward employees, in that they arrived and expected more skillful work on the shopfloor: they demanded, with increasing urgency, workplaces free from routine and unacceptable pressure.

Initially, there was considerable expectation that, almost of its own accord, the quality of working life would improve as technology evolved. It was only later that people began to realize that qualitative modernization policy of active work life programmes was necessary if the quality of the labour process was to increase, in such a way that the requirements on market-oriented production process and, equally, those of skills upgrading schemes and worker expectations were to be met. Using legislative means, the politicians created an institutional and legal framework for the reform of work life and, in 1974, launched the action and research programme known as *The Humanization of Working Life* [German abbreviation: HdA].

Against this background, a reform-oriented alliance made up of employer associations, trade unions, and federal government emerged, an alliance that supported the humanization programme during the first phase of 1974–1980. The bottom line consisted of the actors’ interests which, although different, permitted a sufficiently broad spectrum of parallel goals, at least in the first phase of the programme.

Meanwhile, the crisis of Fordist mass production made the dysfunctional elements of this production form more visible. “The rationalisation of operational time via the division of labour and technologisation, the hierarchical organisation of the factory, the primacy of production economy over market economy, the dualism of small plant and large plant” were all factors getting in the way of any modern labour process [Martens 2003]. Whereas, at the birth of humanization programmes, the Taylorist principle of work organization dominated, management at the larger plants in the metalworking, electrical engineering and automotive industries recognized that any new flexibilization and market-orientation for the production process would require new organization and management concepts, especially the flattening of hierarchical structures, which would (a) give the employees more sophisticated work tasks and (b) guarantee, if only in enclaves, the possibility of limited autonomy and self-governance within the labour process.

It was precisely here that the interface with trade union interests lay, interests directed at the expansion of co-determination and industrial democracy which, in turn, received legal backing in the shape of the reformed Industrial Constitution Act. Although the new legal framework did not meet all expectations, it did “open the door for the constitutional principles of the inviolability of human dignity and social-state democracy to be adopted from the labour process angle” [Däubler 1973: pp. 129–173]. At about this time, Hans Matthöfer, Minister of Research in Germany, seized the initiative and brought fresh life into the programme vis-à-vis

worker participation and democracy promoting concepts, which he in vain had tried to integrate into the metal workers' union (IG Metall) co-determination strategy during his time as a board member of this union in the 1960s.

The employers rejected out of hand the expansion of co-determination and any attempts at industrial democracy. All the same, at least at the beginning, they were prepared to pay a certain price for the state promotion of new and flexible labour structures, and for the availability of higher skilled workers. What that price was to be in terms of humanization programmes soon sparked off a conflict between the unions and the employers, escalating in 1980 and leading to the first crisis within the reform alliance.

In contrast to other accounts of the history of workplace humanization, I intend in this review to look at employee expectations, as well as those of the other actors. Workers throughout Germany expected the abolition of unreasonable pressure, expecting freedom from the short work cycles which meant monotony, one-sided workloads and the deterioration of their occupational qualifications and innovative skills. They were also waiting for work content and work structures which would activate their skills. Their interest lay in greater participation in the design of working conditions, and in more industrial democracy as well as in self-determined and self-governed work (Fricke: 2009).

2. Developments and conflicts

The history of state programmes for work life reform can be presented from a number of different perspectives: as a sequence of conflicts, as a balanced success, or as a series of dashed expectations. Whichever angle you take, programme developments reflect contemporary changes in the social and economic context behind the programmes, and resultant shifts in the balance of power within the reform constellation itself.

2.1. Conflicts 1974–1980

Let me begin here with an overview of the conflicts that took place in the fields of organizational restructuring and implementation of research results.

The start-up years of the workplace humanization action and research programmes, i.e., 1974 to 1979, brought with them an array of far-reaching experiments and pilot projects, directed at the development and introduction of semi-autonomous groupwork, at the expansion of industrial democracy via worker participation procedures and at the abolition of individual piece work. Nearly all the pilot projects in this phase ran in large industrial plants. It was only later that service companies, the crafts sector and the small-to-medium-sized enterprises (SMEs) became platforms for work life programmes. Even then, they never gained the same sig-

nificance that the programmes in the larger metalworking and electrical engineering factories did.

Despite the many ways in which the projects differed, the dominant work restructuring theme in these early days was the repeated attempt to introduce ongoing forms of co-determination, by means of the (re)design of work procedures and working conditions within the labour process itself. Key concepts were worker participation, semi-autonomous groupwork and the abolition of individual piecework. All the initiatives aimed at democratizing industrial relations on the shopfloor, whether by dismantling hierarchical structures, bringing in participatory procedures and setting up codetermination enclaves in the labour process, all met with keen interest on the part of the employees. As for topics such as worker resignation in the light of decades of experience with unsuccessful attempts to emancipate, these were negative phenomena which should have been tackled at the onset (Fricke 1983).

Support for democracy promoting projects came from workers; and from parts of the trade union movement; individual social scientists sitting on the committees that advised the programmes; a few forward-looking management representatives; project managers; and from various groups of social scientists, who had designed and tested pilot projects in the field of industrial democracy. Works council members, who were initially suspicious about participatory advances, eventually supported them, once they recognized that an active workforce did not pose a rival threat but, rather, extended their own room for action on the shopfloor. This was not the case with trade union leaders, who viewed the development and dissemination of democratic worker participation with deep mistrust, and even tried to suppress it in favour of institutionalized forms of codetermination. It was only about 25 years later that the trade union leaders realized the possibility of strengthening institutional forms of co-determination by direct workers' participation; this has become common TU understanding since the early 2000s.

For their part, the employers put up a vigorous defence against any democratization of work life. Indeed, they accused the project managers, the social scientists concerned, and the trade unions of misusing state-financed humanization programmes in order to seed conflict in the factories. Unfortunately, some of the trade unions put the brakes on the impetus from the first programme phase, IG Metall in particular. Its executive committee in Frankfurt am Main, fully averse to grass-roots participatory ventures on the one hand and, on the other, in cahoots with the employer associations, attempted to block any experiments with new wage structures offering alternatives to individual piecework rates. Their general argument: to defend the freedom of collective bargaining versus state-financed interventionism.

The initial long lasting reluctance of the trade unions at that time to try out forms of democratic participation and semi-autonomous group work, and their refusal to open up their own organization to member involvement turned out to be an error with serious consequences. It was an error that contributed in no small measure to the weakening of the trade unions over the last twenty years or so, as

the union leaders of the 1970s and 1980s surrendered the territory of worker participation to management and directors. With a time lag of about twenty years, the bosses began in the early 1990s to strip the idea of worker participation of its democratic roots, and exploited it in their strategy to motivate employees to work in flexible and market-driven forms of work organization.

In modern forms of production organization and labour processes, hierarchical management has given way to market-driven forms of management and control. Combined with the transfer of entrepreneurial functions to the employees [Voss & Pongratz 1988], this has led to an overlap of self-determination and self-exploitation. “Dependent autonomy”, as Peters [2001] calls it, thus replaced the earlier prospects of industrial democracy. Many performance-motivated employees of today will have no perception of the fact that an opportunity, that would have provided them with a certain element of democratic participation and with concomitant self-determination, was missed in the early 1980s.

Rewind to 1980. The employer associations stopped the onset of industrial democratization during the first programme phase, in that they set up a number of taboos. Namely: state-backed projects had to respect the limits of collective bargaining autonomy; they were not allowed to foment conflict on the shopfloor; and any further expansion of co-determination was banned. While the civil servants at the German Ministry of Research adhered to these constraints at once, the programme director tried in vain to persuade the trade unions to come to the defence of the original programme. He was removed from his post. The programme priority on “work restructuring” in which the pilot projects aimed at semi-autonomous groupwork and democratic participation were anchored was also dropped. The introduction of teamwork in industry did proceed, but only in fits and starts. Today, it does not stand up to international comparison [Brödner & Knuth 2002: p. 12] and is, in fact, on the decline again. At the beginning of the 21. century, no more than an estimated 5% of factories in Germany had introduced group work – a figure that in the Scandinavian countries would have raised many an eyebrow.

2.2. The depoliticization of the humanization programme 1980–1983

In 1983, the main theme of work restructuring was replaced by two newly conceived programme items: “Production” and “Office and Administration”. This was the time when workshop-related management concepts for CIM components and user friendly software were being developed to offer “future-proof design solutions”. The manufacturing firms took part in these developments much more actively than companies had previously gone about the first programme phase. Not only that: many of the larger institutes of engineering sciences and many individual information technologists became more active as well. The new model of state-promoted work life programmes as propagated by the German Ministry of Labour and Ministry of Research in 1984 was “an extensive labour-oriented understanding of innovation” [BMFT/BMA 1987: pp. 38–24]. “Accordingly, successful in-

novations may be defined not just by the application of new technologies but also by the organizational possibilities for participation and cooperation as well as a work life design which promotes both health and skills [...] Human, organizational and technological aspects belong in one dynamic interdependent relationship” was how it was phrased. Another publication promised a “humane progress in productivity” [BMFT, BMA, BMW² 1989].

Those being the formulas, the conflict around democratic shopfloor and workplace configuration was to be settled, but a better phrase would be “covered up”. The latest programme speaks of a balance between industrial and social requirements on work life, and it is this balance that state programmes have to promote [BMBF 2001: p. 6].³

These new models were supposed to help the programme respond to the problems then being caused by penetration of all aspects of work by information technology and software ergonomics. However, doubt may be voiced as to whether the main ideas cited above really were effective and conducive to action, and whether the concepts and procedures contained within the modernization policies were appropriate. Programme activities in those years had a visible “expertocratic weakness” [Oehlke: 2001]. In other words, the model as developed was shaped by engineering and IT specialists: any participation by or activation of the employees was hardly worth the mention. This distortion is probably due to the fact that the hurried re-engineering and/or automation processes (CIM, peopleless factories, paperless offices, for instance) were not immediately seen as being on the wrong track. On the contrary, false prospects were opened up, leading to rigidity in the production process and obstructing production flexibilization and market orientation [Brödner: 1985]. “Machines is what they wanted, not people” is how the IG Metall Executive described the main rationalization strategies in the metalworking sector in 1983 [IG Metall: 1983].

2.3. The programme *Work and Technology* 1989 to 1998

In 1989, the German government's humanization programme was renamed *Work and Technology* and reconceived. Its most striking feature was the abandonment of its own claim to a work life strategy independent of industry's modernization concepts. From now on, the primary target was the promotion of economic modernization based on competitiveness. The structure of the programme was simplified, having just three focal points:

² The full titles (which, due to reorganization, changed over the years) are:

BMFT = Federal Ministry of Research and Technology

BMA = Federal Ministry of Labour and Social Affairs

BMBW = Federal Ministry of Education & Science

³BMBF = Federal Ministry of Education, Science, Research & Technology

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- basic research including skills upgrading and health and safety at work concepts;
 - production; and
 - service industry.

During this second programme phase, the actual *Work and Technology* programme was reformulated for three short-lived periods and given new emphases known as “medium-term fields of action” — including “services for the 21st century” [BMBF 1998]. An attempt was also made to lend the programme a job creation emphasis under the ambitious title of *Jobs Via Innovation* [Neubauer & Oehlke 1997]. However, against a background of ongoing social state erosion, none of these measures could be implemented to the extent planned and they more or less ground to a halt. The main reason was the final disintegration of the reformist alliance that had initially supported the programme.

2.4. Work life programmes under the changed working conditions from 2001 onwards

The new social liberal coalition government elected in 1998 needed until 2001 to launch its follow-up programme to its predecessors (*The Humanization of Working Life* and *Work and Technology*). Its title: *Innovative Work Life – the Future of Work*. Although the work world in Germany had not changed fundamentally since 1974, some of the changes were far-reaching in important areas. The increased flexibility of work in terms of time and space, the internalization of markets as a means of controlling in-company performance processes and, therefore, the direct confrontation with market risks for many workers have all brought new demands and pressures in their wake. Corporate labour processes are no longer regulated by organizational rules but by situative constraints [Brödner & Knuth 2002 p. 529]. These processes, in addition to a high level of time, content, and space flexibility, require above all the readiness to accept permanent job-related continuous learning. Since, ironically, many a work process makes learning on the job difficult, employees frequently have to shoulder the responsibility of doing all the extra learning outside their working hours if they are to retain their employability. Now that working hours have been liberalized, they usually do not have the time.

The predicament is often exacerbated by the way the firms handle their employees: wastefully and rarely with any sense of nurture. Existing qualifications are neither correctly used nor built on. According to the results of a recent survey, roughly 50% of employees feel that the work they are instructed to do either over-stretches or understretches their abilities or both [Volkholz & Köchling 2002: p. 456]. Work processes are not designed to facilitate learning. Employees over the age of 45 now rank as the “elderly ones”, the systematic passing-on of their knowledge and experience to younger employees is not organized, and any attempt to refresh the stock of urgently needed specialist knowledge by appointing

younger staff often turns out to be a failure. Demographic changes are also complicating the situation: companies increasingly find themselves forced to take on new challenges with an ageing and/or shrinking workforce. At least partly, the imbalance on the job market is the consequence of a prodigal waste of employees' qualifications through inappropriate work organization on the shopfloor, i.e., work that does not promote learning. Instead of merely consuming their workers' qualifications, would it not only be more human but also, with a view to sustainable corporate development, be more economically effective for companies to organize work processes in such a way that the employees can unfold and develop their skills further? The lack of a state-provided further training or retraining system (which would also be available to the lower-skilled) simply worsens the problem of this non-nurturing of work potential, as much as the inadequate further training facilities offered by the companies. As a rule, it is only the higher skilled who have access to (re)training courses anyway.

The situation at the beginning of the 1970s was not dissimilar. Many problems, that of wastefully not capitalizing on the workers' and their skills, for example, were not new. And that, after 25 years of state-sponsored work life!

At the beginning of the 1970s, companies in Germany also had difficulty handling the transformation of the production system because they did not know how to respond appropriately and resolve the discrepancy between the need for skilled workers and the fact of inadequate work life. Whether this was on account of ignorance, or on account of reluctance to invest in human capital and a work design that would do justice to the workers' aspirations need not detain us here. Despite all the rhetoric of change, any readjustments proceeded then and proceed today only hesitantly, the result being the unnecessary attrition of human resources [Brödner & Knuth 2002: p. 11].

Since no programme and project results had yet been published at that time, it was not possible to judge what innovative impetus the new programme had given in terms of dealing with changing situations in industry. In preparing for this review, I spoke to programme protagonists on the executive and management committees, and found their answers in this respect rather vague. I can only conclude that what the programme lacks is some kind of vision. Of course, nobody talks any longer about industrial democracy, democratic participation and the extension of worker co-determination. Yet "sustainability of corporate development" could contain a vision if the issue of how to manage human resources sensibly was made the focus of attention, and if it were then tackled with some kind of enthusiasm. However, that would necessitate work life programmes and work procedures that do justice to the workers' skills and age. It would include the development of work tasks that stimulate learning, the availability of time resources for people to enter into lifelong learning arrangements, and the opening up of companies to intercultural study so that the barriers against migrants being employed on an equal rights basis can be dismantled. As in the past, it would include the active participation of the workers in the design of their working environment and exclude the

exploitation of their genuine interest in participation in pursuit of other management strategies.

With that first field of action “to develop and maintain employability”, the programme concentrates on the preventive design of health and safety at work measures. This was, in fact, a central point in the first humanization programme, one promoted by the Federal Ministry of Labour and Social Affairs in particular, even if it did not always have much to say about the preventive nature of health and safety at work measures. Here Brödner & Knuth make an interesting proposal with regard to reflexive work life programmes. Changed working conditions, especially in the field of highly skilled activities with “decreasing routinisation of work procedures, increasing complexity and an excessive amount of interpersonal relations”, create pressures which endanger the individual creativity and health of the employees as well as the innovative capacity at the company. These new kinds of pressure cannot be counteracted using conventional methods of stress threshold measures and worktime- and workload standardization. A reflexive work life programme is recommended instead, one which supports the employees in their efforts to develop their own coping strategies [Brödner & Knuth: p. 549].

This proposal for a reflexive work life programme is interesting. Whether it will find its way into the *Innovative Work Life* programme is not immediately obvious. My experience tells me that it will not. However, one should add that the idea of actively involving employees in the discussion about improving their working conditions and, at the same time, letting them develop their own coping strategies, is neither new nor restricted to the better qualified employees. On the contrary, Italian occupational medicine [Dörr & Klautke 1980; Wintersberger 1982], the Peine Participation Concept [Fricke et al. 1981] and the medico-sociological work of Christian von Ferber [von Ferber & Badura 1983] all show that even those employees on low-skilled jobs are quite capable of developing strategies directed at improving their working conditions, and that these are equally successful in the sense of “preventive work life programmes”. Although it is to be welcomed that the idea of participation-oriented work life design still has its supporters, and that the idea is alive and well (and will remain so!), it is at once regrettable and inefficient that valuable experiences made in the past are now being forgotten or ignored. There are many examples to suggest that most of the proponents of this recent programme, *Innovative Work Life*, are probably unaware of, or will ignore, the now 25-year-old tradition of state-sponsored work life programmes.

3. The balance

There can be little doubt that the various state-sponsored work life programmes have notched up some successes. For example: the ease in pressure on workers exposed to extreme physical factors (such as noise, heat, poisonous working materials, car paint) and to unhealthy work (such as monotony, overhead

work and fast cycle times). From the ergonomic science point of view, interesting findings have been made and minimum standards for work safety have been bindingly set. Worth singling out were successful projects in the joinery, textile and mining sectors. The *Work and Technology* programme of the 1990s itself encouraged the systematic introduction of groupwork and team concepts. Pilot projects were set up dealing with age-specific workplaces; the possibility of democratic participation was tested (though meeting with certain difficulties); forms of flexible and decentralized work organization were developed; and many a venture went on to draw up more satisfying work tasks and skill promoting operations, often with the involvement of the workers. Not least, academics had the opportunity of gathering all kinds of experience for their research into design conditions and working life on the shopfloor.

In the 1970s, the dominance of Taylorist work forms in industry was to remain largely unchallenged, even though the humanization programme in the shape of various projects had already mapped out and tested the contours for innovative labour process policies. One result was that efficiency boosts and the work humanization *were* compatible as long as the modernization policy followed the “high road of innovation” [Totterdill 1999], i.e., an approach which combines skilled work, fair wages, quality production and investment in both technology and skills upgrading schemes for the workers. However, models aimed at the introduction of teamwork and, indeed, various attempts to democratize in-company structures and processes beyond the confines of the pilot projects turned out to be either not implementable or only implementable with considerable time lag and pared-down content. Those forms of teamwork that did take off in the 1990s in tandem with the management concept of lean production, for example, were based more on Japanese paradigms than on concepts of autonomous teamwork such as the ones developed by Ulich in the humanization programmes. The degree of (semi-) autonomy was lowered, the work tasks were shorter-phased, and the integration of planning and monitoring tasks into the work operations was either abandoned or only half-heartedly acknowledged. Similarly, whilst decentralization, flat hierarchies and the setting up of semi-autonomous areas (profit centres) tended to shape the organizational changes at management level, any gain in real autonomy was not passed on to the actual employees. The same applies to the transformation of in-company efficiency and productivity policies. For the first part, the planning responsibility held by experts in central departments was often replaced by target agreements between the foremen and their work teams. For the second part, as long as the chance to negotiate agreements about resources (such as work time and personnel) and actual work tasks was not offered, any reduction in worker dependence on company-set performance conditions was only an apparent one. It was the other way round: target agreements only served as an instrument of control, a way to translate management requirements into the reality of shopfloor performance conditions [Voss & Pongratz 1998].

By the second half of the 1990s, in sharp contrast to the work design concepts developed in the state programmes, there was a marked trend away from these in-

novative labour process policies towards more traditional notions of work and organization, i.e., the reintroduction of conveyor belt work with fast cycle times, standardization of work procedures and the renewed separation of planning activity from actual operations, even where groupwork existed. In parallel, supervisors were given back stronger powers with regard to issuing instructions and exercising control. Target agreements on the shopfloor were replaced by centralized performance targets [Kern & Schumann 1998: pp. 10–11]. With this U-turn in rationalization and performance policies, managements were hoping to respond more “effectively” to greater calls for the short-term use of capital and to stiffer competition on the global markets.

Meanwhile, another completely different strategy is mobilizing all efficiency reserves by means of exposing the employees to direct confrontation with market risk. This, in turn, leads to highly ambivalent working situations marked by the combination of self-determination (instrumentalization of participation once considered democratic) and self-exploitation. Above all, the younger and highly qualified employees in the IT sector allow themselves to be motivated to high-flying performances [Glissmann 1997] thanks to the promise of a work autonomy which, in reality, is merely another form of alienation: dependent autonomy [Peters 2001].

The rollback of these first approaches to an innovative labour process policy from the mid-1990s onwards had taken place in open opposition to the modernization concepts developed in the state-initiated programmes. The thrust from humanization-of-work projects was not powerful enough in itself to implement existing elements of innovative labour process policy, and to obstruct the new models based on more rigid efficiency policies and conventional forms of work and technology design. The question must be asked: Why do state-promoted work life programmes have so little influence on the rationalization and modernization strategies of the companies, this after more than 2,500 individual projects and a financial outlay of more than €1 billion (last update: 1998).

4. Weaknesses in the implementation of humanization programmes

Nowadays, the expectation that state-promoted labour process policies can counter modernization strategies in trade and industry is deemed to be illusory: it is seen as the “state illusion” of the 1970s. Only when industry itself initiates innovative labour process policy, a common argument runs, can labour and social science take part in shopfloor rationalization under the proviso that the balance between industry's and society's interests is observed.

That reference to “state illusion” as the midwife of the humanization programme in the 1970s is part and parcel of political mainstream thinking. Yet it is a bit glib. Let me identify here four factors which, in my opinion, are responsible for the little influence that state-promoted work life programmes have had on in-

dustrial rationalization strategies. First, the design monopoly held by the capital owners; second, poor implementation concepts behind the work life programmes hitherto; third, the lack of coordination between labour process policy and other areas of policy; and, fourth, the refusal on the part of social sciences in the mid-1970s to respond to the claims staked by the first humanization programmes.

The monopoly of work life organization held by capital owners is certainly the dominant factor limiting the effects of state-sponsored work life programmes, assuming they not kowtow to the capital's rationalization interests anyway. Understanding this is one thing, recognizing it another. The private constituency of business, along with all the rights its derives there from, is currently a hard fact. Yet one should not overlook its historical character and provenance. That "business takes place in business", as the then German Chancellor Gerhard Schröder used to say, that, in other words, business in the market economy mode has withdrawn itself from public and political influence, is a result of the liberal bourgeoisie movement emancipating itself from its feudal lords over three hundred years ago. As such, it is a historical but not necessarily irrevocable fact. Although we are now experiencing a situation where capital's private power of organization has withdrawn from the arena of public influence, where the social state is being progressively eroded away and where the dominance of market logic is reasserting itself, we should not conclude that, in face of economic decisions and their multifaceted and far-reaching external effects, the public does not have the right to intervene and have its say. This public right legitimizes state-sponsored labour process policy and it obliges the once so critical social sciences to promote elements of transparency and democratization within the framework of state-promoted work life programmes. Any state support aimed only at competitiveness or at tackling the problem of wasted resources (human qualifications, for instance) is simply not enough. In the long run, we cannot sit back and let the companies force through *their* claim to intervene against claims for greater codetermination, against participation concepts and, for a long time, even against groupwork as one useful element in an innovative labour process. Also, as the history of humanization programmes unfortunately shows, the resistance by trade union leaders to participation and to the reform of company productivity-based wage schemes, the abolition of piecework, for instance, has not been helpful.

Deficient concepts of implementation are another reason why the work life programmes in Germany thus far have had little or no impact on business modernization. Despite all the negative experiences of the last 30 years, this deficit continues to exist. Initially, only three channels of implementation were envisaged:

- **Scientific communication:**

Within the framework of research support (*Begleitforschung*), the academics involved were expected to record the various findings and experiences and make them accessible. The upshot was more than one hundred tomes, the BMFT's so called "Green Volumes", written in an academic language that stood in the way of wider dissemination.

- **Instruction manuals:**

As a rule, such manuals make the mistake of becoming detached from the source context of the experiences they try to communicate. The assumption that the formulation of general rules can be applied in a large number of different turns out to be false.

- **Skills upgrading schemes:**

Retraining programmes were usually the responsibility of the social actors involved. That is to say that it was left to the training institutes run by the employers or by the trade unions to decide which humanization concepts would be transmitted to which target groups. Open goal-related discussion and reflexive debate were the exception. The alternative would have meant setting up one or more training institutes under the aegis of the humanization programme in which the vested interests of the labour market parties would not have inhibited the prospects for innovative labour process policy.

Even so, the reason why the implementation of the work life programmes was so half-hearted ran much deeper. Apart from the lack of coordination between state programmes and other policies in the field of work life design, the programmes themselves were inherently flawed in concept. There were five main deficits:

- **Restricting development measures to one company.**

In fact, this initial weakness led to consequences being taken quickly: joint projects and sector-based projects were soon introduced. These project alliances extended the scope of the actors at sector level, facilitating the exchange of experience between companies working in the same sector and, at the same time, allowing academics from different disciplines to be integrated into the work life programme process. This expansion of the source context meant that elements from the implementation process could be absorbed at the development stage of the work life concepts, and thus take a first step towards overcoming the temporal and conceptual gap between development and application.⁴

- **Inadequate linkage between policy areas.**

Since work life programmes came into being, politicians and civil servants alike have refused to see humanization programmes as cross-sectional tasks and organize them accordingly.⁵ Despite many attempts by project supporters, indi-

⁴ This separation, which reflects the cascade model of technical development, can be seen as one of the cardinal errors in the construction of all the work life programmes. The same applies to the general delimitation of theory and practice and, in particular, the divide in the social sciences between pure research and applied research. See Fricke 2003.

⁵ Like all programmes before, a BMFT programme brochure from 2001 demanded a “mutually cross-fertilising interaction between various policies in the fields of research, education, technology, industry, environment and, not least, labour and social affairs” [BMBF: 2001 p. 7]. This, however,

vidual academics and trade unionists, they never succeeded in getting modernization policies organized as a joint task force across diverse areas of research-based, educational, ergonomic, economical and industrial policy. Not only did this lack of political integration reduce the possibility of exerting influence on state policy, but it also led to abortive developments such as, for a long time, a technocratic modernization policy of CIM and peopleless factories, not to mention other areas outside labour process policies such as nuclear technology and industrial agriculture.

- **Programme learning weaknesses.**

The linkage between state labour policy and other fields of policy has been demanded again and again since the start of the humanization programme in 1974, but in vain. This is the result of another peculiarity with state programme administrators. Whether politicians or civil servants, the people in charge regularly initiate innovation and development research, but are not prepared to take part in the learning processes themselves. The same holds good for other institutional actors. The course of a programme including evaluation of results can be controlled. Yet politicians, programme administrators in the ministries and institutional actors somehow manage to escape the learning processes inherent to the programmes. In doing so, they obstruct them and/or rob them of their effect. The outcome: a strange learning weakness and blindness to earlier experiences, the same errors were repeated from programme to programme and the wheel was constantly reinvented.

- **The neglect of regional contexts.**

At the onset of the humanization programme, a group of experienced academics advising the programme administrators, a group that included the author of this review, suggested that the developments planned be integrated into regional contexts. Envisaged was the setting up of regional centres where a combined range of skills upgrading schemes, technical & organizational advisory services and advanced technology displays could be offered primarily to small-to-medium-sized enterprises (SMEs). Well, over the course of the 1970s and 1980s, the Ministry of Research turned down all proposals for a regionalization of the programme on the formal grounds that federal government was not allowed to interfere in the affairs of individual states (Bundesländer). There was, therefore, only one attempt in the late 1980s to link traditional job market and industrial policies with work life projects and that was in the Bremen-based state programme *Work and Technology*. Almost a decade later, however, the Federal Ministry of Research withdrew its reservations and launched various regional programmes for the promotion of labour-process-related, technological and economic innovation in East Germany.

was pure lip service. As any person involved knew, the reality as organized by ministry civil servants was completely different.

- **The neglect of the service sector.**

In view of the increasing integration of service industry into the production process, the separation of production and services as programme sections is no longer appropriate. All in all, the public services and the healthcare sector remain ignored by such programmes, as does the whole area of service industry in the new programme *Innovative Work Life*.

5. The role of the social sciences

The *Humanization of Working Life* action & research programme and the successor *Work and Technology* programme provided social scientists with a learning field of inestimable significance. They were given a unique chance to analyze shopfloor working conditions and conflict areas and, also, make important learning experiences in collaboration and dialogue with actors from practice, experiences which otherwise are not accessible to undergraduates and university staff. Unfortunately, only few social scientists made use of this opportunity.

In the 1970s, industrial sociology was visited by controversy: at first about labour-oriented research [Katterle & Krahn: 1980] and later about the interventionist role of the social sciences. Both discussion threads did not get to the heart of the matter. In reality, the debate was, and still is, about the concept of the dialogic relationship between (social science) theory and practice versus the positivist tradition of the social sciences, characterized by the belief that theoretical or pure research and applied research are two separate strands of academic work.⁶ In this connection, the frequently arrogant way in which self-styled pure research scientists treat SMEs cannot be overseen. If one adds the inability of civil servants to build up stable relations with this important business sector, then it is soon obvious why SMEs, which, after all, provide 90% of jobs in Germany, have been (a) inadequately involved in work life programmes and (b) hardly reached by them. This has considerably changed after 2002.

Social scientists could have used the pilot projects and the actual projects initiated by the humanization programmes to experience at first hand the interactive nature of theory and practice in the research process. By this I do not mean the application or testing of theoretical propositions carefully preformulated on academic premises. An opportunity did present itself for generating new context-related knowledge in the dialogic research process and in causal interdependencies with the actors *in situ*. Such a dialogue research process, via reflexivity and inter-

⁶ It is also worth pointing out that the more academically inclined social scientists cling on to the belief that their usually self-referential form of theoretical work is superior to applied research [Greenwood: 2002].

vention, comprises two sources of context knowledge that draw on experiential and scientific knowledge itself, and whose yardstick would have been its appropriateness in terms of “improving the human condition” [Fred Emery]. It is in this interactive process of learning, research and action that the formative context and applicative context of new knowledge are connected with one another: i.e., the appropriateness of the knowledge so gained does not just crystallize during the subsequent implementive phase (which is usually doomed anyway). The situation is pretty much the same, incidentally, with good doctors. They extend their sound scientifically gained knowledge in dialogue with their patients as part of a process of ongoing empirical learning: only in the course of treatment and the gradual healing success does it emerge whether their knowledge was appropriate to the context from which it partly originated – along with theory and emerging theory from practice.

Regrettably, only a few social scientists have bothered to address practical processes and causal interdependencies and discuss these with the actors from the shopfloor. Most of them prefer observation and analysis from a distance, and stick to research support and advisory services. This attitude contributed not only to weak programme implementation but also to the marginalization of the social sciences, of which we are still witness today (2014). All that could have been avoided if social scientists had taken a leaf from the book of engineering scientists and built up a stable infrastructure of permanent cooperation with real-world workers. An opportunity missed by universities and sociological research institutes alike.

Later, a number of social science institutes were trying to get away from this marginalization by hiring out their services to business. Even so, their work suffers from this cut-off between theory and practice: (a) because they are unable to open up to dialogue and learning processes with the practitioners and (b) because they prefer to adhere to a hierarchical definition of knowledge and experience when they convey their concepts and tools for organizational development or work life design to the people on the shopfloor. See Fricke 2003.

The wariness of social scientists against entering into research dialogue with practitioners is primarily an institutional problem. As academics attempt to move up the career ladder, it is not the solution to society’s problems that matter, but solely peer group recognition in line with the rules of academia. Opening up the academic discipline of social science to the experience-led formulation of theory and knowledge that necessarily and systematically incorporates praxis would presuppose far-reaching institutional reforms in the sense of a professional and not merely formal democratization of the university. Needless to say, this bastion of the academic world continues to keep its doors shut to any such process [Greenwood: 2002; Reason 2002: pp. 26–28].

II. The central idea of a future *Humanization of Working Life* action and research programme

1. Opening remarks:

In the present chapter, I would like to elaborate on the possibilities and assumptions of a new humanization programme in Germany in a slightly unusual manner. I will not focus on the areas where possible improvements should be investigated and implemented but rather on the methodological concept of a programme which serves the humanization of working life.

The subject areas of such a programme include:

- Bringing work and qualifications of employees into balance (qualified labour; abandoning the principles of Taylorism; jobs promoting learning (Ulich); semi-autonomous learning groups; developing and testing “new production concepts” (Kern/Schumann 1984).

- Developing strategies aimed against various manifestations of precarious employment as an expression of the ever-increasing seizure of capital (Dörre). As a result of the laws passed in 1990s (the Hartz reforms in Germany), cheap labour has been perceived as a lucrative area of profitable production.

- Reduction of health-threatening burdens (preventive work safety; burnout prevention; systematic stress analyses conducted with the participation of employees in accordance with the EU standard EN ISO 6385 (Fricke 2011)⁷.

- Tailoring jobs to meet the needs of older workers.

- Promoting technical and social innovations as well as new ways of organizing work in companies, i.e., implementing working time models that allow employees to achieve work-life balance.

At this point, I would like to stop the exemplary enumeration of possible subject areas of a new humanization programme and point out that the prerequisite for such a programme is a societal reform constellation of employers, trade unionists, politicians and administration, which is not on the horizon.

I am interested in something else. It should be emphasized that a new humanization programme for the democratization of work (Fricke, Wagner 2012) must be implemented. We need to put an end to the prevailing trend towards constant intensification of work and precarious forms of employment, resulting from the economization of all areas of work and life by means of capitalist colonization (Dörre). What can be observed in a vast variety of industries, from the banking sector to the health care sector (hospitals) and care services, are constant efforts to

⁷ Part 3.1 reads as follows: “The staff should be effectively and efficiently involved in shaping their working environment.” However, as for now (2014) in Germany “individual employees usually have no access to the risk assessment system and do not know it” (Kohte 2009).

enhance the efficiency of work and production. The aim is to improve profitability, even at the cost of the destruction of individuality (Dörre).

Work and production are becoming less and less sustainable as entrepreneurial decisions are, to a large extent, taken not on the basis of the nature and quality of products, but the viability of production, rapid commercialization and return on equity. Good examples are the toxic products of large international banks the world has had to cope with since the financial market crisis and the economic crisis in 2008. Derivatives – clandestine products – were developed in large banks by thousands of engineers and mathematicians in departments separated from the rest of the business. Had these banks promoted democratic participation of employees and created public spaces for dialogue, the products that were developed in secret would never have come into existence. Democratization of work could have prevented the economic crisis of 2008 and its disastrous consequences for the whole nations (in Europe especially in Greece).

It is essential for democratization of work that all decisions on changes in a company be taken jointly by all actors (management, works councils, persons of trust and employees). This applies primarily to all projects subsidized by humanization programmes. Thus, the humanization programme does not only support projects and pilot schemes aimed at improving working life (cf. the above mentioned subject areas), but it also makes it possible to practice methods of participation involving all the parties concerned in the development and implementation of structural plans. In this way, the new humanization programme creates opportunities to practice democratization of working life through democratic participation of employees in shaping their working environment.

The underlying principle of a democratic organization of working life is the dialogue between all actors within a company. Such a (democratic) dialogue can be recognized by the fact that all the parties concerned, including employees, participate in it on an equal footing. Groups of actors can never impose decisions on other groups of actors or individual actors over their heads.

The concept of democratic dialogue goes far beyond mere discussions held by different actors. Furthermore, such a dialogue cannot be achieved by conducting interviews, having group discussions or providing the parties with feedback concerning research findings, as it is claimed by certain social scientists doing research and planning projects within the existing programmes run by the Federal Ministry of Education and Research. Democratic dialogue is a very radical concept when it comes to granting all actors equal rights. This becomes clear if the principles of democratic dialogue, which were formulated by the action researcher Björn Gustavsen in 1994, are taken seriously and applied within humanization projects. Democratic dialogues pay attention to differences in work experience and qualifications between participants; they even presuppose such differences and treat all participants equally. Dialogues facilitating the exchange of work experience are the only way in which new findings and innovations can shape working environments.

Gustavsen summed up his experience with democratic dialogues as a central element of democratic participation and laid down 13 “Criteria of democratic dialogue” (Gustavsen 1992, p. 3/4). They read as follows:

1. Dialogue is based on a principle of “give and take”: ideas and arguments go back and forth between participants.

2. All people concerned by the issue under discussion should be able to participate.

3. However, a mere possibility of participation is not sufficient. Everyone should participate in the dialogue actively. Thus, participants are obliged not only to present their own ideas but also to help other participants put forward their ideas.

4. All participants have the same status in the dialogue arenas.

5. Work experience is the point of departure for participation. It is by definition the only kind of experience that all participants have.

6. At least some of the experience a participant has when entering the dialogue must be recognized.

7. It must be possible for all participants to gain an understanding of the topics under discussion.

8. All arguments related to the topics under discussion are legitimate.

9. All arguments that are to enter the dialogue must be presented by the actors present. It is not possible to participate only “on paper”.

10. All participants are obliged to accept that other participants may have arguments better than their own.

11. Among issues that can be discussed are the roles and authority of all participants – no one can oppose to their roles and authority being discussed.

12. Dialogue should be able to integrate a growing degree of disagreement.

13. Dialogue should continuously generate decisions that provide a platform for joint action. It should be noted that there is no contradiction between criteria 12 and 13. The main strength of a democratic system as opposed to all other systems is the fact that it allows for a wide spectrum of opinions and ideas that can be integrated into practice while, at the same time, facilitating decisions which can be supported by all participants.

Some authors think that (democratic) dialogues are not possible in hierarchically structured organizations (Kristiansen/Bloch-Poulsen 2011). However, my own experience as well as that of many action researchers shows that democratic dialogues actually start processes of democratic participation at plants. Democratic dialogues initiate learning processes which allow practitioners to develop and practice work democracy. As a rule, this procedure provokes many conflicts. Democratization of working environment is something that is not given but has to be achieved. Therefore, democratization of work should be seen as a process and not as a prerequisite for dialogues. This view is based on the experience of many action researchers and has been discussed extensively by numerous scholars (Fricke u.a. 1981; Palshaugen 2002; Gustavsen 1992; Toulmin 2001).

In a field which is defined by hierarchical relations between actors, democratic dialogues need practicing. This is a tedious process which always provokes conflicts. Not only are hierarchical structures reflected in relations between groups of actors but they also exist in their minds, affecting thinking and behaviour of every individual. Given these (realistic) circumstances, democratic dialogues can be practiced only if, in the beginning, they are held in a protected space free of hierarchy, i.e., if rules no. 10 and 11 are taken seriously and obeyed in spite of all difficulties. If top managers or representatives of middle management are requested to let their role and authority be the subject of a discussion which they participate in themselves, learning and changing processes can start, which, in turn, contributes to the establishment of a democratic corporate culture (Fricke 2008). At first, a company has to create public spaces where all actors can discuss current issues related to work organization as well as medium and long-term strategies for their plants, and also work on concrete solutions they suggest themselves (Palshaugen 2002 calls them *public spheres*, they have been tested in Norwegian action research projects).

Within such public spaces, controlling powers of capital owners derived from private ownership reach their limit. Public spaces and dialogues held therein initiate a tendency towards limiting controlling powers of capital owners with regard to employees. Employees need spaces for public dialogues to reach an agreement with regard to their current situation and common interests (Sauer, Nies 2012 call them *reflection spaces*). In this way, step by step, they may abandon their passive role in the business decision-making process. They will no longer accept dependent autonomy (Peters 2001) which results from the modern forms of market-driven work organization (such as flexible working hours or team work) and often leads to excessive workloads and self-exploitation. Instead, they will make suggestions on how to adjust the working environment to meet their needs (co-determination with regard to resource management, including HR and time management).

2. Contribution of action research to the processes of democratic participation and democratic dialogues

Fostering democratic participation and engaging in democratic dialogues overstretches the abilities of traditional, analytical social sciences whose methodology focuses on making observations, performing analyses and providing explanations of structures and situations within a plant, as well as social processes. In 1970s and 1980s, Germany saw a heated debate as to the scope of possibilities and tasks of research in industrial sociology, with exponents such as B. Lutz, Kern/ Schumann and W. Fricke (Lutz, Schultz-Wild 1986, Kern/Schumann 1984, Fricke 1974, Fricke 2014). The majority of industrial sociologists insisted that social sciences, and industrial sociology in particular, had an analytical function.

The situation changed in 2010. Since that time, there has been growing support for sociologists engaging in and taking methodological responsibility for social and industrial development processes.

However, various participation projects, in particular those pertaining to the first phase of the *Humanization of Working Life* action and research programme in the late 1970s and early 1980s, showed that social scientists had instruments which allowed them to see their action research not only as a dialogue between science and practice but also as a full integration of theory and praxis.

Action research, a particularly difficult branch of social sciences, is the best way to analyze conditions and perspectives of decent work and to democratize working life through humanization by engaging in dialogues with actors such as employees, works councils and management. We have done this ourselves in our earlier action research project financed from the humanization programme (Fricke and others 1980, 1981).

Action research is based on dialogues between science and practice. Instead of being treated as research subjects or mere sources of information, practitioners do research on equal terms with social scientists just as social scientists shape the working environment on equal terms with practitioners. However, the fact that practitioners and social scientists work on equal terms with each other does not mean that there is no difference between them. Social scientists contribute scientific knowledge to the research process while practitioners contribute practical knowledge. Nevertheless, it is both partners that generate new theoretical and practical knowledge in the end. This means that social scientists do not only develop practical knowledge but, as a result, they are also involved in the application of this (new) knowledge at plants. For action researchers, shaping the working environment is part of the research process: Knowledge is in the action.⁸ This is what sets action research apart from all forms of social sciences based only on observations and analyses.

Another feature which distinguishes action research from traditional concepts of social sciences is related to the idea of reflexive work. Reflectivity is an indicator of quality of scientific work. Scientists have to account not only for the impact of their methodology and the formulation of their questions but also for their values and (conscious or subconscious) presumptions regarding the expected findings. This applies to all forms of scientific work. However, action researchers go one step further as they try to organize the research process in a way which enables practitioners to reflect themselves (Eikeland 2007). This is not always successful since contemporary working environments often counteract this process (with factors such as, for instance, profit and market-driven forms of work, work intensification, health risks, various forms of dependent autonomy instead of self-determined participation of employees). Nowadays, reflexive work is only a vi-

⁸ For more details see Eikeland 2006; Fricke 2014

sion. To make this vision a reality, we need a new humanization programme which will take democratic participation of employees seriously.

It has been twenty years since the late French action researcher Claude Faucheux described the vision of reflexive work in the following way:

“The idea that one fine day the reflexive component may become a part of action, and to such an extent that actors will treat the research underway as a process for verifying the fittingness of their actions, is by no means illusory. Indeed, cooperation with professional researchers will become [...] a universal practice. This will lead to a situation in which actors will better recognize their opportunities for making avail of scientific research in the aim of resolving their own local challenges. What will also fundamentally change is the very concept of research work and science. The distinction between subject and object will vanish, as it will between “pure” science and applied science [...]. The core of science will become that of our potential relationship with reality, the reshaping of which we are responsible for, as we ourselves are included in that process as actors. The entirety of scientific work, the aim of which is cognition, will no longer be limited to universities, but will extend across a broad spectrum of human endeavours, and will not be confined to the specialist fields of individual disciplines that pay each other no heed [...] Continuous dialogue between scientific knowledge and common knowledge will make actors capable of ‘thinking globally and acting locally’. Cooperation between science and action in joint research processes will yield the knowledge we need in order to solve problems we ourselves have created” (Faucheux 1994: 160).

If practitioners want to increase the legitimation of their profession on the basis of scientific knowledge, i.e., through cooperation with researchers, conventional social sciences see them as mere users of new knowledge generated by social scientists in other contexts. This draws the traditional distinction between basic science and applied science and leads to problems regarding implementation of research findings. It is the varying relation to practice that makes the real difference between conventional social research and action research.

Social scientists taking the traditional approach see and treat the field “outside” as a research subject and later user of research finding. This makes action researchers pose the following question:

“Why cannot other professions do as the research professions: justify their professionalism through systematic and collective self-reflection based on native or practitioner experience and analysis?” (Eikeland 2007: 52).

In action research, cooperation between researchers and actors from other practice fields is organized in a way which is different from that typical of conventional social sciences. Hopefully useful research results are not delivered to practitioners from outside. Instead, there is a dialogue constituting a process of collective self-reflection involving actors of other professions (including engineers, workers, managers, administration employees, etc.). Dialogue partners compare, discuss and sort out their practical experiences. Finally, they opt for those solutions which are most

likely to improve their practices in the light of goals they have set and account for themselves. This is how their work becomes reflexive.

Also, this is how practitioners become action researchers. They do *practitioner action research* within a process of collective self-reflection.

Is this approach not utopian? It defines science and research not as separate, socially distinctive practice fields, but as part of professional operations in many different practice fields (such as plants, organizations, public administration bodies, hospitals, etc.). Research understood as a process of collective self-reflection becomes ubiquitous.

This is why action researchers have suggested that organizations, plants etc. should create public spaces which will allow for collective reflection and understanding. Actors of such organizations or plants could adjust their practices to their own needs which they have previously discussed and agreed upon. Dependent autonomy resulting from market-driven forms of work organization would be replaced by self-determined autonomy of employees within the context of reflexive work.

If successful, making work reflexive will be a long historic process involving many small steps. For instance, combining work organization (work on stage) and development organization (critical reflection and dialogue back stage) seems possible and has already been tested in Scandinavia (Palshaugen 2000; Eikeland 2006). Public discussions and collective reflection in enterprises stimulate innovation. However, they are a challenge for those enterprises/organizations which follow a rigid routine and are managed by exercising power and resorting to rhetoric (see Eikeland 2006: 232).

The roots of conventional social research and action research may be the same with regard to their reflexive nature (their methodology). However, conventional social research has not developed processes of collective reflection involving practitioners. It has traditionally taken a different approach seeing practitioners as “the other”, subjects of research and implementation. Action research avoids this “othering business” (Eikeland 2006) since action researchers realize that “the field talks back” (van Beinum). Action research enables and encourages practitioners to reflect on their practices and adjust them to meet their expectations formed on the basis of critical reflection on their experiences. Practitioners become practice researchers just as social scientists become practitioners of their science as they practice it. An empirical example of science and praxis growing together can be found in the excellent article written by Ines Langemeyer in 2012.

3. Afterword

Of course, it is not realistic to assume that a state whose structures and policies are shaped by the currently ruling post-democratic parties will launch an action and research programme aimed at fostering democratization of work and industry

and helping employees appropriate their work again. This task overstretches even the abilities of trade unions in their current condition. The third partner of a possible reform constellation, i.e., capital owners and entrepreneurs, is not likely to help either. Peter Fuchs, the founder of the initiative *Power-Shift* combating international arbitration which allows large enterprises to sue a state if its policies, for instance those in the field of environmental protection, threaten the lucrative marketing of their investments, said: “The world has decayed to become a marketplace. Governments are too weak to assert themselves against big business” (Die ZEIT, 27.2.2014, dossier “Im Namen des Geldes”, p. 18). Nevertheless, to create a programme which deserves to be called *Humanization of Working Life* we have no choice but to take the approach of democratization of work as described above.

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FLEXIBLE WORKING TIME – AN OPPORTUNITY OR A THREAT TO THE WORK-LIFE BALANCE?

*Time is a fixed income and, as with any income,
the real problem facing most of us is
how to live successfully within our daily allotment*

Margaret B. Johnstone¹

Introduction

It seems that today no one needs be reassured about the merits of taking action in order to keep a so-called work-life balance (WLB). Addressing this issue requires no special justification in the context of the escalation of socio-economic challenges, and in particular, in the light of unfavourable demographic trends and low indicators of economic activity. The concept of WLB is one of the most important thrusts of EU policy. The work-life balance is an important issue discussed in EU documents, and it appears as one of the key issues of *The strategy on equality between women and men for the years 2010–2015* (pp. 4–5), adopted by the European Commission. In addition, *The Integrated Guidelines for the European Strategy Europe 2020* emphasize the importance of undertakings to facilitate the combining of professional roles with life roles to achieve an employment rate of 75% among men and women, established in the framework of the Strategy Europe 2020 (p. 9).

The researchers conducting studies into WLB issues have tried to diagnose the specific causes of disturbances on the work-life line. In examining the reasons for the lack of WLB on the part of the family one looks for its dependence e.g., on such factors as: household structure (including the aspect of having children), the spouse's workload, and the support of the spouse and other family members. In the work environment, what is crucially significant for the correlations between

¹ M.B. Johnstone (1960), *How to live every day of your life*, Bobbs-Merrill, Indianapolis, Indiana; at: http://www.financeware.com/ruminations/wems/09.13.06/AM_09.13.06.Dashboard.pdf

work and life (in addition to the importance of such factors as high physical and mental requirements associated with the workplace, conflict and ambiguity of the roles, the pace of change in the working environment, low self-control, the amount of earned pay) is working time (Radkiewicz, Widerszal-Bazyl 2011, p. 6).

In the presented article I will attempt to justify the hypothesis that flexible working time² can result in the deterioration of the balance between work and life of employees (WLB), but it also can help in building this balance. The different dimensions of the flexibility of temporary solutions will be characterized in this article, depending on the degree of their impact on the interests of the employer and the employees' needs. The balance between work and life is understood here as the ability to combine work with activity in other spheres of the human life such as home, family, health, social activity, leisure time, and hobbies (Borkowska 2004, p. 54). The analysis in the field of WLB presented in this article is mainly focused on combining work with family life.

1. Flexible working time as a tool to build WLB

The flexibility of working time having a positive impact on the personal work-life balance is classified as positive flexibility of working time for the reason that it takes into account the needs of the employee and offers a choice of alternative solutions in this regard. In the reference literature we can also find other terms defining this kind of flexibility as the flexibility oriented to or focused on the needs of the employee (worker-oriented flexibility, worker-centered flexibility) (Ester, Muffels, Schippers, Wilthagen 2008, p. 182; Gareis and Korte, 2002, in: Chung, Tijdens 2009, p. 11). In the opinion of K. Gareis and W. B. Korte flexibility means "greater freedom of choice of the working hours tailored to the individual preferences of the worker and their family obligations" (Gareis, Korte 2002 in: Chung, Tijdens 2009, p. 11). In turn, Wilthagen T. and J. Visser in emphasizing the employee's freedom and autonomy in making their preferred solutions, define it as the active flexibility (Wilthagen 1998, Visser 2003 in: Chung, Tijdens 2009, p. 11). We are dealing here with the decentralization of the competences within the scope of working time expressing itself in the possibility of the employee's co-deciding about the periods of starting work and its finishing

² In the reference literature dealing with different dimensions of working time flexibility, among other aspects there are:

- Flexibility of working time within which it is possible to lengthen or shorten working time according to the needs of the employer (company) or the employee;
- Flexibility of the organization of working time relates to the possibility of organising and distributing working time maintaining its fixed length within a specified period of settlement in: Latos-Milkowska M. (2009), *Elastyczność czasu pracy*, "Monitor Prawa Pracy" No. 3, p. 118. On the basis of these findings different forms of flexible working time are created, such as: flexi-time, the individual working time, the task-based working time, shortened working week, working time accounts.

(Skowron-Mielnik 2009, p. 94). The form of flexibility with positive characteristics is the introduction of time-specific solutions, such as individual work schedule and shortened working week at the request of the employee or within the framework of the collective agreement. The different time variants compliant with the assumptions of the positive flexibility constitute an important element of work-life programs aimed at providing assistance in the reconciliation of work and after-hours life. Flexible regulation of working time so understood is a practice preferred by the employees and provides them with the important criterion for assessing the attractiveness of the employment (Skowron-Mielnik 2009, p. 93).

The study conducted within the *European Working Conditions Survey* (EWCS) for the year 2010³ shows that a relatively small percentage of Poles are satisfied with the adjustment of their working hours to their needs, including life-related commitments (23%). In turn, the data obtained from the *European Quality of Life Survey* (EQLS) conducted in 2011–2012 show that 43% of the EU citizens can decide about the hours of starting and finishing their work. When it comes to recovery of the extra worked time in the form of the time off – this solution can be used by 41% of the EU population. The data indicate that the most common practice in the EU countries in the field of working time, serving the WLB requirement is the opportunity to take the day-off on demand – the availability of this solution in the workplace is declared by 64% of the respondents (Eurofound 2012a, p. 59).

When it comes to adapting time to the needs of workers in Poland, the situation in this respect is not optimistic. The data published by the Central Statistical Office (Pol: GUS) show that a significant percentage of the hired employees (87.6%) aged 15–64 start and finish their work at fixed hours or at changeable hours determined by the employer. The various options of working time flexibility are used by 11.9% of the workforce (GUS 2012, pp. 29–30). In addition, the conditions of the organization of working time in Poland are not conducive to combining professional and life roles since the possibility of adapting working hours to exceptional or unforeseen family situations in our country is limited. This is evidenced by the fact that as many as 40.5% of employees cannot change the starting/finishing time of their working day for family reasons⁴. For over a third of employees (38.3%) it is permitted only in exceptional cases, while one in five (21.2%) usually can modify their working time in emergency situations. Employees working in the private sector have a little more freedom in changing working

³ EWCS 2010 *Survey Mapping Tool*, <http://www.eurofound.europa.eu>

⁴ The family reasons referred to in the study relate to the “unforeseen or previously scheduled events associated with the family of the respondent, which can include, for example, illness or accidents involving children, spouses or relatives, the need to stay at home longer because of the baby sitter being late or being late for work resulting from the necessity of accompanying a child to the meeting place before their going on a school trip, “Praca a obowiązki rodzinne” in 2010, GUS Warsaw 2012, p. 32

time – generally, such a possibility is used by 23.1% of the employees from private companies and 17.5% from the state sector. The impossibility of taking advantage of that working time regulation is often mentioned by full-time employees (41.4%) rather than by the part-time employed (27.5%). There were no significant differences between the genders in this area (21.1% of men and 21.3% of women can benefit from this) (“Praca a obowiązki rodzinne” in 2010, GUS Warsaw 2012, p. 32).

When it comes to taking a day off without taking a holiday, 61.0% of respondents point at the lack of such possibility. For one-fourth of the respondents (25.1%), this solution is possible only in exceptional cases and for 14.0% of hired employees, this solution is generally possible to take advantage of. The impossibility of using this solution is more often complained about by the public sector employees (66%) rather than by the workers in the private sector (58.4%). Greater restrictions in this regard are imposed on full-time workers rather than part-time workers. The impossibility of applying this measure is indicated by 62.1% of those working full-time and by 44.9% of the part-time employees. As mentioned above, no significant differences between the genders were identified in the use of this option to adjust working time to their needs (14% of men and women without major obstacles could use this solution) (“Praca a obowiązki rodzinne” in 2010, GUS Warsaw 2012, p. 33).

The above results show that the positive flexibility of working time oriented to the needs of the workers (including the flexibility oriented to WLB) is present in Poland to a limited extent.

2. Flexibility of time solutions as a reason for interference in the Work-Life Balance

Flexible working time is unfortunately not often associated with a tool to build WLB: on the contrary, it only evokes negative connotations. As B. Skowron-Mielnik writes: “the essential source of information on the negative effects of the flexible working time are the employed themselves working in different forms of employment.” According to the author, the factors behind the negative perception of the flexibility are, among other matters, the escalation of the scale of those solutions and the experience of the workers (often negative) using such solutions (Skowron-Mielnik 2009, p. 89). Recognizing the adverse impact of working time flexibility on the life quality of the employees, including the WLB, in the reference literature next to the pro-employee solutions, its negative aspect was also mentioned (negative flexibility of working time) (Strzemińska 2008, p. 107). The negative flexibility associated with the imposition by the employer of the solutions regarding working time, aiming only at adapting to the customer needs or taking into account only the economic requirements of the employer of the economic fluctuations and similar factors, without taking into account the needs and

preferences of the employees (Skowron-Mielnik 2009, p. 96; Strzemińska 2008, p. 107; Machol-Zajda 2008a, p. 17). There are closely related terms of flexibility oriented to the interests of the employer or the company (form-oriented flexibility, company-cantered flexibility, employer-oriented arrangements) (Ester, Muffels, Schippers, Wilthagen 2008, p. 182; Gareis and Korte 2002, Reilly 2001 Rubery, Grimshaw, 2003 in: Chung, Tijdens 2009, p. 11). Moreover, in contrast to the active flexibility taking into account the freedom in choosing a given form of working time flexibility by the employee in accordance with the employee's own preferences, the passive flexibility is also distinguished assuming the obligatory use of certain solutions by the employees (Wilthagen 1998, Visser 2003 in: Chung, Tijdens 2009, p. 11).

The increased risk of the occurrence of negative flexibility of the employees is associated particularly with the so-called non-standard working hours (including night work or work at the weekends), shift work, or work with extended hours (48 hours and more per week). These forms of working time flexibility can adversely affect both physical and mental health and clearly interfere with the balance between work and life.

It is not difficult to predict that the number of working hours strongly determines the WLB – the difficulties in reconciling work and family life are increasing in proportion to the number of hours spent at work. EQLS research shows that almost $\frac{3}{4}$ (72%) of women and 65% of men working 48 or more hours per week complain about the fatigue which makes it difficult for them to housework (for comparison, in a population of women working an average of 21-34 hours, this problem affects 52% women on weekly basis, and for men it is 38%). A similar dependence exists in the case of the fulfillment of the family obligations: problems in this field are declared by 15% of men and 24% of women working an average of 21-34 hours, while in the group of people working long hours (48 hours and more) 46% of men and as many as half of women face such difficulties. Working long hours results not only in more frequent difficulties in fulfilling life responsibilities, but also, though to a lesser extent, affects the quality of functioning at work. People working long hours experience problems with concentration at work twice as often as people working shorter hours (21–34 hours) (Eurofound 2012 a, p. 62).

The negative aspects of working time flexibility having an adverse impact on the well-being also include the irregularity of working time (various working hours during the day, week, different times of starting and finishing work) and unpredictability of working time schedules (unforeseeable sudden changes in the distribution of working time and amount of working time which can disorganize the life rhythm) (Machol-Zajda 2008b, p. 18; *Fifth European Working Conditions Survey*, 2012, pp. 91–93). B. Skowron-Mielnik lists the factors in the field of flex-

ible working time which can contribute to the dehumanization of work⁵ and among them are such factors as: the increase of the workload in a given unit of time without extending working time in the form of overtime (Skowron-Mielnik 2009, p. 95). The flexibility to adjust time by the employer carries the risk of instrumental treatment of workers as specific tools you can use when the need arises (Zużewicz, ORL 2005, p. 3). This has an impact on the level of mental and physical fatigue of the employee due to the work intensity.

3. Control over the employee's working time – in the direction of positive flexibility

Among a number of variables (positive or negative) modifying the impact of the time-related aspects on human life, are the following factors: motivation and beliefs of the employees as well as their age and gender (Żołnierczyk-Zreda 2009, p. 7). These variables also include control over working time. The role of such control in this field was highlighted in the assumptions of the concept of decent working time. The reference literature lists five main aspects of such interpreted working time. The modern organization of working time should take into account the workers' health and should facilitate the reconciliation of work and family life, promote gender equality, and should be translated in the productivity of the enterprises as well as give the employees the opportunity to influence their working hours (Organization of working time: Implications for productivity and working conditions 2012, p. 58). The control over working time is related to the more broadly understood human well-being and refers to the level at which the employee may supervise the flexibility and choice of their working hours and sometimes the place of work (Moen, Kelly, Huang 2008). Obviously, the introduction of wide-ranging control over the employee's working time is not possible to be applied under any condition. However, please note that the extension of the scope of co-deciding about working time can take a variety of forms and involve different levels of the autonomy of workers, adapted to the current capabilities of the company⁶.

⁵ According to T. Pszczołowski the humanization of work is "the action preventing the damage which the human being treated as psychophysical integrity may incur while performing the work. Therefore, each action associated with the organization of work, depending on the consequences (in mental or physical health), which it causes to the person performing the work, can be considered humanizing or dehumanizing", B. Mięka (2000), *Człowiek a organizacja*, Antykwa, Cracow, p. 14 in: Skowron-Mielnik B. (2009), *Elastyczny czas pracy – humanizacja czy dehumanizacja w organizacji pracy*, in: J. Sikora (2009), (ed.), *Praca w perspektywie humanistycznej*, University of Economy in Poznań, Poznań, pp. 90–91.

⁶ In the reference literature different levels of control in this field are distinguished. Within the solutions which imply the limited time autonomy of the employees, it is allowed to decide about the time of starting and finishing work as well as about the breaks, however, the employee has no impact on the number of hours worked during the day. The second option provides more flexibility in terms of the employee's working time and includes solutions within which they can also decide

The employee's control over their working time is one of the important aspects of working time flexibility with positive characteristics, having in mind the needs of the employee. The results show that the ability to exercise control over their working time has a positive effect on the work-life balance and the related level of the satisfaction resulting from the successful reconciliation of work and life (this is one of the important factors related to the working time affecting the WLB along with, among other matters, the predictability of working hours including the extended periods of notifications about the work schedules) (Abendroth, Dulk 2011, p. 45, p. 248; Moen, Kelly, Huang 2008, p. 2008, pp. 414-425). The numerous data on this subject indicate that having an impact on working time reduces the negative effects of working in non-standard hours (especially in extended hours or doing the night work) (D. Żołnierczyk-Zreda, 2009, p. 7). In addition, it was proved that a high level of control over working time reduces the monotony of work and the level of stress and tension associated with the work, as well as burnout and depression. In turn, the low level of autonomy in this field results in the deterioration of the health of the workers and sickness absence (especially among women) (Żołnierczyk, Bedyńska, Warszewska-Makuch, 2012, p. 312). Furthermore, flexible work schedules, allowing employees to take decisions about working hours result in increased productivity by reducing absenteeism and strengthening commitment to the job (Coenena, Kok 2013). Given the above, it seems that striving to increase the employee's control over working time (even if limited) should be one of the most important determinants in designing and implementing future solutions for working time flexibility of a positive nature.

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about the length of the working day (Żołnierczyk D., Bedyńska S., Warszewska-Makuch M. (2012), *Work time control and Mental health of Workers working long hours: the roles of gender and age*, *International Journal of Occupational Safety and Ergonomics*, Vol. 18, No. 3, p. 312). The ability to create individual work schedules by the employees, taking into account the wishes schedules, and the ability to swap working hours with other employees and the decision-taking about the dates of recovering the overtime are also manifestations of the employee's autonomy in shaping working time.

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“WORK” AND “LIFE”: THE POWER OF A CLICHÉ

I

It sometimes occurs that ideas that seem obvious and well-intended are introduced into public and professional discussions and wind up beyond criticism. The problem is that the slightest in-depth analysis of these ideas can reveal that they are illusory or that such imposed thinking is, ironically, far from obvious. Briefly speaking, accepting such ideas is connected with accepting assumptions, which after consideration we may not wish to accept. Such is often the case with ideas that are as catchy as they are controversial, for instance, the idea of work-life balance. Catchy, because its apologists see it as emancipatory, believing that the mechanisms of competition, if they manage the economic systems as much as they do rules for compensating people for their effectiveness, can bring corporate success, but at the cost of a personal defeat. Controversial, because it places people deeper in individualism and instrumental rationalism, which is characteristic of modern bureaucracy, and leads them to further objectification.

Moreover, the author of this view holds that one of the basic faults of the idea of work-life balance is that its framework is defined by traditional concepts of bureaucratic organization, which therefore means that it is not worth hoping for a solution to the problems that arise in every form of bureaucracy (P.J. Caproni, 1997). It also indicates that the antonyms of “work” and “life” is a mystification to the extent that work is, and always will be after all, part of human life: “[...] the work–life balance conversation that has dominated the corporate landscape for almost two decades implies that work and life are separate. In this way, we set work and life against each other [...]. The term itself diminishes our ability to make the case that work can be a richly rewarding part of a person's life and should in many ways be personal [...] you don't have two lives, one personal and one professional. You have one life that has personal and professional aspects [...]. People need and want a satisfying experience of life [...]. They want to be told that they don't have to sacrifice their personal priorities on the altar of corporate America in order to have satisfying career [...].” (M. Kelly, 2011).

There are many more such unclear assumptions: when we consider the balance between “work” and “life” *implicite*, we accept the fact that the former, in itself, is, in essence, something unpleasant and instrumental, performed due to various economic pressures, which to some extent enslave us. When concentrating on work, we forget about other obligations arising from our participation in human communities – we do not have time for families or the local community. We also do not have time for those obligations resulting from our participation in the political community of citizens. Here, what comes to mind is that the low level of political participation of Poles is a simple consequence of the fact that, if we accept the data provided by Eurostat, they are, along with Bulgarians, Romanians, and Turks, one of the most worked societies in Europe. Due to the lack of work-life balance, it is sometimes added, we do not have time to take care of our children or dependent parents, and therefore, willingly or not, this imposes the thought that women are desperately fighting for their time budget and are generally the victims in this situation.

In total, both of the theses cited here belong to a current in social sciences that is commonly treated as “critical theory”, a manner of analysis originally associated with the Frankfurt School of the 1930s, that attempts to extract from the opinions of these or other ideological assumptions about social reality. By mid-century, “critical theory”, particularly in relation to the various current truths, ended its association with German Marxists and, in various forms, it became clear that it is distant from Marxism, as Robert Merton once wrote, “the accepted conceptual apparatus shapes our perception, and consequently our thoughts and behavior as well [...]” (Robert K. Merton, 1982, p. 159).

If these general comments were to be applied to the interesting issue at hand, it could lead to a postulate that suggests reflecting on the question, for example: what conception of social reality is, intentionally or not, assumed by those who perceive in the idea of work-life balance chiefly its emancipatory meaning? Another question seems equally important, at least from the point of view of “critical theory” – namely: does a way of thinking about people in organizations exist that better suits the postulate of balance in human life?

It is not excluded that, if we date the acceleration of the problems from the moment when Juliet Schor’s bestseller about overworked Americans appeared on the market (*The Overworked American. The unexpected Decline of Leisure*, Basic Books 1992), we have been dealing with the question of work-life balance for nearly a quarter-century. Honestly speaking, the thought easily comes to mind that the effects of the new current of public debate are twofold: the first is the work of the authors of guidebooks suggesting various, and at times quite strange, manners of problem solving, ones such as “Work/Life Balance for Dummies” (J. Mumford, L. Lockett, Wiley, 2009) or “The Dream Manager” (M. Kelly, 2007).

Incidentally, the second of these two books pleases the reader with not only joyful banalities, but also with persistent adherence to corporate ideology. We are here instructed that “...the future of your organization and the potential of your employees are intertwined, their destinies are linked. An organization can only

become the best–version–of–itself to the extent that the people who drive that organization are striving to become better–versions–of–themselves [...]” (p. 1). The second is the appearance of the specific and previously poorly recognized themes of “anti-corporate” journalism. Madelein Bunting, the popular columnist of the British “Guardian” wrote some time ago: “[...] we have become familiar with the debate about corporate power extending into political life and subverting the power of the state, and we are aware of the way in which corporate power has infiltrated every aspect of civic life; but we also need to recognize how corporations attempt to mold our inner lives through new styles of invasive management which sponsor our ‘personal growth’ [...] the work–life balance agenda is where philosophical questions about what is the good life and what is common good intersects with the political [...]. Time is both a personal and political issue [...]” (Bunting, 2005, p. XXI).

Unfortunately, whether we like it or not, the idea that a quarter-century ago affluent Western society suddenly became aware of the tension that accompanies the emphasis on economic effectiveness is, of course, barely a half-truth, because the problem was perceived earlier. The troubles presented by the linking of roles by working women was noticed almost simultaneously with the massive entrance on the labour market after the Second World War, and the analysis of the social consequences, known as “shift-work”, began in the 1950s.

Schor’s book became important, not because it raised a new issue, but because it pointed out the universality of a problem that already existed. The problem was, after all, perceived, analyzed, and in some manner “swept under the rug” before the book’s publication. It suffices to refer to what Studs Terkel wrote at the beginning of the 1970s as he gathered various oral histories from our time. His book entitled *Working. People Talk About What They Do All Day and How They Feel About What They Do* actually contains all of the themes raised at a later time and begins: “[...] this book, being about work, is, by its very nature, about violence – to the spirit as well to the body [...] the scars, mental as well as physical, brought home to the supper table and the TV set, may have touched, malignantly, the soul of our society... The blue-collar blues is no more bitterly sung than the white-collar moan. “I am a machine,” says the spot-welder. “I am caged,” says the bank teller [...] (from the Introduction, p. xi).

It is necessary to fully understand that the term *work-life balance* is merely a characteristic catch word, a term that attracts public opinion, and does not in essence, despite appearances, offer specific exploratory and innovative content. Of course, it is not worth oversimplifying it, since the contemporary context of the question of the logical separation of work from non-work, regardless of the fact if one accepts or rejects such a distinction, differs greatly from the efforts of the last 150 years to establish legal limitations on working time. For instance, the protective function of the French regulations of 1848 that limited industrial working hours to 12 hours, or the German regulations that were similarly created nearly half a century later, are seen as a step in the direction of civilizing labour relations. Currently, taking this matter as obvious, we are attempting to regulate work

time in various professions, while taking into consideration not only the good of those who perform this work, but also the good of those who benefit from their labour. No one wishes to be treated by an overtired doctor, the fatigue of truck drivers might worry us personally to a lesser extent than the consequences that this could have for others, and we suspect that a teacher overburdened with lessons will not make as much an effort to fulfill his/her basic responsibilities, etc.

However, this is not simple, as it turns out that the supporters of legal regulations, who would restore the balance between “work” and “life”, recognize the later as something causing them anguish by economists. These economists have sound arguments, ones which point out that it is best to leave these issues to the mechanisms of the market and to allow people to decide for themselves independently to what extent they would like to work, but also how much they would like to earn, and thus immerse themselves more or less deeper in the consumer culture of their time. It is also possible to maintain that, generally speaking, the market also forces those who work too much and create supply to think reasonably, because poor quality would be quickly recognized by consumers.

It is not worth discussing this now, not because it is not sensible, but because in one way or another, it must end in either a declaration of faith or market agnosticism. Pragmatic solutions to regulation problems seem therefore to depend not so much on a rather hopeless search for answers to the question “Should we regulate?”, but on pointing out those areas in which regulation could, at least to some extent, eliminate the market failures already identified by economists.

This postulate should be treated with a certain amount of distance, for it turns out that various regulations permitting individual creation of work-life balance are definitely a step in the right direction, since it is always better to have these or other rights, but it does not further solve the problem. It is in this way, because we truly enjoy entitlements that result from these regulations, but also we greatly differ in the manner in which they can be implemented.

Noticing this issue leads to a completely new approach to the question connected with the general concept of capabilities in social politics, which has been promoted by A. Sen for years and constitutes in one of its possible formulations, “[...] a frontal challenge to theories of preference and choice that do not recognize that one’s choices/freedoms are bounded by what we perceive as possible, not in terms of utility but of capabilities, not in terms preferences but of genuine choice [...],” thus the argumentation for this concept is reduced to questioning this thesis generally accepted by the so-called main-stream economists; that is, the thesis, according to which “[...] workers’ preferred hours correspond to actual hours (Becker 1991), that the market provides jobs that offer an optimal WLB (work-life balance) These utility models do not reflect the preferences of workers or the constraints that they face in market economies. Empirical research reveals a discrepancy between what workers would prefer and their actual work hours, either those with a working time deficit who would like to increase their hours, or, more commonly, those working long hours who want to reduce their hours [...].” (Barbara Hobson, 2011, p. 151).

II

The basic problem with the concept of work-life balance is different – namely, that implementing unclear distinctions between work and life *implicite* forces the acceptance of the thesis, as universal and completely obvious, according to which these two areas of human activity differ from each other in a necessary and irrevocable way. Meanwhile, on the level of trivial reflection, it can be easily shown that even if some of us treat work in an instrumental way, there are, however, those who acknowledge it as an autotelic activity, draw from it non-instrumental satisfaction and treat it as part of “the good life.”

Relatively recently, Robert Skidelsky and Edward Skidelsky drew attention to this question when writing that the original meaning of the term leisure does correspond with what once meant by it – that is, when the term was used to indicate not so much the joyful “doing nothing”, as to refer to doing anything for autotelic reasons: “[...] paid work could be leisure in our sense if undertaken not primarily as a means to money but for its own sake [...]. Conversely, many ‘leisure activities’ are not leisure in our sense [...] leisure in our sense is distinguished not by lack of seriousness or strenuousness but by absence of external compulsion [...]” (Skidelsky and Skidelsky, 2012, p. 165).

An estimation of how many fortunate people there are who do what they wish to do in life, and in addition, receive some money for it, and therefore, according to economists, work, is not that simple to calculate despite the increasingly sophisticated analysis of survey research data. However, there are many indications that the number of such people is not so small. At least ¼ of workers employed in the EU-15 countries are satisfied with their work, although one must realize that “work satisfaction” is a dependent variable and is very sensitive to various independent changes both structurally, such as education, gender, type of labour contract, etc., and contextual variables, such as the “level of autonomy” of the worker.

Whatever we may say in this question, one thing seems completely obvious: Skidelsky and Skidelsky did not say anything original or new, which they themselves admitted, after all, when pointing out the source from which they drew their inspiration. However, what they did not perceive was the specific effectiveness or “un-naturalness” of instrumented work, which is commoditized and easier to contrast with “life.” We have at our disposal the richness of anthropological and ethnological sources, which clearly demonstrate that work is not treated as an antonym of the former in many cultures, but is an obvious and natural part of it.

When B. Malinowski described the complex process of building a canoe in “Argonauts of the Western Pacific,” he also showed that independent of all economic details, it is at the same time an important part of “life”: “the construction of a canoe is the first link in the chain of actions connected with the Kula ring. From the moment of cutting down the tree to the canoe’s return from an overseas expedition, the whole process is a chain of events arranged in a regular sequence [...] also the technical actions of construction are interrupted and designated by

magical rites [...] a new ship is not only the next object of use, it is something more, a new being called to life [...].” (p. 180 and following).

M. Weber cited a well-known anecdote about the disappointments of those who induce agricultural workers to greater work effectiveness by increasing piecework pay and derived from it the thought that one of the conditions for the emergence of “capitalism” was a break with “traditionalism”: “[...] the enemy, that the ‘spirit of capitalism’ had to generally fight was in a specific sense, appearing in the form of a certain ‘ethics’ of the way of life, was that type of feeling and behaviour, which can be called traditionalism [...]”. The agricultural worker mentioned in Weber’s anecdote “[...] did not ask how much he could earn on a daily basis, but how much he must work in order to earn two and a half marks which he accepted thus far, and which satisfied his traditional needs [...]. People “naturally” do not want to earn more money, but want to simply live just as they had become accustomed to life and earn as much as needed for this. Everywhere where contemporary capitalism has started its attempts to strengthen the “efficiency” of human labour by increasing its intensification, it has encountered stiff resistance from the pre-capitalist concept of work. One still encounters it today: the more “backward” (from the point of view of capitalism) the worker one has to work with, the stronger the resistance [...]” (*The Protestant Ethic and the Spirit of Capitalism*, 1994, p. 41-42).

Honestly speaking, 18th-century proto-capitalists were more or less aware of this, even before Weber, as Nina Assorodobraj states, “[...] only a small wage can make a worker used to regular labour [...] the less expensive food products are and the higher wages are, the lazier the worker [...] proper prosperity of enterprises [...] is dependent on a cheap labourer, whose wage is sufficient for only necessary food and clothes. What is essential here is not only the manufacturer’s financial considerations, but also the labourer’s job stability [...]” (*Assorodobraj*, 1966, p. 127).

Those who described the particularity of the peasant economy, from A. Cza-Janow to J. Scott or L. Kocika, also promoted similar thoughts. The essential thought is different however – namely, that despite the fact the supporters of the phraseology work-life balance do not want to see it, contrasting “work” to “life”, as it is somehow understood, is not clear, because a significant part of economic history is a story in which work is part of life.

There is no reason why we should argue here if the instrumentalization of work and its commodification were the initial condition for “capitalism” or perhaps its painful consequences, as we are currently convincing ourselves. It is proper, however, to realize that shedding “crocodile tears” over the lack of balance between “work” and “life” and treating it as a social problem is unwise to the extent that one attempts to blur the fact that this problem constitutes a correlative of economic and social order, for which we are unable to find a reasonable alternative.

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WOMEN'S PROFESSIONAL ACTIVITY IN THE FACE OF CHANGING WORKING TIME PROVISIONS

1. Introduction

The world of work is changing. Economic competition is growing increasingly, the knowledge-based economy/new economy is developing, new forms of technology and innovations in the form of employment organizations are appearing, along with a growing interest in maximizing efficiency and productivity. National and regional economies, which to date have competed among themselves in the realm of material resources, are now increasingly competing for human capital, knowledge, and new technology.

The societal and demographic changes that are taking place signify a transition in the labour force and entail changes in the possibility of hiring women, older workers, the disabled, immigrants, and ethnic minorities. This could mean better employment opportunities for everyone, including previously marginalized groups. However, due to continual obstacles on the road to full participation and equality in employment, this is not certain. Overcoming these obstacles is a challenge facing national governments, governing bodies, and employers. Therefore, it is important to know what may take place in order for employers and political decision-makers to accurately plan strategies.

The literature on this topic presents various visions of how the future workforce could look from the perspective of employing both men and women. It is very likely that the number of positions will continually rise, but the quality and character of professional life and the distribution of those jobs between women and men could be subject to change. In particular, the difference in paid and unpaid working hours for men and women has great significance in shaping work conditions for both sexes (Walby 2007, p. 17).

Over the last 50 years, women have been more emancipated in terms of their careers as a result of trends in globalization. However, in several countries, labour segregation remains one of the pressing problems which hinder economic development and violate women's rights. They experience unequal employment opportuni-

ties, are denied advancement on the career ladder, and are also subject to various forms of harassment in the workplace. Due to societal and cultural factors, women are very often underrepresented in staffing. "The undervaluation of women's work is widespread, complex and dynamic" (Grimshaw and Rubery, 2007). A decided majority of women occupy work positions that are part-time or more "appropriate" for women. At the same time, the women's work force is underrepresented in highly qualified positions in information technology, industry, and academia, despite possessing the required qualifications and achievements in comparison with the men who are employed there. Not only are women not able to compete with men in the labour market, but often they are also the victims of societal discrimination in regards to unequal work and payment conditions. In accordance with the European Commission Opinion regarding "The effectiveness of the current legal framework on equal pay for equal work or work of equal value in tackling the gender pay gap 2009," women in the EU earn on average 17.4% less than men for every hour worked (European Commission 2010).

The following article briefly presents the societal and professional situation of women when taking into consideration work division and working time according to gender, preferences, and work possibilities in specific forms of employment and work time. It also offers an attempt to forecast how work time for women might appear in the future.

2. The specifics of women's work time and its conditions

2.1. Work Division according to gender – how do women work and how would women like to work?

The authors of the report entitled "Working Time Around the World", published by the International Labour Organization, analyze working time and in particular, real working hours from various perspectives. From a historical point of view, the development of working time is rather unequal and depends on the level of social intervention¹ and economic development. On the other hand, looking at working time from the perspective of the production sector, the average working week is relatively stable in several countries. Gaps between developing and industrialized countries remain significant and there is no indication that developing countries will catch up with their industrialized counterparts. However, the average values mask the differences in distribution of working time in particular countries. In developing countries, the frequency of the occurrence of both long and short working hours is high. In this case, the average values can be misleading.

¹ Forms of social intervention include legal regulations and financial support for specific working time models perceived as socially desirable. See Lee, McCann and Messenger (2007), *Working Time Around the World*, ILO, Geneva, p. 24–27.

On the other hand, shorter working hours, which are particularly common among women and the self-employed, are a challenge for working time. A significant percentage of employees who work shorter hours do not have full-time positions, but would like to work full time and are thus in danger of falling into the poverty trap. In several developing countries and countries undergoing transformation, there is a split between short and extended working hours. In other words, countries are dealing with income and time poverty (Messenger and others, 2007 p. 63).

Preferences in relation to women's working time are analyzed by the latest report of the European Foundation for the Improvement of Living and Work in Dublin (Eurofound). It turns out that the majority of single mothers and mothers with families would like to work if they had the possibility to choose their working hours. Over 50% of mothers who are economically inactive would like to work on a part-time basis. However, the majority of mothers working in full-time positions would like to work less, regardless of their family status. In contrast, however, single mothers working in part-time positions would like to increase their working time, while mothers who are in a relationship are satisfied with their workload. On the other hand, with reference to men's preferences, the majority of single fathers would like to work on a full-time basis; however, those who currently work full time would like to work fewer hours.

The research conducted by the Institute of Labour and Social Sciences as part of the project "The Factor of Time in the New Economy. Where are we heading?" also raised the question of the various forms of work time organization and workloads. The research shows that workers with small children, most often women, who return to work after their maternity leave take advantage of shortened working hours. Reduced working time is for them an option that allows them to balance childcare with an active career and/or with continuing studies.

Any kind of discussion on the topic of working time/the future of work in reference to women (and men) should begin with drawing attention to two fundamental questions. First, over the last two decades women's share in the labour market has risen significantly in the majority of countries of the world. The large increase in women's share of the workforce occurred in the 1980s, however in the following decade, this share increased only slightly. For example, from 1993 to 2003 the total number of women on the global labour market rose from 1.0 to 1.2 billion workers (ILO, 2004, p. 2 in: Lee, McCann and Messenger, 2007, p. 65).

Secondly, it is necessary to highlight the fact that although women's share in paid work increased significantly, women in general remain responsible for unpaid work at home, childcare, and attending to other members of the family. There continues to be an unequal distribution of household responsibilities among men and women (Lee, McCann and Messenger, 2007, p.65). The difference in time devoted to household responsibilities between the sexes between 25-34 years of age extends to over 30 hours a week (Kotkowska, Sztanderska, Wóycicka, 2007, p. 237). According to the latest research conducted on work conditions in Europe, when taking into consideration the total number of paid working hours, time spent on commuting to and from work, and time for unpaid work, women

work on average 64 hours a week, while men work 53 hours. These results can be explained by the hours spent on caregiving, which in the case of women amounts to an average of 26 hours and in the case of men, 9 hours despite the fact that men spend more time on paid work (41 hours, in comparison with 34 hours in the case of women) (Eurofound 2013).

These two factors combined (the increase in women's share in paid work and in responsibility for housework and caregiving in the family) lead to the inevitable conclusion that while women are taking on professional work more and more often, their availability to work is limited by the time they need to devote to household and family responsibilities. Therefore, while taking into consideration the burden of these responsibilities, one should expect that women will be forced to limit the number of hours that they can allocate for paid work and also the number of hours they are available to work during the day or week.

2.2. Organization of Work Time in the Cycle of Life

Generally speaking, the scope of participation in the labour market changes significantly throughout life, and in particular at the parenting stage. Research (e.g., Anxo and others, 2007) revealed that in the case of women, raising young children has a differing effect on the labour supply in particular countries. In some, having young children impacts women's professional activity by means of definite or temporary withdrawal from the labour market, while in other countries having young children results principally in a permanent or temporary reduction in working hours. Moreover, in some countries, it could also be that the decision to live with someone or to get married can have an impact on women's career choices and working time. For example, in Germany, there is a strong incentive for married women to reduce the scope of their working time, regardless of whether they have children or not (Eurofound 2012a, p. 26).

Several studies have shown having children, particularly those who attend preschool or are younger still, in principle reduces the magnitude of women's work supply in terms of their share in human resources and their work hours (for example, Fagan and Burchell 2002, Anxo 2004, Sztanderska and Grotkowska 2009). On the basis of analyses of time limitations in women's paid labour in Hungary it follows that both marriage and having children cause an increase in the number of professional working hours performed by men and a decrease in the number of hours worked by women. Having children is the cause of differences in the number of women's and men's working hours, which range from 13% to 19%. The more children present in the household, the greater influence this factor has on the number of paid working hours of women. The results of this study demonstrate that women, regardless of age, would be inclined to work longer if they did not have family responsibilities (Lee, McCann and Messenger, 2007, p. 67). Similar figures are cited by Polish researchers: "In the case of having one child, women's professional activity is 64.1% and men's activity 78.8%; however, when having three or more children, women's professional activity is only 56.4% and the anal-

ogous average from men is 63.8%” (Sztanderska, Grotkowska, 2009, p. 79–80). Aside from the number of children, age also has an influence on women’s professional activity. The activeness of women with children under three years of age amounts to 46.7%, while in the case of having children between 4 and 6 years of age, the value rises to 70.6% (ibid, p. 80).

Taking into consideration these significant time limitations, it is not surprising that women’s participation in the labour market is often decidedly different than that of men, and that such differences have serious consequences for their working time. According to statistics provided by the International Labour Organization concerning working time in non-agricultural sectors, the average of men’s real working hours exceed the average of women’s working hours in nearly every country (Lee, McCann and Messenger, 2007, p. 67). Researchers from Eurofound who worked on the fifth study on working conditions came to similar conclusions when they specified nine stages in life. For each stage, the average women’s and men’s work week in European countries was divided into clusters and analyzed.² The differences between the sexes are significant: in each stage of life, women worked less than their male counterparts. In addition, the values for working women demonstrated a greater variability in working time. Men’s working time, in contrast to women’s, seems to be less susceptible to the influences of the particular stages of life, despite the fact that statistics show a clear tendency to longer working time for men in the stage of parenthood (Eurofound 2012a, p. 26ff).

In every European country, women’s working time decreases in the stage of parenthood and gender inequality in working time increases. As the research shows, the influence of young children on women’s work supply in Scandinavian countries takes the form of temporary reduction in working hours and has a limited influence on the employment participation of women. On the other hand, the influence of children on women’s participation in employment in other EU member states is much stronger, which results in temporary or definite withdrawal from the labour market, but a lesser impact on working time, taking into consideration participation (Eurofound 2012a).

Temporal constraints caused by women’s family responsibilities have significant implications not only in relation to the number of hours worked, but to timing. Several companies arrange time schedules by adapting to the needs of working mothers, e.g., part-time daily schedules from Monday to Friday, thus allowing mothers to work when their children are in school (Fagan 2004). Although such schedules have their negative aspects, in many developing countries, there is no

² The nine stages in the cycle of life are 1. Single People (18–35 years old) living with parents or relatives. 2. Single People (over 46 years old) without children. 3. Young couples living together (women under 46 years old) without children. 4. Couples living with young children under the age of 7. 5. Couples living with young children between the age of 7 and 12. 6. Couples living with teenaged children between the age of 13 and 18. 7. Middle-aged couples without children living with them “empty nesters”. 8. Older couples living without children. 9. Single people (50 years of age and older) without children living with them. Source: Eurofound 2012a.

chance to balance work with family, except for “family-friendly working schedules”. Consequently, workers who have family responsibilities, mainly women, can be forced, due to time limitations, to undertake work, which allows them to balance work and family, even though that might present other problems/limitations (Lee, McCann and Messenger, 2007, p. 74).

The need for women to adapt work schedules to family responsibilities could encourage them to undertake self-employment, which (almost by definition) offers them more flexible working hours and/or the possibility of working at home. However, such flexibility can come at a great price, taking into consideration that many self-employed business people in developing countries find themselves in a grey zone, with low wages and lack of social protection. In a similar way, women can undertake work when their husbands are home, in “anti-social working hours”, evening and weekends, in order to reconcile work with family life. For comparison, very few men limit their working time in order to take up childcare responsibilities (Lee, McCann and Messenger, 2007, p. 74, Fagan 2004, p. 2).

3. The effect of the economic crisis on women's labour

The recent years of recession have greatly influenced the situation in the labour market, including the working time of several social groups and, in particular, women. The crisis was made manifest in the strong decrease in economic growth in some EU member countries, which brought with itself dismissals, forcing certain countries to introduce regulation reforms, which also had an impact on work conditions and employment. Employment uncertainty also grew: the number of employees who feared losing their jobs rose in most EU countries, in particular in Slovenia, Greece, Cyprus, Ireland, Latvia, the Czech Republic, Portugal, Spain, Slovakia, and Italy. After the general fall in the average weekly working hours from 2007 to 2009, a tendency of greater differentiation in working time was noted between 2010 and 2012. This was caused in part by the introduction of shortened systems of working time or partial retirement in a number of countries and reduction in activeness in certain economic sectors in the first phase of the crisis. In some countries (e.g., Hungary, Portugal, and Romania), reforms were introduced which facilitated “longer working hours” (Eurofound 2013a).

An increase in labour intensity is characteristic for this period of the crisis, and can be the result of particular conditions associated with the crisis, such as: risk of unemployment, the pressure of competition, cuts in salary and restructuration. Labour intensity increased in Ireland, Spain, and Great Britain. In most countries, the stress level also rose, which can be connected with greater employment uncertainty, linked with simultaneous labour intensity (Eurofound 2013a).

Research conducted as part of the project entitled “The Factor of Time in the New Economy. Where Are We Heading?” confirms the observations mentioned

above. The workers who took part in the study lack a feeling of job security, and the need for safety and regular income is on the rise. Meanwhile, the number of temporary contracts is increasing and wages are low. For this reason, more and more people work in several places, because a single wage is not sufficient to support a family. In Poland, as in other countries, the amount of time dedicated to paid work is increasing, mainly among employers and the self-employed, who are not able to find paid work. Many women and young people find themselves in this group. Family life is increasingly becoming a secondary issue. In effect, one can note the fertility rate in Poland.

The development of new and flexible forms of work is seen by Polish workers as a chance (because inflexible framework disappears as there is a greater chance to negotiate). On the other hand, the respondents view making working time more flexible as a threat, because work “enters the home” (telecommuting, working at home, and private e-businesses, for example). Working hours also are extended, particularly if work is performed at home. As a result, the borders between work and leisure time are blurred, thus creating conflicts and tension in the family, something which also bears negative effects on workers.

The economic crisis caused a deterioration in work and living conditions in several EU member states and an increase in inequality between the state and social groups – and also between families. “If a child lives in poverty in part this depends on the type of family in which he/she is raised”. In this context, the authors of the latest report from Eurofound state that the direction of policies that promote and introduce social investments directed to specific types of families with children should be formulated (Eurofound 2014).

The report provides an analysis of the working time of parents (mothers and fathers separately) depending on the type of household they live in. It turns out that single mothers, regardless if they work on a full or part-time basis, work fewer hours than single fathers, and also work fewer hours than men who stay at home with one and two people working for profit. Moreover, single mothers more often feel employment insecurity than single men (16% women and 8% men fear losing their jobs within the next six months). Single fathers worked on average more hours in 2011 than in 2007 (an average of six hours a week more), while such significant changes were not noted among single mothers. Eurofound study confirms the traditional division of roles in households that constantly remains. In 79% of families, in which one person works for gain, it is the father who works on a full-time basis (on average 45 hours a week). In contrast, only 9% of surveyed households are represented by mothers as the only ones who works full time. In this case, another difference is also evident as such women work an average 41 hours a week. Detailed results regarding the working hours of specific people are represented on the chart below (Eurofound 2014, p. 36).

Table. Working hours by household type and gender, 2011

		% of families	Father's average weekly working hours	Mother's average weekly working hours
Lone parents	Lone father working part time	4	28	
	Lone father working full time	74	49	
	Lone father not working	22		
	All lone fathers	100	48	
	Lone mother working part time	22		23
	Lone mother working full time	45		42
	Lone mother not working	33		
	All lone mothers	100		36
Couple parents: both working	Both working full time	60	44	41
	Father works full time, mother works part time	35	44	23
	Mother works full time, father works part time	3	22	41
	Both working part time	3	23	23
	All dual-earner couples	100	43	34
Couple parents: one working	Father works full time, mother does not work	79	45	
	Mother works full time, father does not work	10		41
	Father works part time, mother does not work	5	21	
	Mother works part time, father does not work	6		21
	All single-earner couples	100	43	34

Source: Eurofound (2014), p. 37.

4. The future prospects for changes in the working hours of women and men

The following factors can be counted among those that effect changes in employment: changes in technology; an increase in productivity; international competition; globalization; specialization and subcontracting; economic growth and an increase in real incomes; changes in regulations and legislations; and also the changing expenditure patterns. According to researchers, a departure from agriculture and industry in the direction of services will continue to be observed, and thus the trend that has been taking place for over the last half century will persist (Wilson, Homenidou, Dickerson 2006).

The latest forecasts predict a further increase in the number of work places as a continuation of the trend that has taken place for over 20 years and confirms the character of these changes (Walby 2007; Kwiatkowski E., Suhecki B, ed., 2014). The research of the Institute of Labour and Social Studies regarding forecasting employment according to profession estimates that between 2012 and 2020 the number of people working in the service market sector will increase by 520,600. "An increase in employment is anticipated in the majority of large professional groups, while the greatest will be observed in group 2: specialists (305,600 people) and group 5: personal service workers and sales people (111,600 people)" (Kwiatkowski E., Suhecki B. ed., 2014, p. 119). According to the former forecasts, a decrease in the number of industrial workers will take place (by 197,500 people). "The decrease in the level of employment will be observed in six large professional groups, the greatest will occur in large professional group 7: industrial workers and artisans. In only three groups, that is, 2: specialists, 5: personal service workers and sales people and 8: operators and mechanics of machines and devices, is an increase of the number of people employed in industry is anticipated, while the greatest observations will take place among those in group 2: specialists (an increase by 150,500 people between 2012-2020)" (Kwiatkowski E., Suhecki B, ed., 2014, p. 119).

In the context of the economic situation of women discussed, an increase in the number of people working in the services industry can indicate positive trends in employing women. It remains a challenge to ensure that these new positions will be high quality and offer appropriate wages.

In the opinion of the British futurologist Ian Pearson, the new economy based on knowledge will favour the development of the women's labour market. This is chiefly due to the fact that national economies are moving in the direction of economies based to a great extent on services and social skills such as communication and cooperation. Pearson refers to this as the "care economy". Several women already work in this sector and there will be a greater number of them in the future. The health care and personal services sectors are the fastest developing economic sectors and dominated by women. According to Pearson, women have the tendency to achieve success in showing empathy, sympathy, and teaching others, and over 90% of employers expect that their employees will possess communication skills and the ability to work in groups. For this reason, when entering the care economy, women find many jobs which help them survive in the work market. The only disputable disadvantage is salaries: "If emotional skills dominate, there will not be high paying positions." Unfortunately, several high positions in health care are low paying (The future of Work..., 2012).

However, there are alternative future scenarios in the literature presented, ones which are at least partially dependent on political decisions. One of the possible scenarios is an economy of full employment based not only on the growth of quantity, but also of the quality of jobs. In this arrangement, women are integrated to a greater extent in the labour market and a departure from the marginal economy occurs. Women currently contribute to the economy by means of a dispropor-

tional share in low-paid professions, which are lower skilled, as well as in part-time work to a greater share and in a greater scope of forms of employment. This scenario is based on a transition towards an economy based on knowledge, which leads to higher level, better qualified, more interesting, more flexible positions that are coordinated by networks and "more flat" forms of organizations than traditional hierarchies. A constant challenge that remains is satisfying the need for care. In effect, the **integration of women and men with the well skilled and highly productive economy** is taking place (Walby 2007, p. 21).

In the next possible future variant, women's labour assumes **further professional segregation**, part-time and low-paid employment with low credentials, and difficulties in reconciling work with care giving. The majority of women remain on the margins of employment, and thus large gender inequalities in salaries and productivity are maintained, with consequences for the productivity of the economy as a whole and the position of particular countries in an increasingly competitive global order. The deciding factors in this scenario are different than in the previous case. Here, women have limited chances to fill high positions (high quality work) and in particular, by professional segregation and type of part-time work. This scenario assumes that an increased pressure of competition in the world of globalization resulting from new information and communication technology leads to a deterioration in work conditions by extended and unusual working hours and less job security. Such a situation can be assumed when the appropriate political intervention does not exist (Walby 2007, p. 22).

A report from the "Work organization and restructuring in the knowledge society (WORKS)" presents a broad picture of how men and women deal with the changing time requirements in various sectors and industries due to the global process of reconstruction. According to this research, it has become apparent that time changes in the workplace have an influence on the work-life balance to a great extent. The researchers' assessment does not foresee clear trends connected with changes in work conditions in general, but the necessity to include the perspectives of the household in academic and political debates on future work scenarios is emphasized. One of the most important consequences is the increasing intensification of work, which means not only extending working hours, but also time saturation, speeding up pace and rhythm, shorter deadlines, higher pressure and sometimes "colonization" of other parts of the individual's life. This phenomenon is noticeable in the majority of sectors and professional groups (Krings, Nierling, and others 2009, p. 37).

Changes in the category of time influence the possibility and strategy of reconciling profession with private life, but they also affect career possibilities and strategies and presence in the labour market. Gender inequality also appears here. Intensification of work, a vast variability in working time, etc., form certain work positions into opportunities for people who are not burdened with family responsibilities or other types of responsibilities in other spheres of life. It is a fact that women are continually responsible for family responsibilities. The majority of men are able to accept a greater work intensification, a greater variability in work-

ing time (overtime, changes in various work dimensions, etc.) because they are responsible for only a small part of household responsibilities. While the majority of women resign from work or career paths that demand from them complete engagement and expanded, variable, and unpredictable working hours. Among employed women, an increase in the part-time employment share is noticeable, in the form of short or very limited working hours and an increase in instable employment and uncommon contracts (temporary work, contracts for specific work or casual work contracts). As a result, there is the risk that, on the one hand, there is hyper-participation on the part of men in the labour market with a simultaneous high level of marginalization in other spheres of life, and on the other hand, an underrepresentation of women in the labour market while being forced to balance work with personal life, limitations in organizing one's time, and with fewer opportunities to build a satisfying trajectory for one's career. In this scope the "effect of the system" should be emphasized. The institutional framework also appears to be fundamental, as institutions can alleviate or strengthen inequality between women and men (Krings, Nierling, and others, 2009, p. 38.)

Currently in Europe, women's professional careers are comparably shorter, paid much less, and precarious – particularly in countries with a strong tradition of male breadwinners. For this reason, the gender dimension for the European Employment Strategy intends to increase the level and quality of women's share in employment by reducing the differences in salaries earned by men and women, professional segregation, sex discrimination, harassment, and making corrections in caregiving for children and programs for balancing professional life with the family more possible (Gender Dimension of the European Strategy, 2010, p. 3).

The availability of policies and programs intending to support employees with family responsibilities can significantly contribute to an increase of women's share in employment including the number of hours of work. In addition, the universal access to high quality institutional child care, family friendly working time policies, such as flexitime or paid days off designated for dealing with family problems, can assist workers in managing their work and family responsibilities more effectively (Lee, McCann and Messenger, 2007, p. 74). Several international and Polish studies address the advantages of family friendly employment.

Currently, many women are moving from full-time to part-time work together with their return to work following maternity leave. Although this is often treated as a short-term solution meant to assist in reconciling work with childcare, part-time employment is very often extended past the time in which children are dependent on their mothers. Several women never return to full-time work after their children become independent. They remain in the trap of part-time employment with few skills and limited possibilities to gain new skills (Walby 2009, p. 42).

The future of part-time work demonstrates the danger of slowing down growth in the future economy due to gender related issues. The further existence of the women's sector of low credentials and part-time work will have consequences for the productivity of the whole economy. It is likely that the share of part-time employment as a whole will decrease, however there are certain obstacles which slows down the transition to high salaries, skills, and high economic productivity. The potential obstacles are, for instance, the growing global pressure of competition in order to minimize employment costs and resistance to full and equal integration of women in the economy (Walby 2009, p. 43).

If women obtain access to decent employment, they will be able to finance their own retirement. If not, many older women will be forced to live off public funding. For this reason, it is in the interest of the state to achieve employment equality between women and men and to permit the designation of public funds for other objectives than retirement or allowances.

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WORKING TIME: BETWEEN SECURITY AND COMPETITIVENESS

Labour market flexibility is nowadays a prerequisite for the competitiveness of economies, and, as shown by analyses, it is also related to such positive characteristics of the labour market as high employment and relatively low unemployment. Poland's recent experience of the international crisis demonstrated another positive feature: the greater resistance of companies to economic problems and the possibility of labour hoarding, which in Poland resulted in a relatively low increase in unemployment, especially in 2012–2013. But flexibility also has its negative side, which unfortunately can be clearly seen in Poland – i.e., the risk of labour market segmentation, especially for disadvantaged groups. For some groups or local labour markets flexibility means worse employment. How should labour market solutions be shaped to avoid the risk of labour market segmentation and treat flexibility as a choice rather than a necessity when boosting employment? What new features of economies and employment relations must we take into account when assessing the current situation and designing new solutions? Will the most recent changes regarding more flexible working time facilitate quantitative and qualitative improvement in the employment rate? An attempt at answering these questions is the main theme of my discussion.

1. The situation in the Polish labour market – the main developments and tendencies

When analyzing the situation on Poland's labour market on the basis of the main measures, it may be deemed good compared to that of the other EU 28 countries. The hiring rate for people aged 15–64 is growing – its cumulative change since 2008 is 0.8 percentage points, while in 2013 this change was -1.6 percent in the European Union as a whole. Poland is among the top six member states in terms of employment rate growth. It currently amounts to 60% in Poland, while in the EU 28 it is 64.1%. This difference is mostly the result of the low economic activity of women over 59.

Table 1. The employment rate for people 15-64 in Poland and the EU 28 (in %)

	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2013
Poland	51.7	51.4	51.4	52.8	54.5	57.0	59.2	59.3	59.3	59.7	90.0
EU 28	62.3	62.6	62.7	63.4	64.3	65.3	65.7	64.5	64.0	64.1	64.1
difference	-10.6	-11.2	-11.3	-10.6	-9.8	-8.3	-6.5	-5.2	-4.7	-4.4	-4.1

Prepared by the Department of Economic Analyses of the Ministry of Labour and Social Policy on the basis of Eurostat data.

Larger differences as compared to the average for the EU 28 concern the employment rate for mature (55-64) and young people (15-24), 9.5 and 8.1 percent respectively. What is interesting, Germany was the only country where positive (albeit, symbolic) growth in the rate among young people (0.2 percentage points) was observed. Compared to that data, the rate for Poland is still above the average for the whole EU 28. This mostly results from the economic slowdown of 2008–2010, when, due to a range of factors, young people were losing their jobs more rapidly than elderly people with more experience¹.

Table 2. The employment rate for people aged 15-24 and 55-64 in Poland and EU 28 (in %)

		2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
15-24	Poland	22.0	21.2	21.1	22.5	24.0	25.8	27.3	26.8	26.4	24.9	24.7	24.2
	EU 28	36.6	35.9	35.6	35.9	36.5	37.2	37.3	34.9	33.9	33.5	32.7	32.3
	difference	-14.6	-14.7	-14.5	-13.4	-12.5	-11.4	-10.0	-8.1	-7.5	-8.6	-8.0	-8.1
55-64	Poland	26.6	27.1	26.1	27.2	28.1	29.7	31.6	32.3	34.1	36.9	38.7	40.6
	EU 28	38.1	39.8	40.4	42.2	43.4	44.5	45.5	45.9	46.3	47.3	48.8	50.1
	difference	-11.5	-12.7	-14.3	-15.0	-15.3	-14.8	-13.9	-13.6	-12.2	-10.4	-10.1	-9.5

Prepared by the Department of Economic Analyses of the Ministry of Labour and Social Policy on the basis of Eurostat data.

Negative developments concerning the growth in the unemployment rate are subject to tendencies that are similar to those observed in the labour market all across the European Union. However, the temporary differences with respect to the intensity of the largest growth in unemployment rate in Poland and all over the European Union are noticeable. The unemployment rate in Poland increased later than in most European countries; the dynamism of growth in the unemployment rate was also slower.

¹ On the basis of data from the Department of Studies Economic and Forecasts, Ministry of Labour and Social Policy.

It is also worth noting that the unemployment rate in Poland has been lower than the EU 28 average since 2012. In 2013, it amounted to 10.5% in Poland, while the EU average was 11.0%.

The unemployment rate among mature people (55-64 years) is relatively lower throughout. After the visible decrease in 2006-2007, there has been a slow increase in this rate since 2009, and in 2013 it amounted to 7.7%. In this period the unemployment rate for this age group is close to the average for the EU 28; in recent years the former has exceeded the latter by 0.1 percentage points²

Table 3. The unemployment rate for people aged 15–64, 15–24, and 55-64 in Poland and the EU 28 (%)

		2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
15-64	Poland	20.2	19.7	19.4	18.0	14.0	9.7	7.2	8.3	9.7	9.8	10.2	10.5
	EU 28	9.1	9.2	9.3	9.1	8.3	7.2	7.1	9.0	9.7	9.8	10.6	11.0
	difference	11.1	10.5	10.1	8.9	5.7	2.5	0.1	-0.7	0.0	0.0	-0.4	-0.5
15-24	Poland	41.6	41.4	40.1	36.9	29.8	21.7	17.3	20.6	23.7	25.8	26.5	27.3
	EU 28	18.1	18.3	18.7	18.7	17.4	15.5	15.6	19.9	21.0	21.4	22.9	23.3
	difference	23.5	23.1	21.4	18.2	12.4	6.2	1.7	0.7	2.7	4.4	3.6	4.0
55-64	Poland	10.3	10.6	10.7	10.8	8.5	6.8	5.3	6.3	7.1	6.9	7.4	7.7
	EU 28	6.3	6.5	6.9	6.4	6.2	5.5	5.1	6.3	6.9	6.8	7.3	7.6
	difference	4.0	4.1	3.8	4.4	2.3	1.3	0.2	0.0	0.2	0.1	0.1	0.1

Prepared by the Department of Economic Analyses of the Ministry of Labour and Social Policy on the basis of Eurostat data.

Just as in most European countries, the greatest problem for the labour market in Poland is the high unemployment rate among people under 25 years of age. The systematic growth in this rate from 17.3% in 2008 to 27.3% in 2013 is alarming. The increase in the number of the unemployed is an obvious consequence of the economic slowdown, and thus the planned growth in employment should result above all from the recovery of the economic capacity for growth in production and, as a consequence, the growth in GDP.

2. Characteristics of the new economy

More and more often decision-makers and experts, but also employees, are becoming aware of the fact that the times of stable employment for life have gone for good. This is the result of the departure from the previous model of employ-

² On the basis of data from the Department of Studies Economic and Forecasts, Ministry of Labour and Social Policy.

ment relations, as well as a consequence of changes in technology, civilization, society, and globalization. Large scale application of IT and digital technologies has influenced changes in labour legislation and the rules of many elements of previous individual employment relations. The key changes of interest to experts and social partners – employers and trade unions – also today, and which have become the focus of discussion and of analyses taking place in Europe, can be listed as:

- The role of the SME sector within the structure of employment is growing; this generates an increasing number of jobs, but employment is not as stable as in large companies with the Fordist model.
- Decentralization of production processes and delocalization are easier, and, as a result, a company becomes a strategic concept rather than a physical unit. Those who make decisions that affect jobs and working and salary conditions, are not an employee's employers in the legal sense, and a new economic phenomenon of the employer's dependency on the decisions of a global or an international investor is arising.
- Tasks at work are increasingly individualized. It is no longer necessary for all employees to share the same workplace because tasks may be coordinated electronically.
- Definition of what should be understood by "working time" becomes increasingly more difficult, bearing in mind that an employee performs work-related functions at home or is required to stay on-call at home and be ready for work.
- In the case of a growing number of employees, it is not working time, but completed tasks or obtained results that become the basic category in the employment relationship. New concepts arise for the organization of work and working time that vary seasonally or depending on the economic situation, such as extended settlement period, working time accounts, and on-call jobs.
- At the same time, solutions that enable workers to combine their jobs with family responsibilities, education or social commitment easier, such as flexible working time or job sharing, are developing.
- Employers have new possibilities for monitoring the actual activities of the employee by means of mobile phones, electronic badges, video cameras, checking e-mail, and Internet and digital technology.
- The importance of training sessions and improvement of professional qualification is growing. In the case of some positions, and sometimes in certain professions, this becomes a prerequisite for employment. Training sessions, improvement of qualifications, and self-education are more and more often organized and performed by the employer, and employees divide their working time between work and training or education.
- The problem of extending the economic activity of people over 50 and hiring them is growing especially in Europe, which is experiencing the aging of the society and loss of stability due to pension systems that are burdened as a result of the demographic change.

- New occupational diseases and hazards, such as stress, the sense of alienation at work, and professional burn-out, have emerged and intensified. They may be related to the use of information technology. The importance of adjusting the working post to the needs of older employees is growing.

- The international crisis of the late noughties revealed the instability of social and economic systems in Europe and the hazards for the competitiveness of European economies, one symptom of which is the threat of unemployment developing and growing.

- Unemployment has become a permanent phenomenon in Europe, and seeking effective forms for counteracting it and increasing employment belongs to the priorities of the EU and its member states³.

Governments and European institutions, social partners, and experts must address these challenges: how to increase employment and employers' willingness to create new jobs? What hazards may be caused by the flexibility postulated by employers as a prerequisite for growth in employment? How to create compromises and address controversies that surround flexible forms of employment?

3. Directions and dilemmas of flexibility – controversies that surround flexible forms of employment

Changes on the labour market entail a decrease in the sense of security among employees who are at risk of losing their jobs or must take into consideration the need to change their place of work and even change their profession. This prompts them to improve professional qualifications or retrain more and more often. They must develop the ability to adjust to new conditions in the labour market – namely, they must learn flexibility. Supporters of this approach emphasize that it facilitates reconciling work and private life, but also involves certain cultural and social changes in the treatment of work. Labour law scholars react to these challenges by searching for compromises between the traditional labour law paradigm and new developments in the labour market.

In the contemporary economy not only employees are to be flexible, as the labour market itself is to be flexible. According to many experts, its flexibility is to be above all a factor that increases employment – both among the unemployed, but also among economically inactive people who constitute a labour force hitherto unused.

From the point of view of employers, flexibility enables a quicker response to the variability of the market environment and better adjustment of the workforce and the structure of employment. Flexibility can be examined in many aspects: as flexibility of working time, as organizational flexibility, as non-standard forms of

³ See J. Męcina, *Wpływ dialogu społecznego na kształtowanie stosunków pracy w III Rzeczypospolitej*, IPS UW, Warszawa 2010, pp. 189 onwards.

work that involve development of forms of employment other than employment contract or self-employment, but also resignation from the hierarchical model of organization in favour of competent teams focused on addressing specific tasks.

The creation of a flexible labour market means not only introducing greater flexibility of labour law regulations, but also enabling the free activity of various public and private entities, ones which may facilitate the flow of the workforce. Economists treat the deregulation of the labour market as something that gives more freedom to business entities and reduces state intervention in the field of collective employment relations. Supporters of deregulation indicate that it means growth in market mechanisms, and thus it improves the functioning of labour markets. They also point to the fact that it is necessary to raise the issue of the new forms of work and employment, which would also require legal adjustments in this respect, in order to deal with the competition and challenges that result from globalization and the modern economy, as well as with the rapid development of new technologies. A significant role in increasing the adaptability of companies – which is necessary in a competitive environment – is to be played by flexibility of employment, working time, wages, functional flexibility related to the organization of work, and appropriate use of the varying qualifications and competencies of workers. The importance of labour market flexibility in the context of changes in the structure of employment should also be emphasized – i.e., the dominant importance of services at the expense of employment in industry and agriculture, and the growing importance of employers who represent micro and small companies in the labour market.

The flexibility of the labour market is assessed based on measures recommended by the OECD and the EU, as well as by experts of the World Bank⁴. These include:

- flexibility of legal protection of employment relations,
- legislation with regard to minimum wage and tax burden on labour costs (the ‘tax wedge’)
- scale and effectiveness of expenses for counteracting unemployment,
- unionization rate and percentage of employees covered by collective labour agreement.

Deregulation of the labour market is supposed to facilitate the development of an appropriate model for economic and social policy and then economic development, and at the same time, the development of human and social capital. The most important effect is the improvement in the balance of the labour market by a decrease in unemployment and growth in economic activity.

However, not everyone treats flexibility as a remedy for socio-economic problems. The demand for the deregulation of labour markets also has its opponents, as the increasing flexibility of the labour market is associated with loss or limita-

⁴ See M. Boni, *Elastyczność i sprawność rynku pracy w Polsce. Elastyczność i sprawność rynku pracy*, Zeszyt BRE Bank – CASE, No. 87, Warsaw 2006

tion of the sense of security, especially where flexibility is perceived as a standard, with regard to e.g., increasing employment burden, the lack of worker rights and guarantees. Some experts point to the fact that the formal and legal mechanisms for regulation in Poland weaken the regulatory effects of the principle of reciprocity. Thus they deny the necessity of deregulation and instead propose introducing effective regulation that takes account of the principles of reciprocity and creates conditions that allow partners (employers and employees) to fulfill mutual obligations. Deregulation may not only reshape employment relations, but may also cause negative social outcomes that will lead to staff resistance.

A dispute has arisen over deregulation as a way that enables reduction in unemployment and growth in the capacity of the economy to create jobs. On the one hand, employees and their representatives, mainly trade unions, have raised the issue of reducing employment protection, increasing the uncertainty of employment and facilitating the use of their greater negotiating power by the employers. On the other hand, employers have presented their demand for greater freedom of operation, more effective use of the workforce and production capacity of their companies, and quick adjustment to changing conditions in the face of globalization of the economy and the international crisis.

How to solve these dilemmas and reconcile the contradictory interests of both groups? Does the concept of flexicurity offer a chance for such compromise?

4. In search of a compromise between security and flexibility

Advancing globalization made the European Union face the need to modify existing models of social policy as early as in the last decades of the 20th century. Thus, in the White Paper by J. Delors, which was concerned with economic growth, competition, and hiring, and then in the European Strategy of Employment, reference was made to the concept of flexicurity as a new idea for combining greater flexibility with security in the labour market. The efficiency and effectiveness of introducing this concept in Denmark and the Netherlands, countries that pioneered labour market reforms, convinced the authors of those documents to conduct similar reforms in all EU member states, though the precise directions of the changes implemented in other EU countries vary among them. Promoting *flexicurity* involves a new approach to social policy by the EU – which assumes that only the compatibility of social and economic policy allows member states to develop sustainably. Hence, this new concept is supposed to contribute to an increase in the flexibility and competitiveness of European economies, with simultaneous guarantees for a sufficient social security level for employees⁵.

Over the coming decades unfavourable demographic tendencies will pose a risk for Europe and Poland, above all in the context of the labour market and public

⁵ J. Męcina, *Niewykorzystane zasoby. Nowa polityka rynku pracy*, IPS UW, Warsaw 2013, pp. 94.

finance. Considering the difficulties on the labour market, growing unemployment, and the need to intervene in the short term, it is worth identifying the strategic labour market challenges and problems which have to be solved in order to achieve long term growth. Therefore, when identifying the problems of the Polish labour market from the perspective of supply and demand for work, we may indicate a number of factors:

- Improvement in human capital quality related foremost to the condition of the educational system and life-long education,
- Increase in economic activity indicators,
- Review of non-standard forms of employment (employment and civil law contracts) and comprehensive changes in working time regulations,
- Consideration of the issue of the cost of labour and remuneration, including the minimum wage, especially with respect to the so-called tax wedge that reduces the chances of employment for disadvantaged groups and generates the problem of informal economy,
- Investment in solutions that aim at improving the efficiency and innovation of Polish companies and the conditions of flexibility and liquidity in the labour market.
- Reform of labour market policy, a matter which is gaining particular momentum in Poland due to structural problems of the mismatch of supply and demand for labour and of instruments for job protection during an economic slowdown.

Solving the aforementioned problems requires a number of measures related to economic and social policy (labour law, employment policy, and labour market policy), and it is difficult to expect immediate changes, in particular owing to the fact that a large portion of those measures result in substantial financial effort and lower tax revenue. On the other hand, achieving the goal of growth in economic activity and the employment rate means improvement in the condition of public finance.

The difficulty in making certain decisions consists in the numerous controversies over such problems as flexibility of employment and the possible scope of employment security, pay flexibility, as well as the amount of the minimum wage, taxation of labour, and the attainable level of social security.

The examples of dilemmas listed above are not only a topic of public debate, but a definite element in the negotiations between employers and trade unions. What is more, these negotiations are difficult, because they have been underway for years, and there is still little chance of reaching compromise soon. In my opinion, in order to appreciate the present scope of flexibility it is worth seeking space for a compromise in the complexity and the complementarity of decisions e.g., by means of constructing a Polish model of *flexicurity* based on a public policy that creates: a space for growth in employment; labour market law that responds to economic, but also social challenges; and an effective policy concerning the labour market, life-long education, and effective social security system.

Table 4. Areas of labour market deregulation

Protection of employment relations and degree of labour market regulation	<ul style="list-style-type: none"> • protection against individual redundancies, period of termination notice • non-standard forms of employment
Organization of work and working time	<ul style="list-style-type: none"> • acceptability of non-standard forms of work organization • accounting periods for working time
Protection against collective redundancies	<ul style="list-style-type: none"> • scope of restrictions concerning collective redundancies • costs of collective redundancies
Minimum wage	<ul style="list-style-type: none"> • the amount of the minimum wage and its relation to the average wage • diversity of employees' age • the regional variations in minimum wage
Level of social security	<ul style="list-style-type: none"> • types and amounts of benefits and availability of these benefits, • maximum period of unemployment benefit collection and its relation to the minimum wage
Rights of trade unions and improvement in effectiveness of the dialogue, especially at the company level	<ul style="list-style-type: none"> • with regard to protection of employment • negotiation and growth in wages • with regard to changes in the organization of work and working time • improvement in effectiveness of the dialogue at the level of a company
Development of effective labour market policy and life-long education	<ul style="list-style-type: none"> • instruments of job protection during an economic slowdown • effective and available assistance in case of job loss • assistance in life-long education in order to improve the employee's situation on the labour market

Source: Own work on the basis of M. Jerzak, *Deregulacja rynku pracy w Polsce Unii Europejskiej*, NBP (the National Bank of Poland), Warsaw 2004; S. Borkowska, *Regulacja rynku pracy w Polsce a polityka gospodarcza*, IPISS, Warsaw 2003, published in: J. Męcina, *Niewykorzystane zasoby. Nowa polityka rynku pracy*, IPS UW, Warsaw 2013, p. 61

5. Increase in the flexibility of Polish labour law

One of the key moves that aimed at making the labour market more flexible was introducing the possibility to use flexible working time to the Labour Code in August 2013.

The changes mean the possibility of extending the accounting period for an employee from the current 4 months, to a maximum of 12 months. As a result, the companies that experience lesser demand for labour in a certain part of the year are not forced to dismiss a portion of their employees. This also includes the possibility to use discontinuous working time and to draw work shift schedules for

a time shorter than the settlement period. Starting and finishing hours will depend only on an agreement between an employer and an employee.

What is important, the new Labour Code still guarantees employees appropriate time for rest. Basic principles concerning rest remain unchanged – the employee has the right to a continuous 11 hours' rest per day, as well as to 35 hours of continuous rest per week. There is still special protection for e.g., pregnant women, parents of young children, and juvenile workers.

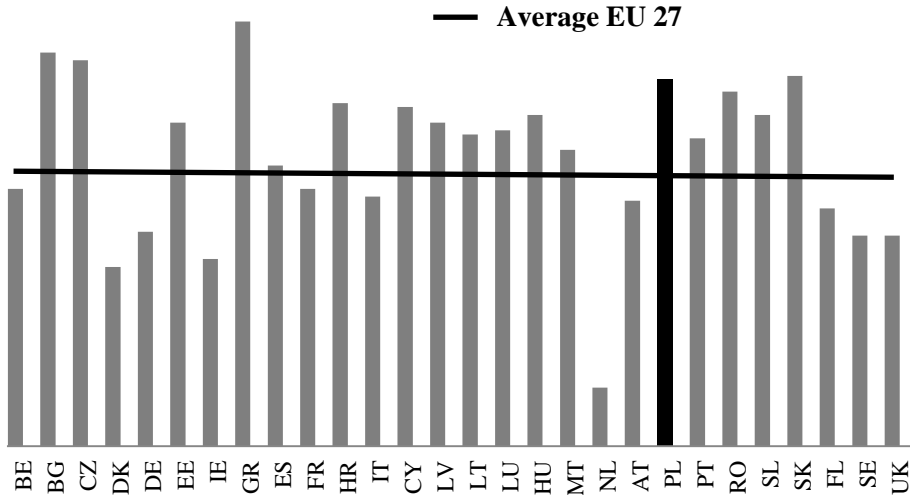
The changes allow interested employers to implement solutions that enable them to adjust working time to the needs of the company, and make it possible for employees to more easily balance professional and family life. What is important, it reinforces the position of trade unions and employees' representatives because the introduction of flexible working time depends on their consent.

6. The most recent changes in the Labour Code with regard to working time

The revision to the Labour Code, by way of the Act of 12 July 2013 on the change of the Labour Code Act and of the Act on trade unions, introduced changes with regard to working time that consist in:

- the possibility to extend the accounting period for working time to a maximum of 12 months,
- the possibility to use so-called flexible working time,
- the extension of the possibility to use a discontinuous working time system,
- the introduction of a regulation that work done in exchange for an exemption from work requested by an employee in writing in order to handle personal matters is not counted as overtime.

These changes will allow employers to organize working time in their companies with more flexibility, which should enable more rational organization of working time and result in the improved competitiveness of companies, and thereby facilitate both preservation of the previous jobs and the creation of new ones.

Chart 1. Average weekly number of hours when an employee actually worked

Data source: Department of Economic Analyses of the Ministry of Labour and Social Policy

The analysis of working time should begin by establishing the number of hours Poles actually work. In 2012 workers in Poland worked substantially longer than the average for the European Union (nearly 40h/week as compared to 36.7 h/week). Only Greeks, Bulgarians, Czechs, and Slovaks work on average more hours per week than Polish employees. When analyzing these results, the question may be asked as to whether the increase in the number of hours worked involves higher productivity.

The extension of the accounting period for working time, no more than up to 12 months, will allow employers to manage employees' working time with more flexibility – depending on the demand for labour in different months. In such an accounting period, seasons of longer working hours will be balanced by times of shorter working hours or holidays, but within the working time for a given employee for the adopted accounting period, pursuant to the Labour Code and subject to other protective measures.

Table 6. Extension of the accounting period

Extended accounting periods according to industry and parties to the agreements (between 23/08/2013 and 12/05/2014)					
Industry	Number of range-ments	Number of agree-ments	Parties to the agreements		
			all trade unions	representative trade unions	employ-ees' repre-sentatives
A. Agriculture, forestry, fishery	0	12	3	0	9
B. Mining	0	11	3	1	7
C. Industrial processing	8	326	55	14	257
D. Energy production	0	5	4	0	1
E. Water supply	0	13	3	0	10
F. Construction	1	98	13	4	81
G. Trade, repairs	2	154	2	3	149
H. Transport and storage	1	31	4	1	26
I. Hotels and catering	1	42	3	1	38
J. Information and communication	0	19	0	0	19
K. Finance and insurance	0	3	0	0	3
L. Estate market services	1	19	5	0	14
M. Professional services	0	33	7	2	24
N. Administration services	0	31	6	2	5
O. Public administration	0	16	2	1	13
P. Education	0	13	6	2	5
Q. Health service and social security	0	35	6	5	14
R. Culture, entertain-ment and recreation	0	16	2	0	14
S. Other services	0	9	2	0	7
X. Indeterminate	0	1	0	0	1
Total	14	887	120	34	733

Source: State Labour Inspection

As demonstrated by the data in the above table, the highest number of agreements was concluded in industrial processing, trade and repairs, and in the construction industry. This means that the proposed solutions have been applied by companies operating in economic sectors that are particularly sensitive to economic fluctuations.

However, flexible working time may be used in two forms, i.e.:

- to determine work shift schedules that provide for different starting hours on employees' working days or
- to determine time range when an employee should start working.

In both forms work started on the same day will not be counted as overtime; however, it will be necessary to comply with the regulations on daily and weekly rest.

The Act provides that both solutions, i.e., the use of an extended accounting period for working time of up to 12 months and the use of flexible working time, will depend on consent from representatives of the staff, i.e., trade union (trade unions) within the company, and where they are not present – on consent from the representatives of employees, elected according to the procedure existing in a given company. What is more, flexible working time may be used at the request of an employee (regardless of whether or not it has been introduced in the company in consultation with trade unions, or representatives of the employees)

Discontinuous working time may be used if this is justified by the type of work or its organization. This system is based on carrying out work according to a fixed schedule that provides for no more than a single break during work per day that does not exceed 5 hours. The break is not included in working time, but the employee is entitled to remuneration for the duration of this break in the amount of half of the remuneration payable for the time of standstill. Previously this could be used only on the basis of a collective labour agreement as a matter of principle. After the amendments, this may be also used on the basis of agreement with trade union (trade unions) within the company, and where such organizations are not present – on the basis on an agreement with representatives of the employees elected according to the procedure existing in the company.

The Act also provides for the introduction of the obligation for employers to draw up work shift schedules to the Labour Code. The working time schedule for a given employee may be drawn up – in writing or in electronic form – for a time shorter than the settlement period, but the minimum time is 1 month. The employer shall submit the working time schedule to the employee at least 1 week before starting work in the accounting period in question. The employer has no obligation to draw up a working time schedule, if:

- 1) the working time schedule for the employee results from the labour law, a proclamation, or from the contract of employment,

- 2) they determine the time necessary to execute any entrusted tasks, taking into account the working time resulting from working time standards in consultation with the employee; in this case the working time schedule is determined by the employee,

- 3) flexible working time is used at the employee's request,

- 4) they determine the individual schedule of working time for the given employee at the latter's written request.

If, due to the distribution of working time in the adopted settlement period, the employee has no obligation to perform work in the given month, they are entitled to remuneration in an amount not lower than the minimum remuneration for the work fixed on the basis of separate regulations. In the case of an employee

hired part time the amount of such remuneration will be determined in proportion to this working time.

As indicated by the data and analysis presented, flexibility is an indispensable feature of contemporary labour markets, and new trends in development associated with the changes in the structure of employment and economy, globalization, and digitalization processes, force adaptation processes. On the other hand, we must not belittle the hazards that are caused by the use of simple flexibility in the economy – for it has an unfavourable influence on the situation of disadvantaged groups, and it creates the phenomenon of working poor, and eventually weakens economic competitiveness by reducing the motivation of employers to invest in human capital over the long run. An alternative form of flexibility is that of flexible working hours, which may be of tremendous importance for stabilizing employment with the simultaneous possibility for companies to respond to changes in demand for their goods and services. From this perspective, the positive impact of the recent changes in the field of working time should be highlighted. What is more, as the data presented indicate, employers approach this solution relatively carefully, and the State Labour Inspection has not revealed significant non-compliance with the regulations in this area.

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FROM INEQUALITY TO EQUALITY IN DISCRETIONARY TIME: WINNERS, LOSERS, AND A MAP FOR THE JOURNEY

1. Introductory remarks

The inequality in society has as many dimensions as there are resources differentiated into valuable and less valuable. In principle, in the case of literally every resource, a determination can be made about who has more or less of it, and based on these distinctions, an assessment can be made as to whether inequality is large or small. How significant an inequality currently is, is connected to the values that are predominant in society. If a sufficient number of people believe that some resource is important, the possession of this resource becomes an important dimension of inequality.

A lot of attention is still paid to economic inequality and its various dimensions. On the one hand, economic inequality can quite easily be measured in this monetary age. On the other hand, this reflects the significance of money in the present day – money is the resource that can be exchanged for other resources, by, for instance, paying for education and healthcare services. Studies have repeatedly shown that meagre economic opportunities are connected to low levels of education, limited social participation, poor health, and weak social cohesion. In this chapter, we focus on the various facets of economic inequality, juxtaposing countries based on their internal inequalities. However, I frame these analyses with a discussion of the new measure of inequality – discretionary time – and I claim that it is this aspect of discretion, of autonomy, of control over one's time that will have to be considered when designing or considering the effects of change until 2050.

It can be claimed that there used to be no special division of time into leisure and work before industrialization, as with the workplace being located at or near one's living space, work, just as leisure, was (potentially) available all the time. With further specialization time acquired certain labels – some of it became considered work, usually referring to paid work for which one left the house and when one always knew when work started or ended; the rest could be considered

leisure, or personal care. Jobs are increasingly time-, place-, functionally-, and numerically flexible, and this may reflect the new norms of risk society (Kal-leberg 2000, 2001, 2009), while one of the reported global effects of the economic and financial crisis since 2008 has been the further expansion of unstable and precarious jobs (ILO 2012).

One could say that the emergence of precarious jobs had been “delayed” in CEE countries, where standard full-time employment was more often the norm: the share of flexible jobs, if measured by the incidence of part-time work, was in 2009 still much lower in CEE than in the EU15 (Aumayr 2010). It might be therefore argued that there was a perceived space for the increase of precarious jobs. Perhaps this was among the last steps still to be taken in CEE retail companies to overcome their “postcommunist” status and get rid of the generous inefficiency of the system (Ost 2009)? “The needs of low-wage workers are met by lower-waged workers” (Coombs 1995) and thus will likely trigger more precarious jobs.

It may be that with the parallel processes of wider time-flexibility (and we are made to believe that everyone needs it), more available place-flexibility (and, the discourse goes, we all would enjoy it), numerical flexibility (that not only employers but citizens of postmodern risk societies would prefer it), growing multi-functionality (which, we hear, should empower us), deepening specialization (leading to longer and lifelong education and training), and involvement in civic society organizations (animal rights, but perhaps also trade unions) all the time becomes the same again, as it will become truly difficult when the working day starts or when it ends – and when one’s personal time starts.

This idea that “we all have those 24 hours, so we are inherently equal albeit some of us less efficient” leads to the next question: when all time is the same, what matters to inequality? Surely, then, our efficiency in making productive use of our 24 hours depends on unequal access to skills and functional flexibility; unequal access to numerical flexibility (or, jobs); unequal access to time and place flexibility; unequal access to security; unequal access to upward mobility; and, in the end, or perhaps to start with, unequal access to money.

During the economic recession the bargaining power of labour decreases as unemployment increases, enabling the easier replacement of the more uncomfortable or just more expensive unionized labour. We argue that meso-level social relations, such as those at workplaces and those at home, transmit and moderate the impact of macro-level institutions and structures on individual actors (Moen 2003; Hagestad 2009). Self-identification, subjective views of own positions and resources as evaluated against those of others (Elder & Shanahan 2006), i.e., perceived (dis)advantage, together with opportunities to secure advantage or to overcome disadvantage mediate impact of structural, cultural and ideological contexts and that of public representations, on the life course choices and subsequent life trajectories (Heinz & Krüger 2001; Roberts 2001). People constantly (re)construct these views, trying to reconcile the shifting social meaning of unequal social locations (Bottero 2004) and the public representations of these locations with their own and their important others’ (real and perceived) life trajectories (Prandy &

Bottero 2000). The impact of subjective views on shaping subsequent trajectories may be even more important than the actual positions and resources (Ferraro & Shippee 2009). Nevertheless, how people feel about (changes in) their social (class or status) standing has been almost entirely overlooked (Marshall & Firth 1999).

2. The significance of the inequality of time

Discussions are constantly being held about the topic of inequality, by focusing on how much inequality is acceptable. Some economists assert that inequality is the motivating force in society that creates opportunities, for instance, for innovation and, over time, for a general increase in wealth. However, others find that society cannot allow great inequality because its price is even greater inequality, especially in cases where the wealth collects in the hands of a small group of people. The representatives of the latter interpretation include Joseph Stiglitz, who has consistently pointed out that GDP is not an adequate yardstick of social success, and has presented empirical and theoretical evidence related to the problematic nature of inequality. He shows (Stiglitz 2011) how inequality has increased in the United States, but this has not resulted in greater enterprise, but rather, incomes have converged, leading, in turn, to greater inequality in fields outside of the economy. More global claims of a similar vein have been made by Göran Therborn (2014).

Economic liberalism, the systematic elimination of regulations and the decline in trade union membership has been accused of causing economic inequality even before the economic crisis, and Stiglitz has not been the only one to do so. When comparing neo-liberal Anglo-American policies with those of continental Europe, where the role of trade unions continues to be relatively strong, it turns out that (Schmitt and Zipperer, 2006) the US model is characterized by the following: a large percentage of the population that lacks social cohesion, which is accompanied by great income inequality, high relative and absolute rates of poverty, low and uneven educational results, poor health and large percentages of crime and imprisonment. At the same time, the flexible labour policies in the US do not support social mobility, which lags behind the comparative European states.

In addition to economists, sociologists and other social scientists have also constantly studied inequality and stratification, and found proof that social inequality damages society and social cohesion. Rather recent studies show that the people in states with less inequality favour democracy more than others do (De Werfhorst and Salverda 2012); inequality primarily reduces the electoral participation of less-educated people, and thereby, causes unequal political engagement (Scervini and Segatti, 2012); people in countries with greater inequality are generally less willing to undertake anything to improve the living conditions of their compatriots (Paškov and Dewilde, 2012). Therefore, it can be said that material

inequality amplifies the differences in the material and emotional resources of individuals (Werfhorst and Salverda, 2012).

Thus, the problem of inequality has been significantly promulgated by economists and social scientists. This topic also occupies a significant place in influential international organizations like the UN and OECD. When speaking of economic inequality, the UN report on economic development (United Nations, 2012) differentiates the following aspects: how great a role labour costs and incomes play in the total production of the state (compared, for instance, to capital gains); how large a proportion of total income is comprised of the highest incomes (the so-called “top 1% of income earners”); and how incomes are distributed among the population, that is, how many people’s incomes fall below the poverty level. Besides these indicators, which directly describe income equality, attention is also directed at wealth and material inequality. In this connection, other related topics are the inequality of land and capital ownership, and access to the education that enables greater incomes. The dimension of gender inequality is also dealt with separately – this indicates how external circumstances, which individuals cannot influence, affect their possibilities for earning income. Therefore, for the purposes of examining social equity, a differentiation can be made that is related, on the one hand, to the “inequality of access,” or whether people have similar or differing opportunities for earning a living, and on the other hand, to the result of that inequality, which is expressed in actual differences in incomes (Plotnik, 2008).

The focus in this chapter is on the equality, or inequality, of the results – income inequality and the working poor. It would undoubtedly be important to add an ethnicity-based analysis or gender-based analysis of income inequality; however, the comparative data in this regard is difficult to collect, for various reasons, and therefore, it will not be included.

The main sources for the statistical information are international organizations, primarily the Organization for Economic Co-operation and Development (OECD), the United Nations (UN), and Eurostat. In addition, data from the Social Inequality Survey, organized by the International Social Survey Programme (ISSP), is included (ISSP Research Group, 2013). This comparative survey, which is based on a uniform methodology, was conducted in 40 states around the world, including Estonia, and the data collection lasted from the autumn of 2008 to January of 2012 (in most states, the survey was conducted between 2009 and 2010). In each state, a representative sample was surveyed, which means that between 900 and 3,300 people were queried in one state (in most of the states, the number of respondents was about 1,000). Attention should be paid to the fact that, despite the careful harmonization of the methods and principles of data collection, the questions may mean different things to respondents in different social contexts. Therefore, in the case of surveys with such a global reach, it is especially important to try and interpret the results based on the economic and social environment of the specific state in order to better understand the background of the international differences.

In my earlier research (Roosalu 2008; 2012) I found that Estonian children often enjoy their mothers' dedicated attention throughout their first years, but after the mother returns to the labour market the child is in paid childcare full-time hours, in fact the longest in European by comparison. Part-timing is very rare in Estonia; however, with full-time working schedules, just about a fifth of mothers of preschoolers want to change their work-life balance to get more time for children. In this context, it does not come as a major surprise that Estonian parents employ rather passive strategies in mediating their children's internet-use, together with a number of other post-socialist countries. Paid work likely takes most of attention whereas parenting gets what is left of it. In order for the parents to dedicate themselves to their professional lives, parental trust towards public childcare is implied. The centrality of paid work evident from the dominant practices is also reflected in the academic discourse on paternity leave: compared to normalizing male full-time work career path for women, minimum attention is paid to other agendas (Roosalu, Pajumets, Hansson 2010). Even with the long tradition of high employment rate among women, the labour market chances of women are rather different from those of men – while they are more successful in obtaining higher occupational positions formal credentials and when formal hiring procedures are at work (Kazjulja & Roosalu 2011).

Based on my previous findings I was able to conclude the suitable work-care arrangements in sharing childcare tasks between the society and individuals have been achieved in post-socialist Estonia, and the dominant patterns emerge clearly. However, this is in the context of both parents' and children's long working days and the stated dissatisfaction with long working hours at the expense of caring by about 20% of mothers and 10% of fathers. It is debatable whether the further treatment of labor as a commodity, now voluntary in nature as far as the norms and common practices allow, and colonizing the life-world by system integration instead of social integration is not going too far. Yet there is no clear notion of when 'too far' is reached; suffice to say, then, that measured in the cumulative time outside of paid labor, or in discretionary time, the considered post-socialist society is disadvantaged compared to many others, regardless of childcare provision. However, since work is a meaningful category, why not leave the attached importance to paid employment in the labor market?

The fundamental distinction among Esping-Andersen's "three worlds of welfare capitalism" (Esping-Andersen 1990) is the level of de-commodification – that is, the degree to which individuals need to rely on work to ensure their livelihood. "To understand the concept, de-commodification should not be confused with the complete eradication of labor as a commodity; it is not an issue of all or nothing. Rather, the concept refers to the degree to which individuals, or families, can uphold a socially acceptable standard of living independently of market participation. [...] When work approaches free choice rather than necessity, de-commodification may amount to de-proletarianization" (Esping-Andersen 1990). So de-commodification becomes the true enabler of deproletarianization and can, we are to believe, become the source of flourishing for the individuals and their societies alike. An-

derson & Hipp (2009) explain that Esping-Andersen's argument implies that de-commodification truly liberates – that is, it enhances workers' relative power vis-a-vis their employer and the dictate of the market. The labour *market* is proof of *Gesellschaft* (Tönnies), of profit-making (Weber). The very fact that labour is marketed, that there are those who sell and those who buy labour, has in its core the notion that the first have in excess of labour, and the others lack it, and they are in position to want or need to perform the exchange (see further Marx 1867; Marx 1859, esp. Part I The Commodity). As such it refers to the commodification: transformation of goods and services (or things that may not normally be regarded as goods or services) into a commodity. As Polanyi (2004) has explained, things that normally (by nature) are not goods or services includes money itself, human beings, and the natural environment. Marx extensively criticized the social impact of commodification warning of alienation. So, thinking of the labour markets' commodification of labour is assumed and normalized. The common practice of not seeing alternatives to labour markets could be understood as a result of normalizing, self-assuring discursive support for commodification.

My argument argues that instead of one clear view, a two-way interpretation is possible for the case of the (Estonian) post-socialist labor market.

The first interpretation should consider empowered workers, men and women, who are working towards and managing to achieve their preferred work-care balance. Their empowerment could originate from the socialist (and pre-socialist) past of society, about which at the rhetorical level I emphasized the value of selfless work to contribute to the common good of the society and thus dignified work and workers. On the other hand empowerment may be (more indirectly related to the socialist era) originating from the high level of education among the population, with gender-universal labor market participation and accompanying public childcare to enable gender-neutral work patterns for parents. This would support the understanding of work as a central value in those societies and the good compliance between the popular views with the generally European (if not global) aims of the 'work first' principle (Bruttel and Sol 2006). To develop this argument further, one could expect that in post-socialist societies 'work' is the more important element in the notion of 'paid work', because the respect for work and the belief that work is the source of dignity. The informal sphere with unpaid work to supply one's own needs, or these of one's social network, accounts to be quite extensive even with the dedicated commitment to labor market, as was shown in my research by the importance of social networks to find a job. This makes me wonder whether Estonian society – and possibly other CEE societies with socialist background – is more likely than others in the EU 15 to reach the state where labor is taken out of market (Polanyi, 1967:251). Michael Burawoy (2003) has suggested "the postcommunist age calls for a Sociological Marxism that gives pride of place to society alongside but distinct from state and economy", reminding the reader of two distinct approaches in the tradition of thought: for Gramsci advanced capitalism is marked by the expansion of civil society, which, with the state, acts to stabilize class relations and provide a terrain for

challenging capitalism; for Polanyi expansion of the market threatens society, which reacts by (re)constituting itself as active society. This *society*, which has room also family and is distinct from economy, still needs to be made space in the postsocialist countries I studied.

The alternative explanation to what we see, though, would be one of the disempowerment of the workforce by the neglect of the values ideologically promoted during the socialist era. This has occurred since the change in the social order to democracy and the introduction of neo-liberal ideology implemented the capitalist system relying on the concept of a free-market economy. Labor, like all other commodities in the market, now has a price. Demand for labor is no longer dependent on system-level planning, but on the decisions made by each capitalist employer. The structural collapse of whole industrial sectors and especially the dissolving of trade unions as being institutions from the socialist era meant the bargaining power of individuals in work relations with employers weakened to the extent that they ended up in entirely unbalanced power relations. This way, no matter how difficult the work conditions are perceived to be, they are perceived as reality, not only because of the impossibility of negotiating better conditions with employers, but also because unemployment and generally perceived similarities between employers imposes mobility restrictions. Consequently, there is little hope that conditions elsewhere might be different. In such a way, paid work is central to people's lives and their minds because no alternatives are perceived for coping in a commodified society than work. This disempowerment-thesis is widely supported by scholars of post-socialism (Dunn 2004; Ost, 2005; Kideckel, 2008; Mrozowicki, et al, 2010): in Central and Eastern Europe, the assumption that workers were not able to act as reflexive citizens was used in the liberal discourse to symbolically exclude them from the public sphere and to define their unions as a dangerous illiberal force.

Most likely, there is some polarization within the workforce into those two groups. There are probably women who are pushed to parenthood rather than pulled, most likely in search of identity other than job-related. This search for identity is shown to be the case in Eastern Germany in the analysis of entrance into parenthood of the 1971 cohort (Mayer & Schulze 2009), while in Western Germany it seemed those who took up the quest of parenting, were pulled by the many perceived benefits. If, however, having a child is another initiation rite in becoming an adult, the importance of children to their parents' identity is, again ambivalent.

The two interpretations clearly stem from contrasting origins and need very different data from that used in this research to reveal the inner logics.

Theoretically my point is that social democracies, as found in Norway (and elsewhere), have participation in the paid labor market among their core values, which does not provide an escape from commodification. Post-socialism in the Estonian way follows a similar pattern. However the similarity comes from a different tradition where parents and children spending long hours in the system, rather than the life-world, is the norm. Considering the impressive ideological consensus

on the centrality of paid work in the examined subgroups, which might have other interests due to their parenting obligations or studies, researchers make a couple of claims. Either there is not enough flexibility in the dominant paradigms for the individual social practices to emerge in a different way, or they are employed by a very few researchers, so as not to appear in the empirical data, or in the research designs. I would suggest that considerable *flexibilization of the work and care regime* in Estonia is required. Flexibility would accept and appreciate the child-care that both fathers and mothers can provide without causing long-term consequences for either their careers or family lives. As Aboim (2010) argues the struggles originating from full-time work in dual career families and parenting, as well as those of single-parenting, conditioned by markets as well as hegemonic visions of masculinity and femininity, need not be perceived as natural and inherent. As Goodin et al. (2008) show, the extent of inequality in discretionary time available to individuals is precisely the aspect that the welfare system could target by providing security for a decent life irrespective of involvement in paid labor. This would make available more child-care time at the discretion of individual choice. The issue of institutionalizing care refers to a certain fear for bureaucratization and further colonizing of the *life-world* by the system, to use the terms of Jürgen Habermas (1981/1987). The process which Habermas perceives as the rationalization of society in the framework of communicative competence may have a normatively negative value. In contemporary society, communicative competence becomes suppressed by the way in which the major domains of social life, such as the market, the state, and institutions have been given over to, or taken over by, instrumental rationality. The extent to which childcare is outsourced from the family to the system may thus pose a question of desired quantity from not only individual or family perspective, but also from the perspective of society at large. The issue about outsourcing care (see Ehrenreich and Hochschild 2003) becomes especially relevant when care for and after children is considered.

To what extent can care be treated as a commodity, and what are the implications for a child – if any – when parental care is replaced with informal care by a babysitter, a nanny or an *au pair*? What about replacing it with formal care in a public or private *crèche* or kindergarten? What about the implications for the parent, whose parental care is replaced by someone else? Such questions may be difficult to pose and to answer: they cannot be posed, if there is no choice between one and the other because of perceived informal or formal norms, or because of instrumental needs or wants. Even if they are posed, the questions are difficult to answer given the multiple contradictory and enforceable effects that influence any given action or their results in society. The most society can do, as Catherine Hakim (2000) argues when developing her *preference theory*, is acknowledge that individuals may indeed have different preferences regarding their work and aims, and provide individuals with opportunities to fulfill their individual aims as widely and freely as possible. Hakim suggests that in a society with a clear dominant value the perceived (sometimes actual) freedom of choice by each individual in terms of concentrating on either or both career and care, or reconciling both, is

much lower because of the poor standard of alternatives on offer. As argued by Goodin and colleagues (2008), the concept of discretionary time, or the time remaining to an individual after *necessary* time – in terms of earning, caring for others or themselves – is deducted, should be used to measure individual freedom and therefore individual welfare. Goodin et al. (2008) argue that where the state can intervene is the extent to which individual freedom can decide over their own time is guaranteed. Rather than posing the normative question of what individuals should do in their discretionary time, the core suggestion of Goodin et al. (2008) is that people in a society should initially have an equal amount of such discretionary time. The public sphere or social networks should then take care of those whose *minimal necessary* time investments are larger than the average because, for example, they have care obligations. 24 hours deducted from the time one has to spend on something equals the time at one's own discretion (Goodin et al. 2008), but this is certainly dependent on cultural and subcultural norms about things like how long is it ok to sleep/not to sleep; how clean does one's house have to be; does one have to have a house; what about the kids; and is one still expected to stay married if one doesn't care to anymore. These beliefs represent the country's institutional setting, but also then make clear that for each society it can be calculated based on national time use survey data on how much time is needed for one's personal care that can't well be outsourced (bathing, eating, sleeping...); other necessary activities (cleaning, cooking, laundry, bathing kids, feeding them, ...); and paid work, in order to provide for household. These calculations will be made for various types of households (e.g., couple with no kids compared to single parent with two kids) and considering various types of jobs (e.g., good/bad).

Such kind of “freedom is all” approach does really not worry much about *preferences* or *money-rich-time-poor* who should have (at least in theory) the chance to choose, and their own bad choices are still their own choices. Instead, the discretionary time approach does worry about *time-poor-money-poor* – if one did not have choice, they should not be held responsible, and in this case, the system should step in to widen the capabilities for their agency (see Hobson 2014).

On the other hand, this approach considers that there's the national standard threshold of “normal”, but nevertheless, the overall level of necessary and acceptable income would be such to provide the minimum standard of living, although culturally adjusted. If one does not actually need all the money they earn to secure that level of living, the approach assumes one could always cut the hours and thus the extra hours they work really are discretionary, even if they do not feel like that. However, the approach does acknowledge there are those who absolutely do need more money than they currently earn, and who do work full-time or more (*working poor*), or would work if they could (*work poor*), or they can't work as there are other needs to tend. In this paper, I concentrate on discussing discretionary time from the point of view of working poor and income inequality.

3. Income differences and people's assessment thereof

Examinations have been made of social stratification and, changes therein, in the transition states (Evans, Kelley, Kolosi, 1992; Matějů, Večerník, 1999; Evans, Kelley, 2004; Saar, 2010; Saar, 2011), and these reflect the different aspects of inequality and their changes in time. The analyses show that, by the end of the economic boom, Estonia had become a society with greater inequality. Although, in the dominant ideology, an attitude prevails that inequality is a characteristic feature of a market economy, a large part of the population does not share this position. From the viewpoint of social justice, it can be said that the Estonian society's sense of fairness has been offended (Plotnik, 2008).

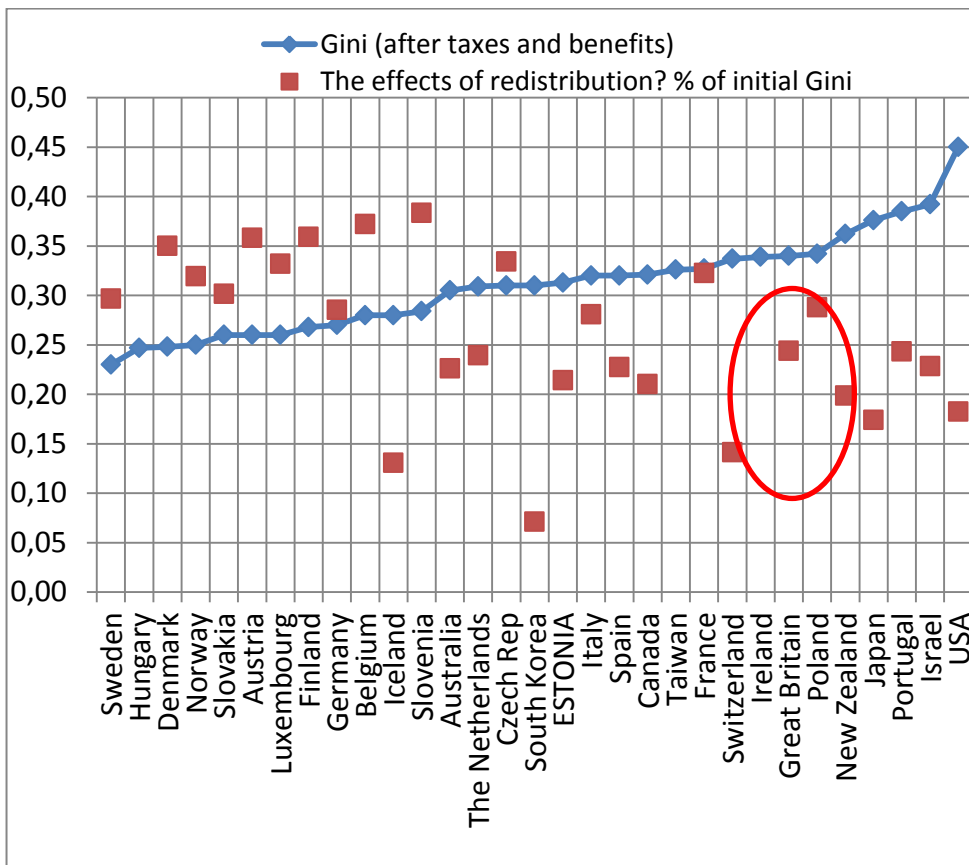
A thorough overview of the income differences, starting at the beginning of the transition period, is included in the 2009 Estonian Human Development Report (Paškov, Kazjulja, 2010), and there is no reason to include the entire time series here. However, let us recall that the Gini coefficient, which shows income inequality, increased between 1989 and 1995 from 0.277 to 0.396, and remained high for 10 years (0.358), and then decreased to 0.309, by 2007. Therefore, income inequality has demonstrated strong growth in Estonia, but started to decline somewhat once the economic boom ended. What happened during the economic crisis?

In order to give substance to these numbers, it is useful to look at the variance of the Gini Index by state. The Gini Index value is between 0 and 1 – with 0 being a totally equal society, and 1 being a totally unequal society. The difference in Gini indicators, for the European states, remains within 0.16 points, which shows that, although various policies may be implemented in a space with similar cultural, social and political traits, generally, there is little difference in inequality. Costa Rica, Chile, and Uruguay are also very similar, as are Singapore, Mexico, and the US. The inequality in these Asian and South American countries is greater than in Europe.

Income inequality is measured more exactly in two ways – income is differentiated before and after social transfers. First, the differences in market-based income are measured, which depend on whether the person works at all, on pay differences, the number of family members being supported, etc. In order to level the differences resulting from the labour market and the nature of the household, most societies provide a social protection system, which also includes the payment of supports and benefits to the weaker members of society. Therefore, it is useful to measure the differences in incomes after social transfers, i.e., after deducting taxes and adding social benefits, pensions, etc. At the end of the 2000s, among the European states, Sweden had the lowest indicator for income inequality after the taxes and benefits in the Gini Index (0.23). The indicators for Denmark, Norway, Hungary and Slovakia were also low. Incomes were more unequal in Portugal (Gini value of 0.39), and a similar situation existed in Israel, Japan, and New Zealand. Of the states being analyzed, the greatest differences in income were in Chile, Mexico, Costa Rica, Singapore, and Uruguay, where the Gini Index value is close to 0.5. In regard to its income inequality, Estonia tends to be among the

states with greater inequality, like Spain, Italy, Greece, France, Ireland, and Poland. Compared to the other European states, Estonia is characterized by the limited effectiveness of our social system in the reduction of inequality. The social protection effect in Iceland and Switzerland, as well as in the Republic of Korea and Chile, is even smaller than Estonia's. The situation in Japan, the US, and New Zealand is similar to Estonia.

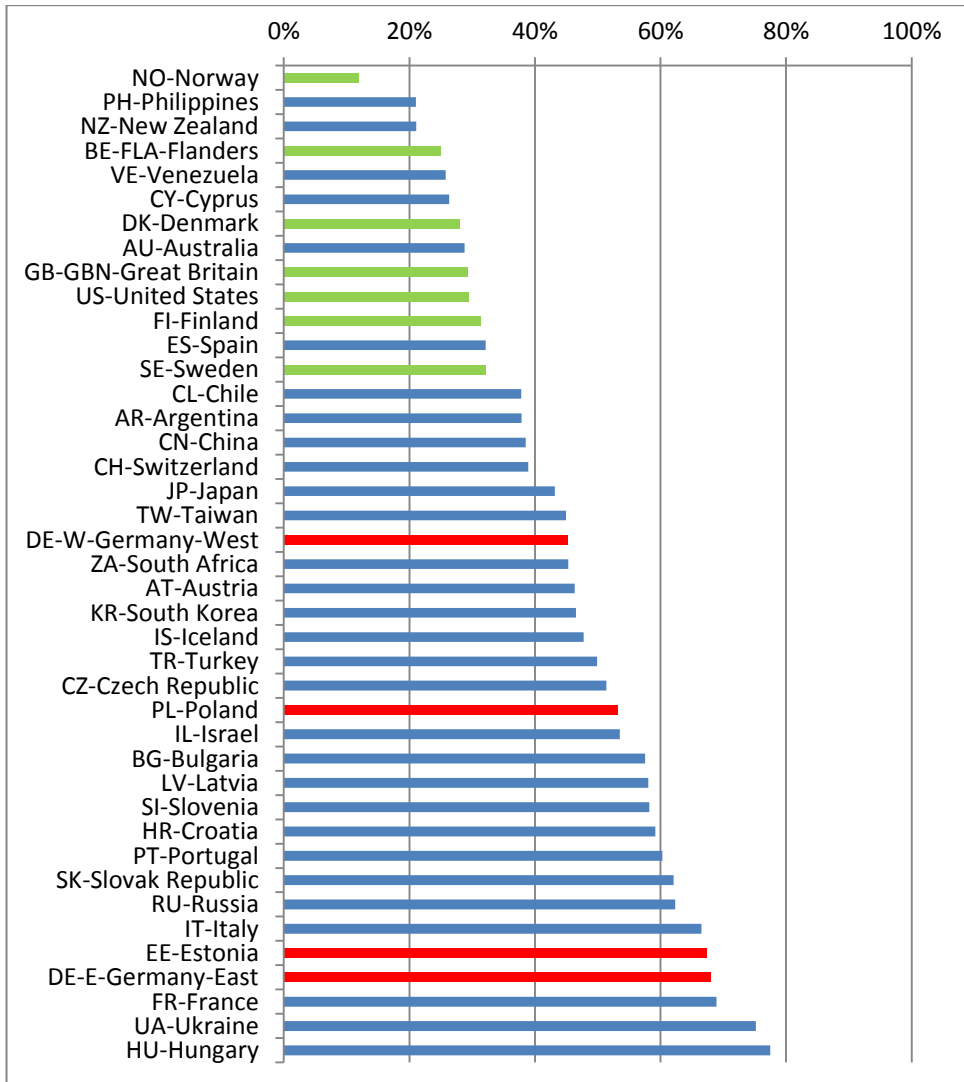
Figure 1. Income inequality after social transfers (measured with the Gini coefficient) and the relative importance of the transfers in the reduction of inequality (what proportion of the initial inequality was reduced by transfers)



Source: CIA Factsheet 2012 (CIA 2012), OECD online database Social Inequality (OECD 2012)

Along with the inequality determined on the basis of these objective criteria, the population’s subjective sense of equality is also important. The interpretations and explanations of the extent of inequality indicated by various surveys allude to the importance of subjective assessments and perceptions, and its significance for Estonia has also been shown (Lindemann 2011).

Figure 2. The percentage of the population that agrees strongly with the statement that the differences in income in the state are too large



Source: ISSP 2009 survey, author’s calculations

Above, we examine how the populations assess the level of inequality that exists in reality. These assessments originate from a survey (ISSP Research Group 2013) conducted between 2009 and 2010 in 40 states. The respondents were asked whether they agree with several statements, which included: *Differences in income [in our country] are too large*. The respondents could choose between four possible answers: 1 – strongly agree, 2 – agree, 3 – neither agree nor disagree, 4 – disagree, 5 – strongly disagree. The answer *can't choose* was also possible. The following diagram includes only the data from the respondents who chose “strongly agree”.

It turns out that two-thirds of Estonia's population considered the income differences to be too large, which in the comparison of states is a remarkably high indicator. Of the post-Communist states, an even more critical attitude than Estonia's was found in Hungary, Ukraine, and also East Germany (since it was an opinion poll, it was considered important to differentiate the data for the states that had belonged to the Eastern bloc, i.e., for East Germany and West Germany separately). The dissatisfaction indicator in West Germany is considerably lower (less than 50%), which indicates how the previous social experience has affected the perception of inequality.

It should definitely be taken into consideration that the survey was conducted at the same time that the economic crisis occurred, which may have caused the assessments of the respondents to be more negative. However, in 1999, the same survey was carried out in 26 states, and based thereon, it can be said that the economic crisis was not the most important factor shaping the attitudes of the respondents. Namely, it turns out that, in some of the states, the opinions were considerably more negative than ten years earlier (e.g., Bulgaria, Slovakia, the Czech Republic, Russia, and also Norway); however, in others, it was considerably more positive (e.g., East and West Germany, Hungary, Poland, Cyprus, and France). The attitudes were stable in Iceland, Sweden, and England. Therefore, it can be concluded that the impact of the global economic crisis is reduced by the developments in the specific state, for example, the inequality within the state.

One can surmise that behind these negative assessments are people's good opportunities for comparing themselves with other states, and they choose to compare themselves with the more successful ones. It also seems that in the states with smaller differences in income, there are few people who assess inequality to be extremely large. The exceptions are New Zealand, the US, and Great Britain, where the differences in income are quite large, but few people consider them to be too large. All three of these countries represent the liberal welfare model, where greater emphasis is placed on the equality of opportunities, rather than on results, and therefore, the public tolerates greater inequality of results.

At this point, we should ask, if the equalization of incomes in Estonia is too slow? Sometimes this is what causes dissatisfied attitudes in society. Analyzing (1) the changes in the Gini coefficient from the mid-1990s to the mid-2000s and (2) the changes in the Gini coefficient during the global economic crisis, in the second half of the 2000s, we have to rely on data originating from the different

states in different years (OECD, 2012b), and therefore, the temporal designation is general, differentiating between the beginning, middle and end of the decade. Therefore, at the moment of observation, all the states are, actually, not at the same distance from the end of the Communist regimes and the economic crisis/crises. Yet, the data demonstrates that the capability of the states to reduce inequality differs over time. However, it is worth considering that the smaller the initial inequality of the state, the more room there is for the inequality to grow, and vice versa. In most cases, reducing or balancing inequalities requires great changes in the society – either long-term economic growth or decline; changes in the taxation system and reorganization of social transfers; restructuring of the labour market and economy, etc. Therefore, it is important to interpret the data within the context of each national context – and this paper is not setting out to do that.

4. The working poor in statistics and people's assessments

Several sources provide an overview of the income inequality and poverty in Estonia (Toomse, 2007; Kutsar, 2010; TAI, 2010; Nimmerfeldt, 2012), so that we will not pause here for long. Below, we focus on a special form of poverty – the working poor. Some tend to explain poverty by saying that some people just do not want to work, and if they do not contribute to the production of social benefits by paying taxes, they have no right to get support from the society. Nevertheless, there are people who have such low-paying full-time jobs that their wages do not help them get out of poverty. These people are called the working poor. How large is the proportion of the working poor, by state, and how many people in each state feel that they are being paid less than they deserve?

Answers to the first part of the question are provided by the EU-SILC pan-European income survey. The “working poor” are defined as the people who earn 60% of the state's median income, also taking into account social transfers (pensions, benefits, etc.). It should be considered that this indicator does not measure wealth or poverty, but how low the incomes are, compared to the other residents of the state. Thus, this is a relative, not absolute, yardstick.

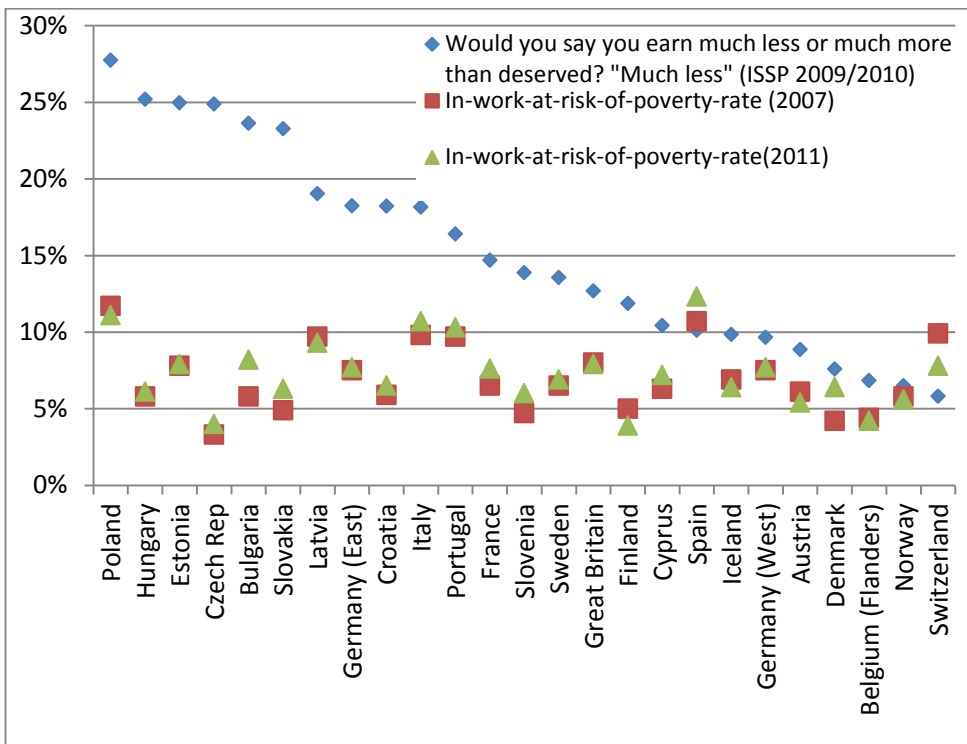
However, for an answer to the second half of the question – how many people in the state feel that their pay is unjustly small – we turn again to the Social Inequality IV survey (ISSP Research Group, 2013) conducted between 2009 and 2010. The respondents were asked, *Below please assess your pay. Would you say that you earn...* 1- much less than I deserve; 2- less than I deserve; 3- what I deserve; 4- more than I deserve; 5- much more than I deserve. Some dissatisfaction with pay is not necessarily problematic; therefore, in the following analysis, we will only include those who assessed their pay to be *much less than I deserve*.

From the following diagram, it turns out that the percentage of people who are not saved from poverty by working is between 3% and 12%, depending on the state. This indicates quite a large difference, despite the fact that the state's medi-

an income was used for the calculation, so that the proportion of working poor is basically similar. In the course of the economic crisis, the percentage of working poor has increased in about half the states, while in some it has remained comparatively the same. In Switzerland, Austria and Finland, the number of working poor declined during the crisis. The situation in Estonia is illustrated by the fact that, although the proportion of working poor is quite large, it has remained practically unchanged during the economic crisis.

Although the states differ, based on the number of actual working poor, this variance is relatively small compared to the differences in the perception of justice (see Figure 3).

Figure 3. Ranking of states based on how large a percentage of their workers find that they get less pay than they deserve, and the percentage of working poor in the European states before the global economic crisis (2007), and during the crisis (2011)



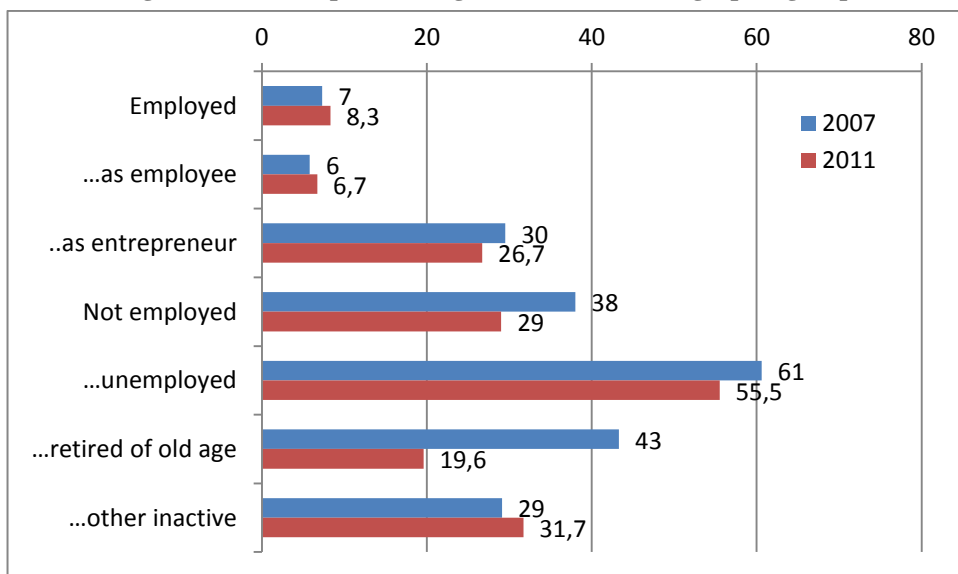
Source: ISSP 2009 Social Inequality; Eurostat.

It is clear from the diagram that Estonia is among those at the bottom of the rankings, that is, about a quarter of the workers in Estonia feel that they definitely deserve higher pay. A great proportion of people feel this way in Hungary, Poland, Ukraine, and Russia, as well as in Chile and Argentina. In these states, the

people feel that they are being treated unjustly, since they do not get paid what they think they deserve. The workers in Norway, Denmark, Switzerland, Belgium, and Austria take the position that they receive less pay than they deserve, considerably less frequently. These states are characterized by a high standard of labour relations, which means that managers and owners have a respectful attitude toward the needs and expectations of their workers. On the other hand, greater dissatisfaction is also based on the state's generally poorer quality of life and wage level, which characterizes Eastern Europe and South America. Information about the wage levels and working conditions in other states is readily available, and the possibilities for the workers themselves to move, are also uncomplicated. Nevertheless, the studies assert (Magun, 2013) that the transparency of the pay system, and the merited recognition of the worker's contribution, are of decisive importance in both the growth of the gross domestic product (GDP) and the accompanying increase in the wage level.

A look at the cross-country comparisons, of course, does not do justice to the story of individual winners and losers – or, groups more or less likely to end up with the least means – within each country, as discussed by Göran Therborn (2013). For example, when looking at the composition of Estonian data on poor, it was about 8% of the employed – and about 30% of those not employed – who qualified as below poverty line (see Figure 4).

Figure 4. Share of poor among various socio-demographic groups



In addition to those socio-economic groups, certain ascribed groups are more likely to end up in time-and-money-poverty than others. These often involve representatives of immigrants, of women, the disabled, and those outside of prime working age. The extent to which any of these groups is subject to such disadvantage is related to the national context; empirical evidence demonstrates that certain group may be much more disadvantaged in some societies whereas in the others the same group may enjoy certain privileges. However, the national accounts of discretionary time inequality should carefully consider all of the groups relevant to the specific national context, and specifically take account of the intersectionality and cumulative (dis)advantages.

5. The power of trade unions to counteract precarious employment

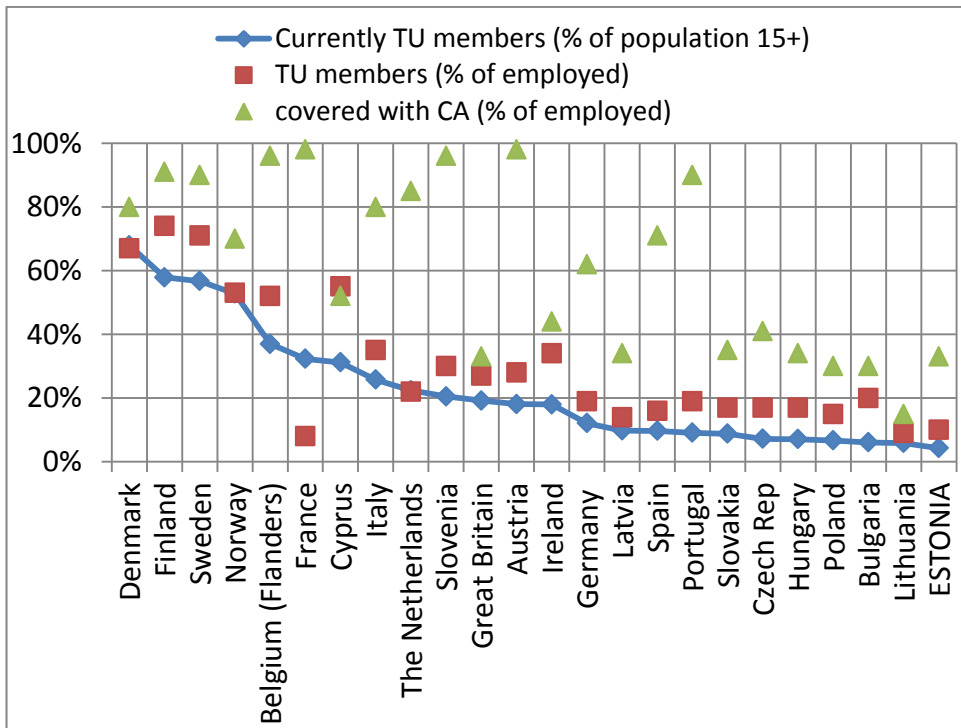
The cyclic nature of economic development in labour markets suggests that during the times of economic crises, the bargaining power of labour decreases as the increasing unemployment enables employers' easier replacement of more expensive, often unionized employees, who have full-time, 'standard' employment contracts. In compliance with this, one of the global effects of the economic and financial crisis since 2008 has been the further expansion of unstable precarious employment as a result of state-led policies relaxing employment regulations and austerity measures adopted in the private and public sectors (ILO 2012: viii). Precarious employment (Kalleberg (2009: 2) is 'employment that is uncertain, unpredictable, and risky from the point of view of the worker.' It can be suggested that the emergence of this kind of jobs has been 'delayed' in Central and Eastern European (CEE) countries, in which standard full-time employment was more often the norm as a result of their socialist legacy. For instance, the share of temporary and part-time jobs in the commerce sector was in 2002 still much lower in the prospective New Member States of the EU than in the EU15 (Caprile 2004). It may therefore be argued that there was some perceived space for increase of precarious jobs in this and other sectors. Following the argument on postcommunist in-excess labour (Ost 2009), one could even go as far as to claim that the emergence of precarious work was among the last steps still to be taken in CEE companies to overcome their postcommunist status.

Still, this 'last step' was not inevitable, and depended somewhat on the trade unions' response to the expansion of precarious work. Tendencies towards precarization were accelerated by the economic crisis – but their scope was mitigated by existing industrial relations frameworks (Mrozowicki et al. 2013). For example, in the case of retail sector employee representation and collective bargaining are generally less developed than in other sectors but precarious jobs are widespread (Georg, 2011; Grugulis and Bozkurt 2011). The existing comparative research suggests that retail sector employers are prone to utilize non-standard employ-

ment in response to increasing cost-driven competition in the sector. The forms of atypical employment (e.g., mini jobs, part-time employment and temporary agency work) reflect the loopholes in the labour market regulations in a local context (Carre et al. 2010: 214). It is also clear that the same processes hold in CEE, although not in such a scope yet (Mrozowicki et al. 2013), despite the further expansion of non-standard, precarious employment during the economic downturn in various institutional settings in CEE.

The data shows that countries – and their populations – are very differently situated as to how useful they can expect their trade unions to be in collective bargaining (Figure 5).

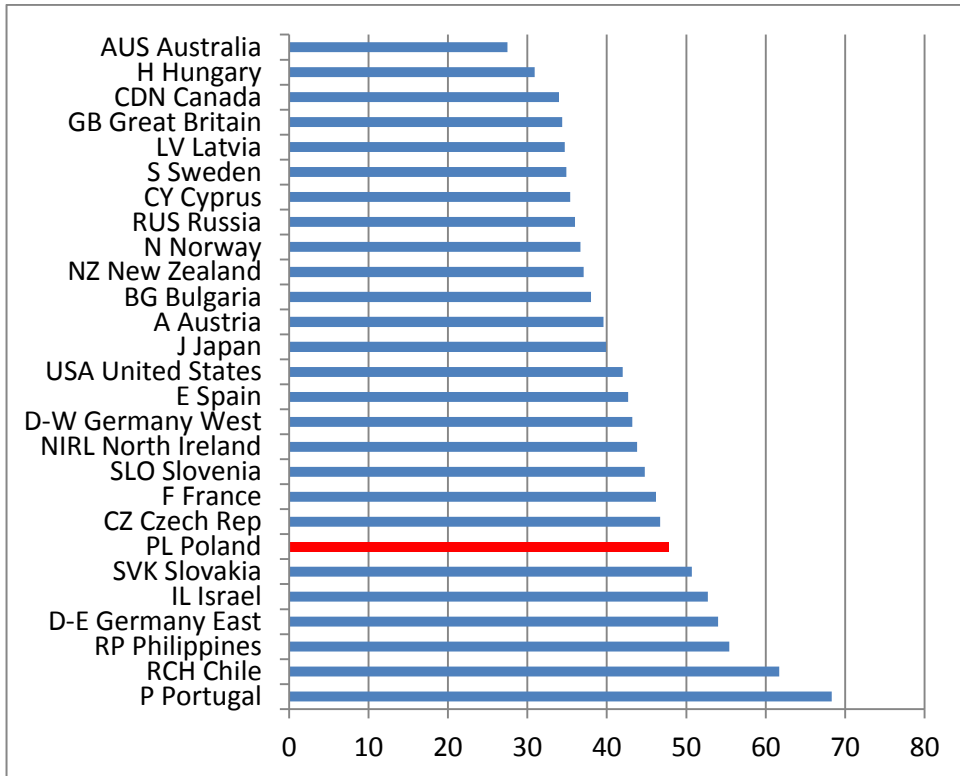
Figure 5. Trade union membership and coverage by collective agreement in selected European countries



It is clear that while it is the social-democratic Scandinavian countries that have the largest TU participation, in many CEE countries the TU membership is exceptionally low. However, there are some other systems – such as France’s – where membership as such is quite low, but coverage by collective agreements is still rather high, which fact points to the TU power. Thus, as a body of empirical evidence demonstrates and theoretical literature discusses, countries differ a lot in their bargaining contexts.

As an aspect of the context is also the popular belief in unions, the next figure presents the data with the agreements with the statement “Income inequality exists because of the lack of unions” (ISSP 1999).

Figure 6. The percentage of the population that agrees or strongly agrees with the statement that the income inequality exists because of the lack of unions (ISSP 1999)



Source: ISSP 2009 survey, author's calculations

In most countries, there is a significant share of people believing that income inequalities could be fought with if unions worked on this, or worked harder, or were stronger – in a word, existent rather than lacking. The craving is significant in the CEE countries, and almost 10 percentage points higher in Eastern Germany than in Western Germany; but in general it is clearly relevant in the countries considered.

According to Hall and Soskice (2001), one of the key characteristics distinguishing liberal and coordinated market economies (LMEs and CMEs) is the degree to which skills are jointly financed and owned by the employee and the employer: in CMEs, workers' skills are often jointly “owned” by the employee and the em-

ployer, because generous unemployment benefits and stringent employment protection guarantee income stability and long-term employment relationships, which make it less risky for both parties to invest in or acquire firm- and industry-specific skills. In absence of these regulative employment institutions, as it is the case in LMEs, however, firms are reluctant to invest in training because their employees may be poached by a competitor and employees prefer to acquire skills that are of universal use and not specific to a particular employer or industry. Where is the worker more free to choose – in CMEs, or in LMEs? Regardless of our answer – which, I wish to emphasize, cannot be given until the ruler for measuring freedom that de-commodification implies is set – the discussion, while paying attention to the within-country processes of inequality, overlooks the cross-country or international level processes.

Considering European experience, the principles of free movement of capital and labour has meant that employees with lower competitiveness or lower protection, but also those with stable jobs and high skills may seek better jobs in other countries – or at least envy the standards or pay offered in those. The common European labour market creates new opportunities both for multinational and local employers as well as mobile citizens and their stay-behind families. In so doing, however, it questions the relevance – or, rather, the capacity – of any single national context with its tailored institutions of education and labour market in inspiring, guiding, and supporting its citizens.

In conclusion

The worry in this paper was around discretionary time, but instead of comparing actual hours at hand by certain groups, I decided to look at the chances and perceptions of the one group the societies should be most embarrassed about: their working poor, that is, people who work full-time but nevertheless fall into the category of income poor; and people who feel their income is much lower than they really deserve.

Following Max Weber and his interpretation by Richard Swedberg one could claim, that profitmaking as a general principle of arranging society is more characteristic of a liberal market economy, while any attempts for a socialist, and social market economy, can be rather viewed as a sign of householding principles in dominance. Sure, it seems the meeting of everyone's interests is in principle prioritized over individual profits in social democratic systems, which rely heavily on the public sector-based redistribution of incomes, while in a liberal market economy individuals are protected by their individual resources and individual social networks rather than the anonymous state.

One could argue against that viewpoint, for example on the basis of union density (which in social democratic Scandinavian countries is higher than in liberal US, indicating higher class awareness and readiness to recognize and protect

different interests), which could be an indication that the household-type arrangement in society *per se* cannot be achieved as a stable goal, but has to be negotiated over and over again, especially in the household-type economies. However, with the introduction of unions as a potential power there is a higher likelihood that even the idea of the power to be used prompts the parties to have a clear vision of householding goals.

Instead, we see crystallization of relationships between labour and capital in profit-seeking economy, as the role of unions in negotiating changes is weak. Even if one expects higher individual-level bargaining to be going on in such societies, the bargaining power of an individual tends to be lower than that of a group, or that of employer, no matter how much resources s/he possesses.

In my interest lies the special case of transformation society, which allows me to look at the changes specifically in a society moving from a socialist to a capitalist order, as provoked by, or accompanied by, changes in politics, ideologies, and economics, but remaining the same in nature, culture, and in most part even in people. With my data I barely capture new cohorts entering the market while only some were entitled to leave the market, ensuring that most of the individuals have experienced both systems, the socialist one and the market economy emerging. As many have stated before, these *designer economies* were mostly unique, and uniquely neoliberal, with no comparable cases among the western European countries they aimed to be learning from.

Based on the Gini coefficient, the income inequality in Estonia is far from the best performers in Europe and thus close to the European average, and a slight decrease in inequality is noticeable on a favourable reading. A totally different situation exists in regard to the assessments of the population related to inequality, with the people in Estonia being among the most critical. Two thirds of the people in Estonia consider the income difference in Estonia to be too large.

The inequality is also illustrated by the relatively high proportion of working poor, with Estonia being only at the average level for Europe, an indicator that has not increased by the economic crisis. At the same time, very many people in Estonia find that they are being paid considerably less than what they deserve. In the perception of this inequality, Estonia's is one of the most critical in Europe. In regard to gender inequality, an "unprecedented" gender regime prevails in Estonia. This is characterized by the clearly weaker economic position of women; this is also accompanied by progressive gender behaviour in other fields of activity (family life, education), which is even comparable to the Scandinavian countries. Therefore, Europe's largest gender pay gap is very difficult to explain. In addition to understanding this contradiction, we should make efforts to try to find possibilities for reducing gender inequality in the society, in a situation where there are no direct parallels.

It is possible that it is these aspects – general perceptions of inequality and unfair wages in general – which explain why gender pay gap remains, as it is considered to be of a lesser importance. On the other hand, it may indeed be this gender pay gap that is behind the large income inequality and sizeable numbers in work-

ing poor. In any case, the within-country inequalities that are generally shown to be growing rather than diminishing across developed countries (Therborn 2013) are not the best predictor of growth in equality and life quality – and rather low belief in trade union power provides additional doubts. Therefore, certain steps should be taken to guarantee that those most in need will be compensated – with time. It should definitely be the case that those with the least of discretionary time would be compensated properly with both money as well as services, to either reimburse the individual investments of time (for example, in home-based childcare and other services of such kind) or provide additional time by making such services available, accessible and affordable.

What is more, the Estonian story is just one of the extremes of the otherwise shared story among post-socialist CEE countries. It seems the collective sadness, discontent but perhaps even anger (Estonians may be envious by nature) can be traced behind the claims that inequality is too large and one earns less than one feels s/he deserved. Therefore, it is high time to pay attention to the need to compensate the lower level of discretionary time of the citizens of these countries – that originates only, or mostly, from the lower wage level in the context of similar cost level, and thus is perceived relative to other countries rather than relative to other groups in society, or in absolute terms.

So, a map for the journey towards a more time-equal 2050 starts with collecting data on the national wealth of discretionary time as well as discretionary time inequality – both across and within-country. There is also need for building awareness of time-related inequalities and their consequences, for example, for sleep, health, and happiness, both among general and specialized audiences. The next stop on the journey should be increase in negotiation skills and also improved contexts for negotiations and social dialogue. This would involve paying attention to study curricula and the education system, which currently remains rather reluctant on teaching such necessary skills – but happily provides students with classes on entrepreneurship and banking. However, this also involves improving trade union contexts and tripartite institutions. Of course, the map would also point to the areas of necessity in the welfare state and services, with the aim of compensating the ones without choice, and extending up to the citizens' wage, not dependent on working and sufficient for (bare) survival.

It can be expected that with a complex of such measures in place, more equal distribution of time across social groups and countries could be achieved by 2050.

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CHAPTER III
LEGAL ASPECTS
OF WORKING TIME CHANGES
IN THE FUTURE

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THE FUTURE OF WORKING TIME

Many people work: self-employed, employees, and civil servants, as well as volunteers. It is amazing that in a small country, like Belgium (some 11 million inhabitants) more than a million volunteers are active¹. In my country, in some cities, the unemployed are asked to perform some community service for which they get extra compensation. Indeed work is important. Work is socially inclusive. The time we work is working time and labour law obviously has to play a role. Labour law, so the ILO has taught us since 1919, and social justice leads to peace. In this paper we limit ourselves to the working time of employees in the formal sector.

1. Protection of Workers Remains a Social Must

Labour Law regarding working time should protect workers regarding health, safety, and safe work, taking the organization of work and the economy into account. This is a must as a few examples show.

Working 6 days a week, 12 hours a day like *Chinese workers in Foxconn* (a Taiwan site) at 2 US dollars a day is socially unacceptable, but a fact. Workers are exploited also by Western multinationals, like Apple, where the former CEO, Steve Jobs, was yearly making 66,000 times more than the Chinese worker assembling the Apple I pad.

Workers on call, like 1 million British, who are only paid when effectively called, without any guaranteed hours or income (*zero hour contract*), does not guarantee a decent income.

There is the black market, overtime, e.g.; in the construction industry, on which neither taxes nor social security are paid.

There are millions of Eastern European workers, who come with a so-called European A1 document, delivered by their home administration, declaring they are self-employed and work in Western European countries in transport, construction, meat-cutting, hospitals and other sectors during long hours at the lowest

¹ There is a specific law on volunteers, making insurance against accidents obligatory, providing for the possibility of the payment of expenses and a small fee (tax-free).

wages possible of 1, 2, 3 € an hour, living in horrible conditions. These workers are fake-self-employed. The EU knows about the problem, but does not do anything about it.

In the Netherlands where flexicurity was recently introduced there was a lot of “fanfare”, one is returning to more security. 40% of the youngsters in the Netherlands are flex-workers!!! The Dutch government is going to give so-called flex-workers a permanent job. This concerns cleaners, security agents, and couriers. Those jobs were outsourced to private enterprises and the workers concerned landed in “throw away jobs”, of a temporary nature, with little job protection, irregular working time, and low wages. Fixed term contracts will be limited. The trial clause in fixed term contracts will be abolished, and so on.

And then we are only speaking of the formal sector. What about the informal workers in China, India, Africa, Latin America... who by far outnumber the workers in the formal sectors? They have no protection whatsoever, certainly not regarding working time. The picture is not rosy, and indeed is deteriorating.

Therefore effective protection by way of legislation or of e.g. (extended) binding collective agreements is a must.

A good example is the European Directive of 4 November 2003, where an almost adequate protection is foreseen.

2. Directive 2003/88/EC of 4 November 2003

For this directive the objectives are as follows:

- the improvement of workers’ safety, hygiene, and health at work is an objective which should not be subordinated to purely economic considerations;
- all workers should have adequate rest periods. The concept of ‘rest’ must be expressed in units of time, i.e., in days, hours and/or fractions thereof. Union workers must be granted minimum daily, weekly and annual periods of rest and adequate breaks. It is also necessary in this context to place a maximum limit on weekly working hours;
- account should be taken of the principles of the International Labour Organization with regard to the organization of working time, including those relating to night work;
- research has shown that the human body is more sensitive at night to environmental disturbances and also to certain burdensome forms of work organization and that long periods of night work can be detrimental to the health of workers and can endanger safety at the workplace;
- there is a need to limit the duration of periods of night work, including overtime, and to provide for employers who regularly use night workers to bring this information to the attention of the competent authorities if they so request;
- it is important that night workers should be entitled to a free health assessment prior to their assignment and thereafter at regular intervals and that whenever

er possible they should be transferred to day work for which they are suited if they suffer from health problems;

– the situation of night and shift workers requires that the level of safety and health protection should be adapted to the nature of their work and that the organization and functioning of protection and prevention services and resources should be efficient;

– specific working conditions may have detrimental effects on the safety and health of workers. The organization of work according to a certain pattern must take account of the general principle of adapting work to the worker.

A. Scope and Definitions

1. Purpose and Scope

This directive lays down minimum safety and health requirements for the organization of working time. It applies to:

(a) minimum periods of daily rest, weekly rest and annual leave, to breaks and maximum weekly working time; and

(b) certain aspects of night work, shift work and patterns of work.

(c) all sectors of activity, both public and private.

2. Definitions

For the purposes of this directive, the following definitions shall apply:

(1) working time means any period during which the worker is working, at the employer's disposal and carrying out his activity or duties, in accordance with national laws and/or practice;

(2) rest period means any period which is not working time;

(3) night time means any period of not less than seven hours, as defined by national law, and which must include, in any case, the period between midnight and 5 a.m.;

(4) night worker means:

(a) on the one hand, any worker, who, during night time, works at least three hours of his daily working time as a normal course; and

(b) on the other hand, any worker who is likely during night time to work a certain proportion of his annual working time, as defined at the choice of the Member State concerned:

(i) by national legislation, following consultation with the two sides of industry; or

(ii) by collective agreements or agreements concluded between the two sides of industry at national or regional level;

(5) shift work means any method of organizing work in shifts whereby workers succeed each other at the same work stations according to a certain pattern, including a rotating pattern, and which may be continuous or discontinuous, entailing the need for workers to work at different times over a given period of days or weeks;

(6) shift worker means any worker whose work schedule is part of shift work;

(7) mobile worker means any worker employed as a member of travelling or flying personnel by an undertaking which operates transport services for passengers or goods by road, air or inland waterway;

(8) offshore work means work performed mainly on or from offshore installations (including drilling rigs), directly or indirectly in connection with the exploration, extraction or exploitation of mineral resources, including hydrocarbons, and diving in connection with such activities, whether performed from an offshore installation or a vessel;

(9) adequate rest means that workers have regular rest periods, the duration of which is expressed in units of time and which are sufficiently long and continuous to ensure that, as a result of fatigue or other irregular working patterns, they do not cause injury to themselves, to fellow workers or to others and that they do not damage their health, either in the short term or in the longer term.

The Court (2000) has given a ruling on the application to medical staff assigned to primary health care teams of certain aspects of the Union directives concerning improvements in the safety and health of workers at work.

SIMAP is the union representing public health workers in the Valencia region. In proceedings against the Health Administration in that region it sought the implementation of certain provisions concerning the length and organization of working time for staff assigned to primary health care teams at health centers.

According to that union, the doctors concerned are required to work without the benefit of any time-limit and without the duration of their work being subject to any daily, weekly, monthly or annual limits.

The *Tribunal Superior de Justicia de la Comunidad Valenciana* asked the Court of Justice to rule on the interpretation of the Union legislation concerning the promotion of improvements in the safety and health of workers at work and certain aspects of the organization of working time.

The Court found, firstly, that the Union rules on improvements in the safety and health of workers at work, and in particular the directive concerning certain aspects of the organization of working time, apply to the activities of doctors in primary health care teams. They do not fall into any of the professional categories (specific public service activities intended to uphold public order and safety, for example) for which, because of their special features, the Union provisions grant an exemption from their scope.

The Court considered whether time spent by doctors on call should be regarded under Union law as working time, that is to say time forming part of the period during which a worker is at work, carrying out his activities or duties, regardless of whether the doctors are actually present at the health centers or are merely contactable.

The Court pointed out that the objective of the directive was to ensure the safety and health of workers by granting them minimum periods of rest and adequate breaks.

According to the Court, the characteristic features of working time are present when doctors are present at the health center where they are physically on call. On the other hand, when they are simply contactable at any time, the Court considers that they are in a position to manage their time with fewer constraints: only time actually spent providing primary health care services will therefore be classifiable as working time.

The Court also considered that work performed by doctors on primary health care teams whilst on call constitutes shift work within the meaning of Union law: the workers concerned are assigned successively to the same work posts, on a rotational basis which makes it necessary for them to perform work at different hours over a given period of days or weeks.

Finally, the Court ruled that individuals affected by any derogations from certain aspects of the Union rules on working time must give their own consent and that a collective agreement cannot be substituted for such consent.

In September 2003, the European Court ruled that time spent by a doctor working in a hospital on an on-call basis constitutes working time in its entirety, even if the employer provides a place of rest for the employee to use when not actively engaged in their duties.

Mr. Jaeger has worked as a doctor in the surgical department of a hospital. He spends three quarters of his normal working hours on call (that is to say 28.875 hours). Under an ancillary arrangement, he is also required to carry out on-call duty.

Generally, Mr. Jaeger carries out six periods of on-call duty each month, offset in part by the grant of free time and in part by the payment of supplementary remuneration.

On-call duty begins at the end of a normal working day and the length of each period is 16 hours in the week, 25 hours on Saturdays (from 8:30 a.m. to 9:30 a.m. on Sunday morning), and 22 hours 45 minutes on Sundays (from 8:30 a.m. to 7:15 a.m. on Monday morning).

On-call duty is organized in the following manner. Mr. Jaeger stays at the clinic and is called upon to carry out his professional duties as the need arises. He is allocated a room with a bed in the hospital, where he may sleep when his services are not required. The appropriateness of that accommodation is in dispute. However, it is common ground that the average time during which Mr. Jaeger is called upon to carry out a professional task does not exceed 49 percent of the time spent on call.

Mr. Jaeger was of the view that the on-call duty performed by him as a junior or emergency doctor in the context of the emergency service must in its entirety be deemed to constitute working time, which the employer contested.

The Court ruled as follows.

(1) The Directive must be interpreted as meaning that on-call duty (*Bereitschaftsdienst*) performed by a doctor where he is required to be physically present in the hospital must be regarded as constituting in its totality working time

for the purposes of that directive even where the person concerned is permitted to rest at his place of work during the periods when his services are not required with the result that that directive precludes legislation of a Member State which classifies as rest periods an employee's periods of inactivity in the context of such on-call duty.

(2) The directive must also be interpreted as meaning that:

– in circumstances such as those in the main proceedings, that directive precludes legislation of a Member State which, in the case of on-call duty where physical presence in the hospital is required, has the effect of enabling, in an appropriate case by means of a collective agreement or a works agreement based on a collective agreement, an offset only in respect of periods of on-call duty during which the worker has actually been engaged in professional activities;

– in order to come within the derogating provisions set out in the directive, a reduction in the daily rest period of 11 consecutive hours by a period of on-call duty performed in addition to normal working time is subject to the condition that equivalent compensating rest periods be accorded to the workers concerned at times immediately following the corresponding periods worked;

– furthermore, in no circumstances may such a reduction in the daily rest period lead to the maximum weekly working time laid down in Article 6 of the directive being exceeded.

In the *Abdelkader Dellas* (2005) case the Court confirmed that night duty carried out by a teacher in an establishment for handicapped persons must be taken into account in its entirety for ascertaining whether the rules of Union law laid down to protect workers – in particular the maximum permitted weekly working time – have been complied with.

In France, a decree lays down, for periods of night duty by workers in certain social and medico-social establishments, a weighting mechanism for the purpose of calculating pay and overtime which is intended to take account of the fact that there are periods of inactivity during on-call duty. The decree establishes a 3 to 1 ratio for the first nine hours followed by a 2 to 1 ratio for subsequent hours between the hours of presence and the working hours actually counted. Mr. Dellas, a special needs teacher in residential establishments for handicapped young persons, was dismissed by his employer as a result of disagreements relating in particular to the definition of actual work and the remuneration due for hours of night work on call in a room on the premises. Mr. Dellas and a number of trade unions brought proceedings before the Council of State for the annulment of the decree in question. The Council essentially asked the Court of Justice whether such a system is compatible with the directive.

The Court of Justice finds, first, that the directive does not apply to the remuneration of workers. On the other hand, the hours of presence in question must be counted in their entirety as working time for ascertaining whether all the minimum requirements laid down by the Directive in order to provide effective protection of the safety and health of workers have been complied with. The flat-rate

weighting mechanism in question takes the hours of presence of the workers concerned into account only in part. The total working time of a worker may thus amount to, or even exceed, 60 hours a week.

Consequently, such a national system of calculating on-call time exceeds the maximum weekly working time fixed by the directive at 48 hours.

In another French case (2010), the European Court was asked the question ‘whether persons employed under contracts such as the educational commitment contracts at issue in the main proceedings, carrying out casual and seasonal activities in holiday and leisure centers, and completing a maximum of 80 working days per annum, fall within the scope of Directive 2003/88’.

The Court stated that concept of worker may not be interpreted differently according to the law of Member States but has an autonomous meaning specific to European Union law. The concept must be defined in accordance with objective criteria which distinguish the employment relationship by reference to the rights and duties of the persons concerned.

The essential feature of an employment relationship, however, is that for a certain period of time a person performs services for and under the direction of another person in return for which he receives remuneration.

It is for the national court to apply that concept of a ‘worker’ in any classification, and the national court must base that classification on objective criteria and make an overall assessment of all the circumstances of the case brought before it, having regard both to the nature of the activities concerned and the relationship of the parties involved.

In the light thereof persons employed under contracts such as the educational commitment contracts at issue in the main proceedings, carrying out casual and seasonal activities in holiday and leisure centers, and completing a maximum of 80 working days per annum, are within the scope of Directive 2003/88.

B. Minimum Rest Periods, Other Aspects of the Organization of Working Time

1. Daily Rest

Every worker is entitled to a minimum daily rest period of 11 consecutive hours per 24-hour period.

2. Breaks

Where the working day is longer than six hours, every worker is entitled to a rest break, the details of which, including duration and the terms on which it is granted, shall be laid down in collective agreement or agreements between the two sides of industry or, failing that, by national legislation

3. Weekly Rest Period

Per each seven-day period, every worker is entitled to a minimum uninterrupted rest period of 24 hours plus the 11 hours’ daily rest referred to in Article.

If objective, technical or work organization conditions so justify, a minimum rest period of 24 hours may be applied.

4. Maximum Weekly Working Time

The period of weekly working time is limited by means of laws, regulations or administrative provisions or by collective agreements or agreements between the two sides of industry.

The average working time for each seven-day period, including overtime, does not exceed 48 hours.

Article 6(b) of Directive 2003/88/EC must be interpreted as precluding national rules, which allow a public-sector employer to transfer compulsorily to another service a worker employed as a fire fighter in an operational service on the ground that that worker has requested compliance, within the latter service, with the maximum average weekly working time (48 hours).

5. Annual Leave

Every worker is entitled to paid annual leave of at least four weeks in accordance with the conditions for entitlement to, and granting of, such leave laid down by national legislation and/or practice.

The minimum period of paid annual leave may not be replaced by an allowance in lieu, except where the employment relationship is terminated.

In the *Neidel* Case (2012) the Court points out that the directive applies, in principle, to all sectors of activity, both public and private, in order to regulate certain aspects of the organization of workers' working time. In addition, the Court states that although it is true that the directive provides for exceptions to its scope, they were adopted purely for the purpose of ensuring the proper operation of services essential for the protection of public health, safety and order in circumstances the gravity and scale of which are exceptional.

Consequently, the Court's answer is that the Working Time Directive applies to a public servant carrying out the activities of a fireman in normal circumstances.

Next, the Court points out that it is clear from the directive that every worker is entitled to paid annual leave of at least four weeks. However, on termination of an employment relationship, it is in fact no longer possible to take paid annual leave. It is precisely because of that impossibility that, in such a case, in order to prevent a situation in which the worker loses all enjoyment of that right, even in pecuniary form, the directive entitles the worker to an allowance in lieu. In the present case, the Court takes the view that the retirement of a civil or public servant terminates the employment relationship. Consequently, the Court holds that a public servant is entitled, on retirement, to an allowance in lieu of paid annual leave not taken because of the fact that he was prevented from working by sickness.

The Court holds that a regime of 'rolled-up holiday pay' may lead to situations in which the minimum period of paid annual leave is, in effect, replaced by an allowance in lieu, which the directive prohibits, except where the employment relationship is terminated, in order to ensure that a worker is normally entitled to actual rest.

Consequently, the Court holds that payment for minimum annual leave through a system of 'rolled-up holiday pay' rather than by means of a payment in

respect of a specific period during which the worker actually takes leave, is contrary to the working time directive.

As regards sums already paid to workers in respect of holiday through the system of ‘rolled-up holiday pay’, the Court holds that payments made, transparently and comprehensibly, may, as a rule, be set off against the payment for specific leave. On the other hand, such set-off is excluded where there is no transparency or comprehensibility. The burden of proof in that respect is on the employer. The Court points out that the Member States are required to take the measures appropriate to ensure that practices incompatible with the provisions of the directive relating to the entitlement to annual leave are not continued.

C. Night Work/Shift Work, Pattern of Work

1. Length of Night Work

Normal hours of work for night workers do not exceed an average of eight hours in any 24-hour period.

Night workers whose work involves special hazards or heavy physical or mental strain do not work more than eight hours in any period of 24 hours during which they perform night work.

Work involving special hazards or heavy physical or mental strain shall be defined by national legislation and/or practice or by collective agreements concluded between the two sides of industry, taking account of specific effects and hazards of night work (Article 8).

2. Health Assessment and Transfer of Night Workers to Day Work

Night workers:

a) are entitled to a free health assessment before their assignment and thereafter at regular intervals;

(b) 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.

The free health assessment must comply with medical confidentiality and may be conducted within the national health system.

3. Guarantees for Night-Time Working

The work of certain categories of night workers may be subject to certain guarantees, under conditions laid down by national legislation and/or practice, in the case of workers who incur risks to their safety or health linked to night-time working.

4. Notification of Regular Use of Night Workers

An employer who regularly uses night workers brings this information to the attention of the competent authorities if they so request.

5. Safety and Health Protection

Member States shall take the measures necessary to ensure that:

(1) night workers and shift workers have safety and health protection appropriate to the nature of their work;

(2) appropriate protection and prevention services or facilities with regard to the safety and health of night workers and shift workers are equivalent to those applicable to other workers and are available at all times.

6. Pattern of Work

An employer who intends to organize work according to a certain pattern takes account of the general principle of adapting work to the worker, with a view, in particular, to taking the necessary measures to alleviate monotonous work and work at a predetermined work-rate, depending on the type of activity, and of safety and health requirements, especially as regards breaks during working time.

D. Miscellaneous Provisions

1. More Specific Community Provisions

The provisions of this directive do not apply where other Community instruments contain more specific requirements relating to the organization of working time concerning certain occupations or occupational activities.

2. More Favourable Provisions

This directive does not affect Member States' right to apply or introduce laws, regulations or administrative provisions more favourable to the protection of the safety and health of workers or to facilitate or permit the application of collective agreements or agreements concluded between the two sides of industry which are more favourable to the protection of the safety and health of workers.

This enumeration is not complete, but gives an example of points which need to be regulated; some can improve like: working on call. Social security is must.

3. Future developments

The future of working time is self-evidently in:

- 1) a global economy,
- 2) determined by new technologies,
- 3) information,
- 4) and the demographic development, greying and migration included,
- 5) as well as the fact that in many countries both parents are working.

A. Globalization

Since the economy is dominated by multinational enterprises (centralized decision-making in headquarters), outsourcing and networking, and the client is the king, there may be a push for a 24-hour economy: pizzas, night and day, research continued from one laboratory in one continent to another in in another continent, ongoing.

Multinationals need to respect local culture (see Wal-Mart, the largest retail company in the world – Germany), where the working time schedule did not suit the Germans and Wal-Mart has to go away.

As there is a growing invasion of Chinese and petrodollars in the EU and worldwide, there may be a clash of cultures. . . . Recently Geely, a Chinese multinational, which has taken over Volvo, clearly indicated that wages in Volvo Gent, Belgium have to go down by 15%, otherwise the Gent factory will close. No need to say that Geely has already, since the takeover, constructed two plants in China, using the newest Volvo technology, which of course they own.

B. Localization: jobs which are not exportable

Personalized jobs are on the increase (safety – police –, education, restaurants, hospitals, more care for sick and elderly; this last may increase night work...

C. Enterprise

At the level of the enterprise, working time will be more and more adjusted to networking of the company and need of the clients.

D. Private and working life: looking for a right balance

A right balance between private and working life is a must for employees. As in many cases both men and women have a job. How to manage the family and especially the children? So, here flexibility is in. Part-time and working from 9 to 16 pm; not working when there is vacation for the children... Majority of part-timers are female. Here, there will be a growing need for flexibility to be benefit of the employees.

E. Telework

There will be more telework, e.g., at home, especially for needs of flexibility. But one should not exaggerate the possibilities of telework: quite a number of jobs need to be done at the work place: hospitals; construction, . . . and also teleworkers need social contacts – one grows in the job together with others. Moreover, one has to take into account that teleworkers can and are controlled by the employer, who can see on the server of the company when the teleworker effectively starts, what has been accomplished on the computer, how long and so on. Also here working time has to be respected.

F. Demographic developments

We live longer and better. We need to work longer. A pension should be right and not a duty. No mandatory retirement age. Let have a look at the US system where employees can work as long as they see it fit. Let the employee choose.

Pension age has to be raised substantially. Pre-pension is a curse and not a cure, as the OECD rightly indicated.

G. Austerity measures

Due to the economic crisis a lot of countries need to take austerity measures: are we ready for a six day week, a cut in wages, no overtime pay, less vacation. . . . ? Greece is a good example of what we mean. Elementary social protection in those countries seems to fade away.

H. Role of trade unions & social dialogue

We need more unions than before, provided they look forward and engage in a constructive dialogue (e.g., Danish Model with Active Employment market Policies) and work more together, especially at international level.

Conclusions

We should not forget that there are more workers in the informal sector than in the formal sector. Also informal workers need social protection. That social protection needs to evolve taking into account the global, national, enterprises and individual needs and necessities. There must be a global framework, ILO, EU, national; but concrete solutions need to be worked out at the plant-level (Germany), not at national level (France with the 35 hour week – which is a fundamental mistake. Flexicurity is in. But the problem is that trade unions loose strength and representativeness.

Working time is under pressure.

But we should not forget that only people who are happy at work, see themselves grow in the job, have access to information, enjoy teamwork, take initiative, have a good balance between work and private life, will make their company flourish and be competitive. It is in like in soccer: you need a motivated team. Only those will go to Brazil!!!

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FLEXIBLE EMPLOYMENT FORMS: THE OPPORTUNITY TO ESTABLISH A MORE FAVOURABLE WORKING TIME REGIME

Introduction

The labour activity of each employee, irrespective of the functional job peculiarities, is done within a certain time. Therefore, the time when an employee works shall be considered the main performance indicator of the work process. In turn, regulation of working time directly influences the employer's responsiveness to economic changes and changing labour needs. Adequate and timely regulation of working time is tightly related to tackling the problem of low employment levels and plays a very important role in balancing work and family obligations. In addition, regulation of working time enables achieving an optimal work organization by the parties to labour relations that meets the interests of both the employer and the employee.

Flexible regulation of working time means that the parties to labour relations have a certain freedom in agreeing the length of working time acceptable to both parties. It does not mean that flexibility should promote overtime work, or that the state should not at all interfere in the regulation of the length of working hours, leaving it up to the parties to labour relations to decide. In fact, flexibility in the regulation of the length of working time is reflected not only by the possibility to agree on longer than standard working hours, but also by the possibility to shorten the length of work by a mutual agreement of both parties. Therefore, flexibility should lead the parties to labour relations to an agreement about the length of working time, concurrently ensuring the actual compliance with the minimum rest time standards, while all other arrangements should be left to the discretion of the parties.

1. The importance of the legal regulation of working time

Working time is a dynamic and complex institute of labour law, related to private, social, cultural, and economic interests. It was as early as the 1880s when employees started making demands to shorten the working day to 8 hours per day.

This issue, therefore, appears to have been a key one, playing a huge social role, from the very formation of labour law. The legal regulation of labour law continued to revolutionize during the 20th century. This was greatly influenced by the adoption and evolution of international legal standards. In addition, new legal forms developed for the organization of working time, as did legal possibilities for reconciling work, studies, and family life. However, abundant legislation and the great variety of the forms of work arrangements often pose more questions than the key ones they answer. It should be noted that international legal rules are often laconic, providing for a number of exceptions. Certainly such international legal regulation provides opportunities for adapting the state's international requirements to national peculiarities. On the other hand, however, this raises certain controversies and differing interpretations of such issues as the maximum length of working time, the definition and structure of working time, rest time, etc. Increasing flexibility in the current approach to the organization of working time is concurrently making it more difficult to monitor and control hours actually worked, posing a threat to the safety, health or even life of workers. Working time may be also regarded as worker's ownership. This must be taken into consideration when establishing the legal standards of working time¹.

Standard patterns of employment and usual forms of the organization of work (including working time) give way to the so-called 'atypical' or even 'very atypical' forms of work, including work in certain accords, employment based on agency work contracts, use of on-call work, agreements on annualized working hours or, on the contrary, entering into 'zero-hours' contracts whereby employers and employees agree on working hours in each specific case individually. This exemplifies a very flexible work organization model, which presents both positive and negative aspects. Over the past few decades, traditional labour law has been building job creation standards that are very safe and socially favourable to employees. In fact, value has been given to working hours that are intensive rather than excessively long, and to adequate, socially-oriented rest time. In other words, efforts were taken to apply rather strict regulation of the length of working and rest time in order to provide possibilities to employees not only to receive socially just earnings for living, but also to create conditions to live outside work. This social interest apparently had an economic shade as well, i.e., to promote consumption by letting people have time to go on holiday, travel, buy leisure goods and services. Such a standard and economic approach was basically in conformity with, and at the same time was conditioned by, the so-called classical work pattern characterized by the prevalence of manufacturing and employment in the labour market with the strictly established beginning and end of work, rest periods and annual leaves. It should be noted that such a strict and centralized regulation of working time has been long supported by the European Union, too².

¹ Guobaitė, Ramunė. The Essence and Dynamics of the Legal Regulation of Working Time [in Lithuanian]. *Jurisprudencija*, 2005, vol. 74 (66), pp. 57–65.

² Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time. *OJL* 299, 18.11.2003, pp. 9–19.

Over time, both social life and professional activities began to change, and this inevitably resulted in the need to shift to the creation of different working conditions. The need for flexible working time was determined by the following conditions:

- a) workers' migration and resulting labour shortage;
- b) high unemployment among young individuals and certain socially sensitive groups (women, disabled persons, national minorities, etc.);
- c) intensive development of the service sector (where it is extremely difficult to establish strict standards of work and rest time due to varying employment, need for services, seasonal adjustments, etc.); and finally by
- d) technological changes in the so-called traditional, manufacturing sector, which today has not only to manufacture, but to manufacture to meet consumption needs.

On the other hand, inflexible regulation of working time is an impediment in both routine and extreme situations in that the manufacturing sector is not able to expeditiously adapt to changing needs and environment due to the strict regulation of working time.

Inflexibility of working time hinders effective distribution of available labour resources. Labour demand is artificially promoted, while the absence of labour supply cuts corporate entrepreneurship. The inability to use the available labour resources in an effective manner, excessive costs of hiring additional workers, the shortage of labour force, and the fear to violate the law make small- and medium-sized businesses shift to moonlighting or completely terminate their activities, or reduce sharply their profitability or productivity³.

It is obvious that working time is no longer the main measurement of work in modern societies. Evolution from an industrial to a technological society entails, as a matter of fact, changes in labour. The worker, and the workplace, becomes less dependent on a specific location and physical instruments. Leaving the workplace does not necessarily mean leaving employment. Technological opportunities are not limited to providing services through distance. They also open possibilities for employees to better balance their work and rest time, family obligations and leisure. This technological progress enables returning to a more reliable labour measurement, i.e., performance. Flexible employment gives possibilities for employees to choose how and where to work, and for employers – to focus on performance results⁴.

To sum up flexibility considerations in the context of the regulation of working time, it is worthwhile noting that today's major impediments to flexibility opportunities include the existing regulation of working hours per week and per day, and legislative provisions restricting the possibility to agree on overtime work and

³ Lithuanian Free Market Institute. Analytical study on the Influence of the Regulation of Working Time on Lithuania's Competitiveness [in Lithuanian]. Vilnius, 16.11.2006.

⁴ Ibidem.

application of the summary recording of working time. Labour laws often contain worker-favourable, but rather strict and insufficiently flexible provisions regarding the regulation of working time.

1.1. Individual patterns of establishing working time

Overtime. One of the classical ways to allow more flexibility in employment relationships is to create conditions to work overtime. In this case, collective agreements signed at the workplace could play a special role. On the other hand, collective bargaining and signing of collective agreement is not a one-day process. Therefore, in order to promote more flexibility in working time, more freedom should be given to the parties to an employment contract to establish the specific features of a work and rest time regime applicable to a particular worker. In such case, collective agreements might serve as entrenchment of a certain safeguarding standard and guarantee the minimum conditions ensuring workers' interests, safety and health. All the rest shall be left to be agreed on an individual basis. For instance, collective agreements could provide for maximum annual, monthly or other time limits for overtime work, principles of payment or other compensations (by granting additional rest time, etc.) for overtime worked hours, etc. In fact, overtime work might be used in the future as a certain form of irregular working hours, where the parties may agree on long hours in a flexible manner, subject to the needs and external and/or internal conditions, instead of being exposed to various bans or strict regulation of overtime work. However, it is of great importance to avoid backfiring on workers, their social, family and other interests, and to prevent abuse of such arrangements and such working time conditions that would eventually put the private life, health and safety of workers in danger. Therefore, it would be reasonable at this point to combine collective-contractual regulation of overtime with individual-contractual regulation, thus creating maximum opportunities to apply overtime work when necessary and, at the same time, to secure workers' interests.

Part-time work. It is noteworthy that working time can be not only extended, as compared to standard work hours, but reduced as well. The possibility to agree on part-time work is one of the techniques for implementing flexibility in employment. Working shorter hours a day or a week enables employees to better balance their work and private responsibilities without losing professional skills and qualifications. It is widely recognized that part-time work plays not only an employment promotion and economic role, but a social role as well. The nature of labour relations changes in modern societies with the increasing significance of distribution of work in time, adaptation of working time to the needs of the worker and employer, rather than of defining the duration of working time. In a broad sense, it is not just the right of the parties to an employment contract, but also a measure of promoting employment. The concept of part-time work is associated with the diversity of forms of the organization of part-time work, including the right to agree on a shorter (incomplete) working day, shorter (incomplete) work-

ing week, job-sharing, summary recording of part-time work, and even a mixed model of the organization of part-time work, where both the work day and the work week are shortened at the same time⁵. It should be noted that both national and international standards ensure that employment on a part-time basis shall not entail restrictions for employees with regard to establishing the duration of annual leave, appointment to senior positions, improvement of qualifications, and restriction of any other rights. Therefore, part-time work is not only a flexible form of work organization, but also a reliable one in respect of employee's interests. In addition, an agreement between the parties on shorter work hours may prevent dismissal of employees for economic reasons during the periods when the employer is not able to maintain jobs under usual conditions of payment for work. Taking into consideration the specific features of setting part-time work hours and the need of individualization of such working time, it is to be considered that the right to enter into agreements on part-time work can only be exercised through voluntary and individual negotiations and arrangements between the worker and the employer. In this case, collective negotiations and agreements can only define certain general guidelines and principles. Notably, the right to initiate part-time work should be recognized not only for workers, but for employers as well. International standards, in turn, do not limit the reasons for entering into agreements on part-time work, the term of their validity, the minimum length of part-time work, and do not establish the special maximum length allowed for part-time work. The parties to an employment contract are free to negotiate and independently agree on all the conditions of part-time work. It is obvious that such flexible arrangements adopted by a mutual agreement of the parties to an employment contract represent one of the perspectives for the organization of working time.

Summary recording of working time. It is a common rule to regulate working time by strictly establishing the length of the working week or working day. It is true to say, however, that European Community law imposes such strict requirements only on work of minors and night work. Yet, those strict requirements are often applied as a usual practice of regulating working time. In order to have the length of the working day and working week (or, possibly, working month, or another appropriate, reasonable period that is not harmful to employees' health) regulated on a more flexible basis, it is useful to apply summary recording of working time. For this purpose, limitations to the length of the working day could apply only in respect of certain categories of persons (minors, workers in harmful jobs, night workers, etc.). Introduction of an average working time standard per certain recording period would create opportunities for all other parties to employment relationships to use working time standards far more effectively. Application of such recording of working time could be foreseen in collective agreements.

⁵ Guobaitè-Kirslieñè, Ramunè. The Features of Legal Regulation on Part-Time Work. *Social Sciences Studies*, 2010, 4(8), p. 317–338.

However, flexibility is inseparable from the greater individualization of working time patterns. The liberalization of summary recording of working time would be favourable for employees facing difficulties in balancing their work and private responsibilities, and time of studies.

Shift work. A working time regime is usually common to all employees, but the employer is free to organize working time in shifts. This enables more flexible adaptation to economic changes. A number of companies, particularly large production businesses, still apply shift teamwork patterns involving groups of employees working in the same shifts and in regular shift rotation. However, same as new forms of economic activities, the new forms of employment and services needed by a modern society raise the issue of the need and necessity to set flexible individual working time patterns and flexible individual work shifts. Shift work, or more exactly setting of individual working time patterns, will inevitably keep developing in the future with prevailing [again] individual-contractual regulation of such working time. In this case, the state and social partners, as well as their collective arrangements, should play the role of certain guiding or, possibly recommendatory, regulation, and create preconditions for individual agreements on flexible working time. This form of work organization may also include job-sharing or patterns when work hours agreed by the employee are annualized and divided into fixed shifts, while the rest are held in reserve and worked by giving a notice to the employer, or on-call work, which is very negatively approached by workers and their representatives in a number of countries. In this context, it seems to be obvious that classical working time with work patterns “from – to” are decreasing with every year. It is therefore quite probable that flexible forms of employment and organization of working time will gradually replace the so-called *standard working time*. In this light, the negative views of some social partners, politicians or representatives of labour law doctrine should be transformed from a categorical denial of the aforementioned organization of working time to appropriate regulation thereof. It is important for modern and future societies not to stick to something what was considered to be the standard and classical organization of work, and not to deny the existing social and economic transformations, but rather try to create such legal standards that would ensure to a maximum extent the balance and protection of the interests of both businesses and employees.

1.2. Rest time as a work regulation and accounting measure

The category of working time is inextricably linked to another category – namely, that of rest time. The economic relationship between these categories is that the longer or shorter is one of them, the longer or shorter is the other one, too. The length of worker’s rest time for leisure and rest, cultural, and other needs is directly dependent on the length of his working time. Therefore, reasonable limitation of working hours is an important legal guarantee of the right to rest and leisure for every worker.

However, this guarantee often becomes unenforceable when employers, in response to market conditions, seasonality, customer needs, amount of work, etc., try to extend working hours on account of rest time. It is no secret that annual leaves are also often granted fictitiously, while in fact employees continue to work during that time. In this context, it becomes reasonable to speak about a prospective rest-time regulation of a new quality. Naturally, the regulation of rest-time should be differentiated by the categories of workers, i.e., taking into account their psycho-physiological characteristics (young workers, disabled workers, pregnant workers, etc.) and social needs, for example, their family obligations, studies. Of course, the regulation of rest time should be established taking into account the specifics of work: seasonality, specific features of a production or service sector, creative work, etc.

It cannot be ruled out that a future regulatory model will be contrary to the standards of setting maximum working time and minimum rest that are currently prevailing both in international and national laws. It might be reasonable to entrench appropriate (requested by employees) and just rest standards, especially in relation to the so-called liberal professions and creative workers, who often brush away the dividing line between their work and rest time patterns so that segregation thereof becomes impracticable, whilst leaving all other time periods for their work and other time spending forms and opportunities. However, this possibility has been little discussed by scholarly representatives and practitioners in law and other sciences. In addition, drastic innovations are often met with a stance of a priori limitation of workers' rights. Therefore, the aforementioned perspectives require thorough discussions between employers and employees, and their efforts in looking for a common opinion and common interests, in order to create pre-conditions for innovative regulation of working time, involving no direct regulation of working time, but rather imperative regulation of minimum or longer rest time (at the option of the social partners and the society itself).

2. Regulation of working time and the role of social partners

In the modern process of universal globalization, it is not enough for society's evolution to be a manufacturer and participant of exchange relations; it is necessary to look at social needs, too. Therefore, today states have the task of building a bridge between the free market and social needs, being flexible and trimming between those who are socially sensitive and those who exert their economic power. In the face of the rushing globalization process, a modern social state must stay strong in securing and defending the inalienable social rights and interests. Labour law seems to be playing the most important role in the process of implementation of this task. It is namely this branch of law, which regulates societal relations involving confrontation of the mentioned antagonist phenomena and areas where different goals and expectations of the society have the most violent and

strong manifestation. Therefore, new challenges appear for industrial relations and their participants – representatives of employees and employers – to seek employment guarantees rather than security of labour relations, in order to enable each specific party to labour relations to implement their rights originating from compromises achieved during collective bargaining⁶. The social partners may play a dual role in promoting flexibility of labour relations: by implementing flexibility in labour relations in accordance with the already existing rules and by participating in the process of improvement of flexibility in labour relations. Flexibility means the ability to rapidly and effectively adapt to market changes, better opportunities to acquire new skills, seeking better work or higher positions, better reconciliation of professional and private responsibilities. The social partners should be, *inter alia*, oriented towards achieving the following goals for everyone:

- a) adaptation to market changes;
- b) opportunities for the acquisition of new skills;
- c) better work and career advancement,
- d) better reconciliation of professional and private responsibilities.

The ability of the social partners to act expeditiously is obviously inseparable from the decentralization of industrial relations in which a key lever in decision-making is at the enterprise level. Information and awareness procedures should play an important role in this context, serving as an effective instrument for ensuring flexicurity in labour relations.

Classical labour relations are characterized by the parties to employment relationships having their interests agreed upon and disputes settled in negotiations and collective agreements. However, there are increasing manifestations of individualization seen in this area wherewith employers and employees enter into individual arrangements in derogation of the provisions of law and/or collective agreements in order to adapt as much as possible to the needs of both an individual worker and his employer, and to external factors at the same time. Therefore, the individual regulation of labour relations is obviously fundamental and will never be replaced exclusively by collective regulation (just like the latter cannot be replaced exclusively by centralized statutory regulation). Yet, despite increasing individualization of labour relations, the element of collective labour relations (industrial relations) cannot be completely neglected. It is not for nothing that European Commission's Green Paper 'Modernizing labour law to meet the challenges of the 21st century' notes that collective agreements no longer play a merely auxiliary role in complementing working conditions already defined by law. They serve as important tools adjusting legal principles to specific economic situations and to the particular circumstances of specific sectors. Developments in social dialogue at national, industry and enterprise level, geared to introducing new forms of internal flexibility, have also demonstrated how workplace rules can be adapted to

⁶ Petrylaitė, Daiva. Collective labour relations across the centuries: Tasks and possibilities [in Lithuanian]. *Teisė*, 2007, vol. 65. p. 108–115.

changing economic realities⁷. It is true to say that today there are two opposing positions supported by representatives of labour law doctrine, social partners and politicians, namely:

a) proposals to narrow not only the scope of regulation by labour laws, but by collective agreements, too, leaving such arrangements as working hours, remuneration for work and other conditions completely to the discretion of employer and individual employee;

b) there are increasing voices stating absolutely opposite trends. References are made to the increasing expansion of labour law to the legal regulation of public relations related to labour relations.

The first position appears to completely negate and oppose the very nature of collective labour relations, and to deny the essential function of this branch of law, i.e., security function. The second position is to be welcomed as this would create conditions for withdrawal from statutory regulation of labour relations and for more flexible regulation of their specifics. In addition, collective agreements could more expeditiously, as compared to national legislation, respond to changes on the labour market and varying interests of employees and employers. Such a transition from the statutory regulation of labour relations to autonomy of the social partners would greatly increase flexibility of labour relations along with ensuring adequate social security and safety of employees. It should be noted that flexicurity in labour relations is specifically characterized by the need to promptly and effectively respond to market changes. This could be best implemented at a lower level, i.e., at the level where a problem requiring a response occurs. Therefore, a special focus should be placed on the development of social dialogue at the sectoral level and, in particular, at the enterprise level. This would enable the parties to labour relations to agree on longer than standards working hours and create preconditions for greater individualization of working time.

With regard to the role of industrial relations and the parties to such relations (social partners) in the regulation of working time, many countries not only face the challenge of working time, but also the issue of the legal status and role of social partners or, more precisely, of employees' representatives. This particularly refers to the states applying a model of solidary representation of employees whereby employees are jointly represented by trade unions and works councils. In this case, the distribution of functions in the area of certain issues relating to the regulation of labour relations and/or conducting collective bargaining is of major importance. It is a traditional practice that trade unions try, both in a historical and functional sense, to maintain a monopoly in collective bargaining, while works councils participate in information and consultation procedures. This conditional distribution of functions is seen as meaningful and viable with regard to, *inter alia*, tackling the future issues of working time and organization of work. Pre-

⁷ Commission of the European Communities. Green paper: Modernising labour law to meet the challenges of the 21st century (com/2006/ 708). Brussels, 22.11.2006.

sumably, trade unions could act as political players in social law making, and build principal provisions on the regulation of working and rest time by entering into collective agreements with employers and their representatives. In turn, works councils should take over the functions of implementing this policy and act as mediators for both trade unions and employers, as well as represent the interests of individual workers in entering by the latter into individual arrangements with the employer about their working time, working conditions, etc.

Conclusive findings

1. The labour activity of each employee, irrespective of the functional job peculiarities, is done within a certain time. Therefore, the time when an employee works shall be considered the main performance indicator of the work process. In turn, regulation of working time directly influences employer's responsiveness to economic changes and changing labour needs. Flexible regulation of working time is inseparably linked to increasing employment levels as it enables employees to achieve optimal employment that meets their interests. Major impediments to flexibility opportunities include the existing regulation of working hours per week and per day, and legislative provisions restricting the possibility to agree on overtime work and application of the summary recording of working time. The legislator's intention to promote social dialogue between the parties to labour relations in order to agree on longer than standard working hours should be viewed positively, but possibilities for greater individualization of working time would promote greater flexibilization.

2. It is necessary to expand the autonomy of the parties to industrial relations by providing broader opportunities for collective arrangements. This would create conditions for withdrawal from statutory regulation of labour relations and for more flexible regulation of their specifics, concurrently creating preconditions for individual arrangements detailing and particularizing the terms and conditions of collective agreements. In addition, collective agreements could more expeditiously, as compared to national legislation, respond to changes on the labour market and varying interests of employees and employers. Such a transition from the statutory regulation of labour relations to autonomy of the social partners would considerably increase flexibility of labour relations along with ensuring adequate social security and safety of employees.

3. Bearing in mind and not negating the fundamental protective function of labour law, i.e., the role of labour laws in protecting the rights and interests of the working population, today this protecting function should be understood in a broader sense as a task to take care of the common interests, pertinent not only to a certain employer's staff, and, if seen even broader, of the interests of the whole group of society living on earnings from work, unemployed individuals including. This goal can be only achieved if flexibility of the legal regulation of labour rela-

tions is increased, i.e., the role of statutory regulation is reduced and that of collective agreements is amplified. However, it should not be forgotten that statutory regulation, although introducing certain business, behavioural or other restrictions of freedom, helps the state to implement its function as that of a public arbiter, i.e., the state establishes certain restrictions in order to protect the public interest. On the other hand, proposals to liberalize the labour market and to ease the burden of the statutory regulation of labour relations should not be made absolute. These steps inevitably require a review of administrative and financial instruments of states. Mitigation of bureaucratic rules and easing of tax burden in complement with liberalization of certain norms of labour relations would presumably be the indicator giving grounds to speak about constructive increase in labour law flexibility and maintenance of adequate protection of employees' interests.

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WORKING TIME REGULATIONS: THE TENDENCIES OF CHANGES AND DEVELOPMENTAL PROSPECTS

1. Introduction

Discussing the particular institutions of labour law is not an easy task. Social and economic reality changes so rapidly that it is difficult to anticipate the legislator's future actions. It is the same in terms of legal regulations on working time, which have in the last decades undergone an evolution that in many respects has been surprising. At the same time, certain tendencies can be observed that may be an indication of the direction of future systemic changes. We can also analyze the existing regulations in view of their coherence and compliance with the objectives declared by the legislation, formulating, should need be, *de lege ferenda* conclusions. However, one needs to remember that the potential changes must be within the boundaries set by the fundamental rights, as expressed in acts of international law and in the Constitution.

Historically, legal regulations on working time were developed in connection with the tendency to limit working time within the day and within the week¹, with the intention to protect the life and health of factory workers. In later times, the phenomena typical of the post-industrial society left their mark on the regulations on working time. The main tendencies in this respect include a growing flexibility of organizing the work process², the creation of solutions facilitating combining professional and private life, and the specific work division being a response to the general nominal value of work. Working time started to be viewed in a wider sense – of not only day and week norms, but also non-working days and employee leaves that are an element of a broadly understood right to rest.

¹ Cf. i.a., A. Raczyński, *Polskie prawo pracy*, Warsaw 1930, p. 96–99.

² The way in which working time is specified substantially affects the effectiveness of the work process (i.a., A. Sobczyk, *Zasady prawnej regulacji czasu pracy*, Warsaw 2005, p. 102 and 108).

2. Fundamental rights and working time

Employee protection against excessive workload is one of the elements of the fundamental rights, both from the international³ and the domestic⁴ perspective. This results in the necessity of limiting working time in a day and in a week, the obligation to ensure rest periods and a proper number of non-working days, as well as paid vacation leave. These standards are inviolable since they reflect the axiological foundations of the legal system. The fundamental rights cannot be looked at one-sidedly. Employee protection needs to be confronted with the freedom of business activity⁵, which is also a fundamental right. This freedom may be limited to the extent necessary to carry out other objectives, in particular those related to the safety of the work process. The above assumptions will largely define the directions of the legal regulations on working time, which, in protecting the life, health, and privacy of the employee, cannot go beyond what is necessary, so as not to excessively limit business freedom.

The subjective scope of the regulations on working time is a separate problem. The view that not only employees, but also other persons personally carrying out work of certain nature⁶ should be entitled to protection under labour law is being expressed more and more often. Noticing the inevitable expansion of labour law into other areas of employment, one cannot disregard the specific features of the work relationship that are absent in other forms of employment. These are primarily the employer's managerial rights, e.g., the right to specify the time-frame

³ Pursuant to Article 24 of the Universal Declaration of Human Rights, everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay. Article 7 of the International Covenant on Economic, Social and Cultural Rights, recognises the right of everyone to the enjoyment Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays. Article 2 of the European Social Charter contains an undertaking 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), public holidays with pay, a minimum of two weeks annual holiday with pay, and a weekly rest period which should, as far as possible, coincide with the day recognized by tradition or custom in the country or region concerned as a day of rest. Finally, Article 31 of the Charter of Fundamental Rights of the European Union provides that every worker has the right to working conditions which respect his or her health, safety and dignity (Article 31.1) and the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave (Article 31.2). The above are supplemented with the employment standards defined by the International Labour Organization.

⁴ Pursuant to Article 66.2 of the Constitution, an employee is entitled to non-working days, as specified in statutory provisions, and annual paid leave; the maximum working time norms are specified in statutory provisions.

⁵ This right is formulated e.g., in Article 16 of the Charter of Fundamental Rights of the European Union. Another problem are economic freedoms recognized by the Treaty.

⁶ In this respect, cf. primarily A. Sobczyk, *Prawo pracy w świetle konstytucji RP*: Volume I: *Teoria publicznego i prywatnego indywidualnego prawa pracy*, Warsaw 2013 and M. Gersdorf, *Prawo zatrudnienia*, Warsaw 2013.

for work (Article 22 § 1 of the Polish Labour Code). The absence of the element of subordination results in impossibility of, or at least hindrance to, applying protective measures. If the employee is to be the one to decide on the scope and time-frame of carrying out work, he himself becomes the addressee of potential limitations. Therefore, in the event of economically independent entities, the use of measures limiting the time-frame of carrying out work seems generally impossible. Certain forms of protection may be looked for in the case of economically dependent persons (usually carrying out work for one entity), although here protection would concern the scope of the tasks and not the time-frame of work, which is usually specified independently. The above conclusions are reflected in the constitutional norm which guarantees employees with the right to rest, even though the concept of an 'employee' may be interpreted autonomously (in particular, in a broader manner than in the Labour Code).

3. Limiting working time within the day and within the week

Limiting working time within the day was the beginning of shaping contemporary labour law. Regulations specifying the maximum number of hours of work, established first with respect to certain groups of workers, have ultimately become universal, being one of the manifestations of work protection and the state's intervention in the area of work relationships. The result was the principle of an 8-hour work day and shortening the working week to 40 hours, and in some countries to even less than that⁷. The last decades have brought a new tendency, which consists in partial resignation from working time norms (except for the maximum weekly norm⁸) and building protection on the basis of rest periods. More and more Member States are deciding to introduce such a solution⁹. In turn, in the countries where the working time in a day and in a week is still limited, the catalogue of the cases in which work over the adopted norm (in particular the daily norm) is allowed is being expanded. Lowering the nominal value of work was

⁷ This effect was achieved either as a result of the legislator's clear decision (France) or due to the involvement of social partners (e.g., Germany). Cf., respectively, J. Pellisier, A. Supiot, A. Jeammaud, *Droit du Travail*, Dalloz 2006, p. 1046 and F. Gamillscheg, *Kollektives Arbeitsrecht*, Bd I, *Grundlagen, Koalitionsfreiheit, Tarifvertrag, Arbeitskampf und Schlichtung*, München 1997, p. 578, who points to the fact that shortening working time in collective agreements was a manifestation of the fight for a 35-hour working week.

⁸ A 48-hour average weekly norm, as specified for the settlement period.

⁹ These solutions have been used e.g., in Denmark, Ireland, and the United Kingdom. In Italy, the daily norm was abolished, but the weekly working time is still limited (T. Treu, *Labour Law and Industrial Relations in Italy*, Kluwer Law International 2007, p. 74). Potential limitations may follow from collective agreements and other collective arrangements (O. Hasselbach, *Labour Law in Denmark*, Kluwer Law International 2005, pp. 114–115), which, however, is a solution not as rigid as shaping working time norms in statutory provisions.

also related to the increasing number of non-working days. This tendency was quite clearly stopped by the economic crisis – in some countries, the number of officially non-working days has even been reduced¹⁰. The issue of potential extension of working time as a response to the crisis seems more complex. In spite of an economic slowdown, it seems unlikely that the existing trends will be reversed in an attempt to increase the statutory nominal value of work. This kind of activities, consisting a serious regression in the area of employment conditions, would cause violent social reactions.

Attempting to define the possible directions of changes, one needs to consider two issues. Firstly, further deregulation is to be expected in terms of working time norms. The conditions in which work is carried out and the objectives implemented by the legislator will probably result in focusing protection around non-working time (rest periods). Secondly, due to the uncertain economic situation and the economic slowdown, one should not expect further shortening of working time that is not accompanied by a lowering of the remuneration. Conversely, shortening working time is more likely to take place in various forms of work-sharing¹¹, which does not result in growing costs of employing workers. However, if the economic situation does not deteriorate any further, drastic actions intended to extended working time should not be expected.

4. More work process flexibility

Ensuring more work process flexibility is one of the most important demands in the restructuring of the legal regulations on working time at the beginning of a new century. The idea is to adapt the work process to the changing needs of the employers¹² and, as a result, also increasing the effectiveness of the work relationship¹³.

Employment flexibility largely depends on whether it is allowed to use various forms of balancing working time¹⁴. In the most general sense, this concerns using average weekly norms and equivalent daily norms. The first of these solu-

¹⁰ In 2012, in Portugal, the number of holidays being officially non-working days was reduced by 4.

¹¹ According to Eurostat data, in most European countries, the number of employees (including young employees) working non-full-time is growing. It is estimated that in most cases, the reduction of the working hours is not voluntary.

¹² Cf. the suggestions of the ILO Executive Committee, International Labour Office, *Hours of work: from fixed to flexible?* [International Labour Conference, 93rd Session 2005], Geneva 2005, pp. 106–107.

¹³ As emphasized by T. Zieliński, *Prawo pracy. Zarys systemu*, Volume II: *Prawo stosunku pracy*, Warsaw-Kraków 1986, p. 222, increasing work effectiveness allows for avoiding the so-called extensive use of working time that consists in extending the working day or week.

¹⁴ Various legal solutions enabling this effect are discussed i.a., by H. Paoli-Pelvey, *Working time*, in: *Comparative Labour Law and Industrial Relations in Industrialized Market Economies*, R. Blanpain, C. Engels (eds.), Kluwer 1993, pp. 410–417.

tions is currently the standard, with gradual liberalization visible with respect to equivalent daily norms. In Polish law, these solutions constitute equivalent working time systems (Articles 135–137 of the Labour Code) that may be applied in a relatively wide scope, with the starting point being an extension of the working day to 12 hours. Going even further, one may point to the work accounts¹⁵ used in some countries and the working time reserve systems¹⁶. In this respect, the Polish legislation has not decided on a clear regulation. Finally, some possibilities of balancing working time are possible when overtime may be compensated with additional free time¹⁷, even if the employee himself has not applied for such free time (Article 151² § 2 of the Labour Code). These solutions allow the employer to use work when there is actual need for it (without having to pay additional remuneration), while in the periods of less demand for work, the employee is not obliged to be ready for work. This allows for a rationalization of the work process and a lowering of the costs of employment¹⁸. The employee's situation is deteriorated in that working days and hours become less predictable and there is no possibility of additional remuneration for overtime. This deterioration is treated as the price paid by the employees for keeping the enterprise's situation relatively stable. The tendency to extend settlement periods¹⁹ overlaps all of the above phenomena. One of its manifestations are the changes introduced to the Labour Code in 2013²⁰ and consisting in allowing 12-month reference periods in all systems. This raises doubts as to whether the objectives of regulations in terms of protection have been achieved to an adequate extent. Secondly, some countries allow solutions consisting in resigning from a strictly specified working time and making the employee's work condi-

¹⁵ As a result of comparing the planned and the actually worked hours, a surplus or a reserve of working hours occurs, to be balanced until the end of the adopted period. Cf. H. Strzezińska, *Zarządzanie zasobami czasu pracy doświadczenia krajów europejskich*, Warsaw 2004, p. 76. Working time accounts have become very popular in Germany. Cf. i.a., P. Hanau, A. Veit, *Das neue Recht der Arbeitszeitkonten*, München 2012. The accounts allow for accumulating working hours and using them at the time when needed most, as well as for reducing employee activity when the enterprise operates less intensively (cf. A. Chobot, *Nowe formy zatrudnienia. Kierunki rozwoju i nowelizacji*, Warsaw 1997, p. 210).

¹⁶ I.a., H. Strzezińska, *Zarządzanie zasobami czasu pracy doświadczenia krajów europejskich*, Warsaw 2004, p. 75.

¹⁷ Cf. i.a., K. Rączka, *Praca w godzinach nadliczbowych w znowelizowanym kodeksie pracy*, PiZS 2004, Issue 1, pp. 15–16; A. Chobot, *Nowe formy zatrudnienia. Kierunki rozwoju i nowelizacji*, Warsaw 1997, p. 114 and 206, and A. Sobczyk, *Zasady prawnej regulacji czasu pracy*, Warsaw 2005, p. 267.

¹⁸ Cf. K. Rączka, *Elastyczny czas pracy*, PiZS 2013, Issue 7, pp. 2–3.

¹⁹ Extending the settlement periods allows for taking into account changes in work intensity that occur over the calendar year. The employers' interests are protected especially thanks to the guarantees of fixed work remuneration. Cf. i.a., H. Strzezińska, *Zarządzanie zasobami czasu pracy doświadczenia krajów europejskich*, Warsaw 2004, p. 80 and International Labour Office, *Hours of work: from fixed to flexible? [International Labour Conference, 93rd Session 2005]*, Geneva 2005, p. 81. The 4-month settlement period specified in Directive 2003/88 can be considered a starting point here.

²⁰ The Act of 12 July 2013 r. on Amendments to the Labour Code and to the Act on Trade Unions (Dz.U. of 2013, item 896).

tional on the current needs of the employer (on call work²¹ or its extreme form: zero-hours contracts²²). These solutions raise fundamental doubts since they result not so much in effectively distributing working time, but – in spite of the limitations applied – in substantially changing the distribution of economic risk, threatening the work relationship paradigm itself. Therefore, this solution needs to be approached with much caution, especially on the Polish labour market where the employers have at their disposal a particularly wide range of solutions allowing for mitigating potential threats related to employing workers.

Thirdly, the employers want to exercise more flexibility in shaping working time distribution. The legislator is going the same way. Even though the starting point is a collective distribution (Article 150 § 1 of the Labour Code)²³, in most of the cases, the distribution is specified without the participation of employee representatives (which is a result of the lack of trade unions), and, additionally, in the event of changing days and hours of work, must be specified in detail using a work schedule produced by the employer²⁴. What is more, under the latest amendments to working time regulations, the legislator has allowed for schedules covering periods shorter than the settlement period (Article 129 § 3 of the Labour Code)²⁵. Going even further, in certain cases, the employer has been released from the obligation to produce schedules, especially in the cases where the employee himself has decisive influence over the organization of the work process (e.g., task-based working time). Another factor that determines the level of working time flexibility is the conditions on which the employer may modify working time distribu-

²¹ On call work is permitted either with respect to all employees – on certain conditions (e.g., Germany) – or was limited to selected groups of employees in an attempt to facilitate their access to the job market (Italy).

²² This employment concept is particularly popular in the United Kingdom, where some commercial and service chains employ most of their workers in this way. It is estimated that approx. 250,000–300,000 British workers are employed under such contracts. The issue generates substantial controversy. The employers that use zero-hour contracts are criticized as exploiting their workers. To counterpoise this, entities that forbid such contracts in their employment strategies are given as an example. Cf. the series of articles in *The Guardian* published between 5 and 7 August 2013, www.theguardian.com.

²³ Collective shaping of working time distribution may also bring certain benefits to the employer, who can influence the situation of groups of employees thanks to this mechanism (H. Lewandowski, *Uprawnienia kierownicze w umownym stosunku pracy (Przedmiot i granice)*, Warsaw 1977, p. 177).

²⁴ Individualization of working time distribution systems facilitates responding to the changing situation of the enterprise (H. Strzemińska, *Zarządzanie zasobami czasu pracy doświadczenia krajów europejskich*, Warsaw 2004, p. 73). The fact of the employer specifying working days and hours is considered a natural solution that is an emanation of the employing entity's managerial powers (H. Paoli-Pelvey, *Working time*, in: *Comparative Labour Law and Industrial Relations in Industrialized Market Economies*, Kluwer 1993, p. 410). Individualization of distribution systems is even visible in the legal systems that had a relatively strong tradition of shaping working time frames at the collective level (J. Pellisier, A. Supiot, A. Jeammaud, *Droit du Travail*, Dalloz 2006, pp. 1067–1070).

²⁵ However, the period for which the schedule is produced cannot be shorter than a month.

tion, adapting it to the changing situation. In this respect, considering the lack of clear regulations, demands should be expected from employers as regards amendments to statutory provisions or at least acceptance of practices consisting in modifying schedules (in the same manner they are produced or on conditions following from labour law provisions, including facility bylaws). Recognizing the fact that changes are permissible, employee interests must be protected to the necessary extent (this concerns especially the advance with which employees should be informed of schedule modifications²⁶). The so-called flexible working time, introduced under the 2013 amendments and mitigating the adverse consequences of using the 24-hour work cycle by allowing work commencement at various times, including earlier than on the previous day (Article 140¹ § 4 of the Labour Code), will undoubtedly facilitate the organization of working time.

Fourthly, a number of things indicate a return to the discussion on overtime employment. The latest decades have brought liberalization with respect to the permissible overtime (rest period instead of a fixed limit) and the amount of the bonuses, with a 50% bonus being the rule today. However, overtime is still a subject of employer demands²⁷. They concern primarily further lowering of the amount of bonuses (even though it cannot be excluded that the propositions formulated in this respect were an element of a strategy during the works on the amendments to the Labour Code intended to make working time more flexible). Fifthly, the principles of employment on Sundays and official holidays remain the subject of discussion. Here, the employers expect further deregulation, including the areas in which work on Sundays and official holidays is in their opinion necessary²⁸. However, in this case, opposite actions from the employees are visible, as they demand the introduction of a prohibition of Sunday work in commercial facilities²⁹. With respect to this issue, one may obviously wonder if there exist social reasons (including family protection) so strong as to limit the business freedom of the employers.

Recapitulating, one should expect that in the future, working time organization will become even more flexible. The employers will primarily expect such methods of shaping working time that will allow for matching working days and hours to the actual needs. Therefore, the possible directions of the legislator's actions include preservation of long reference periods (with employee interests

²⁶ Cf. F. Marhold, M. Friedrich, *Österreichisches Arbeitsrecht*, Wien-New York 2006, p. 76.

²⁷ In connection with the economic crisis, overtime regulations have been liberalized e.g., in Lithuania, Portugal, and Hungary (*Impact of the Crisis on Working Conditions in Europe*, www.eurofound.europa.eu).

²⁸ The catalogue of permitted jobs has been recently extended with jobs consisting in providing services with the use of electronic communication received outside of the Republic of Poland if, under the regulations applicable to the recipient, the days that are official holidays in Poland are working days in the country of the recipient.

²⁹ Cf. the parliamentary draft of the Act on the Amendments to the Labour Code (paper No. 1612), which introduces the prohibition of employment in commercial facilities not only on official holidays, but also on Sundays.

properly secured), the possibility of accumulating non-used working time, and growing influence over working time systems and schedules, which will become more and more flexible. In particular, it should be expected that the discussion on the introduction of working time accounts (or a similar solution), which could be a major facilitation in the process of the employer organizing the work process, will be taken up again. Substantial changes in terms of remuneration for overtime and employing workers on Sundays and official holidays seem less probable.

5. Considering the needs of the employees

Originally, working time regulations were intended to increase the level of safety. Today, they are also evaluated from the point of view of employee privacy, personal development possibilities, and the needs related to other roles of employees in society. In particular, the regulations on working time must be correlated with life-long learning policies (enabling employees to continuously improve their professional qualifications) and the work-life balance (creating conditions allowing for combining work and family duties). Important social aspects support both these elements. Continuous improvement of professional qualifications is to be one of the major methods for securing the market situation of the employed, contributing to keeping the current job or facilitating the taking of a new job in the event of termination of the current employment relationship³⁰. In turn, the introduction of pro-family solutions is a response to the serious demographic problems European societies face.

As regards change tendencies, an expansion of the legal measures intended to combine work with other forms of activity is visible. Several examples can be provided in this respect. An employee may request that an individual working time distribution be created for them (Article 142 of the Labour Code), taking into account this employee's specific needs to a greater extent than the working time distribution system applicable to all employees. At the employee's request, shortened working week systems (Article 144 of the Labour Code) and weekend work (Article 144 of the Labour Code) may be introduced. In certain cases, these may also contribute to combining professional duties and private life. Also at the employee's request, the employer may compensate for overtime by granting free time (Article 151² § 1 of the Labour Code). In such case, the free time does not have to be planned before the end of the reference period, which makes it possible for the employee to use it at a time convenient for him or her. A major role may be played by the solutions introduced to the Labour Code in 2013: flexible working time with the employee deciding on the time of commencing work (Article 140¹ § 2 of the Labour Code) and facilitations in making up for the time of being

³⁰ This issue is therefore crucial in the context of various models drawing on the concept of 'flexibility'.

released from the obligation to work (Article 151 § 2¹ of the Labour Code). Finally, the employer should make it possible for the employees to improve professional qualifications (Article 17 of the Labour Code), which means e.g., that to the extent this does not clash with the needs of the workplace, requests regarding working time organization or granting vacation leave are to be considered. Additional employee rights (exemption from an entire working day or a part of it, training leave) apply if the employer directs the employee to improve his or her professional qualifications or permits him or her to do so. Professional development may also be facilitated by periods of reduced work activity. The legislator himself encourages this, providing for subsidies for training sessions for employees organized during economic slowdown or when working time is reduced³¹.

To sum up this section, it seems that the legislator, recognizing the existing social and economic tendencies, will have to expand the regulations making it possible for employees to reconcile work and private life. This is confirmed by both the axiological foundations of the legal system (protection of dignity and autonomy of individuals) and by pragmatic aspects, including the need to establish a new, more flexible model for the protection of employees that will not be focused on any particular workplace. The legislation will also have to respond to the demographic problems, ensuring effective family protection.

6. The role of social partners

In the restructuring of the legal regulations regarding working time, social partners have a major role to play. The involvement of employee representatives increases the chance for developing mutually acceptable solutions³². Cooperation from social partners is necessary on two levels. Firstly, it needs to be postulated that the legislator's actions are preceded with developing a joint position of the Tripartite Commission. The introduction of solutions that are not supported by most of the interested parties could result in social tensions and conflicts, as in the case of amendments to Division VI of the Labour Code in 2013. Secondly, specific solutions leading in particular to more working time flexibility, can be admitted on con-

³¹ These institutions were introduced by the Act of 11 October 2013 on the Special Solutions Related to Workplace Protection (Dz. U. of 2013, item 1291). The subsidies are provided by the Labour Fund. Interestingly, the training session should be justified by the entrepreneur's current or future needs, which limits potential activities, as the legislator focuses on employment at a particular employer's and not on the employee's general situation.

³² International Labour Office, *Hours of work: from fixed to flexible?* [International Labour Conference, 93rd Session 2005], Geneva 2005, p. 53 and p. 60. It needs to be remembered that the fundamental purpose of labour law is to secure employee interests: Z. Salwa, *Przemiany prawa pracy początku stulecia a jego funkcja ochronna*, in: *Prawo pracy a wyzwania XXI wieku. Księga Jubileuszowa Profesora Tadeusza Zielińskiego*, M. Matej-Tyrowicz, L. Nawacki, B. Wagner (eds.), Warsaw 2002, p. 300.

dition of consent from collective entities that represent employees. This is confirmed by the mechanisms used by the legislation in the context of extending reference periods, interrupted and flexible working time, and the conditions for employment in connection with an economic slowdown and a reduced working time. Particular solutions are introduced in the collective labour agreement or in an agreement with the trade unions (or at least representative workplace union organizations) or, in their absence, with the representatives of the employees selected following the procedure applicable at the given employer's. Most doubt is naturally raised by the admission of representatives selected *ad hoc*. This is because the solutions that substantially affect the employees are introduced with consent from representatives whose negotiation position is relatively weak. Solving this problem will be very difficult³³ without a comprehensive restructuring of the model of representation of employee interests and creating permanent non-trade-union representation that could play a key role e.g., in the area of working time organization.

Both for systemic reasons and the practical assets of such a solution, it should be expected that the participation of social partners in shaping working time will be increasing. However, this needs to be a real dialogue of two equal entities that is a guarantee of developing mutually acceptable solutions. By ensuring such balance, the legislation could also expand the subject of social dialogue, enabling the introduction of new, more flexible solutions (such as extended settlement periods³⁴ and working time accounts) in exchange for more employee protection in other areas³⁵. The collective procedure will be adequate in the cases concerning untypical working time organization that substantially affects the employee's situation. Here, the free consent of the employee (expressed e.g., in a relevant request) is necessary.

Conclusions

Observing the evolution of the legal regulations on working time, there can be no doubt but that they are of crucial importance in matching the contents of the employment relationship to the needs of its parties. Therefore, the manner of shaping working time determines both the usefulness of the employment relationship for the employers and the possibilities of proper development for the employees. On the one hand, the legislator must increase the effectiveness of the

³³ The employers claim that a resignation from the analysed solution would result in total impossibility of making working time more flexible.

³⁴ Cf. H. Strzemińska, *Zarządzanie zasobami czasu pracy doświadczenia krajów europejskich*, Warsaw 2004, pp. 24–71 and pp. 170–171 for the German solutions.

³⁵ Without such possibilities, social dialogue becomes unattractive. Cf. L. Florek, *Ustawa i umowa w prawie pracy*, Warsaw 2010, p. 155, who points to the fact that the evaluation of benefits is not carried out in a wider perspective.

work process, while on the other hand he must protect the employee's life, health, and privacy. It seems that in spite of a surface contradiction between these tendencies, there are huge possibilities of reconciling them, both as a result of a coherent concept of shaping working time at the statutory level and thanks to increasing the role of social partners and leaving some freedom to the employees themselves. Skillful promotion of working time adapted to the needs of the employees will also contribute to increased effectiveness of the work process. Evaluating the future from today's perspective, one should therefore expect an expansion of legal instruments increasing employment effectiveness, at the same time as they securing the individual's autonomy, the protection of which will be shaped more flexibly than today.

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THE FUTURE SUBJECTIVE SCOPE OF REGULATIONS ON WORKING TIME

1. Preliminary remarks

1.1. Legal analysis of working time

In the following text, I analyze working time from a legal standpoint. This means that I do not aim to evaluate the economic and social rationality, including global conditionings, which have an influence on the working time regulations. Thus, I do not take a position on whether a given regulation effectively leads to achieving specific social aims or not.

I do, however, obviously refer to arguments from the sphere of economics or other spheres of social life as they comprise an axiological justification for the existence of regulations in the area of working time. I limit myself to just stating the fact that such elements exist. Whether specific regulations effectively fulfill the assumed aims is not the subject of my discussion. Similarly, I do not consider whether excessive regulations do not cause counter effects by diverting official employment into the so-called grey economy. To recapitulate, the subject of this text is only to establish the assumed aims of legal regulations rather than to evaluate their effectiveness.

1.2. The concept of working time

To begin, it is necessary to establish the subject matter of this analysis as it is especially significant from the perspective of Polish law. The crux of the matter is that the Polish labour code clearly distinguishes between holiday leave and the regulations on working time. Regulations concerning working time pertain to regulations on the number of working hours and days off work other than holiday leave. Holiday leave is regulated separately. The above could suggest that the social role of regulations on holiday leave is completely different from the regulations concerning working time. Such a finding would have been incorrect. Although it is true that the social aims which underlie holiday leave are broader than the ones concerning working time. To a significant degree, however, they are common,

especially that, in its general principles, the Polish labour code states that the regulations on holiday leave, days off work and working time form a joint set of regulations executing a so-called holiday entitlement. Furthermore, a fundamental for this matter deed of the EU labour law, i.e., Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of organization of working time, pertains to both the norms of working time and of minimum rest periods. All this speaks for this analysis of working time to also include holiday leave, holidays, and days off work.

1.3. Subject of the analysis

This subject of this study is to determine the subjective scope of legal regulations concerning working time. A fundamental question is whether these regulations should only pertain to persons performing subordinate work (classical workers) or should they also pertain to persons performing work on other grounds than an employment relationship. The above question can only be answered after two preliminary issues have been explained. First, the social values which underlie the existence of regulations on working time should be established. Second, it should be determined whether a significant similarity exists between the situation of an employee and the situation of a person who performs gainful employment based on other grounds than an employment relationship. The notion of “significant similarity” means that although the legal situation of those performing work on different legal grounds can indeed differ, still, in terms of the key element from the perspective of the protected social values hiding behind the regulations on working time, a significant difference does not exist.

1.4. Regulations on working time in the system of human rights

Finishing the introductory issues, it should be mentioned that the regulations concerning working time are regulations which limit human freedom as their sense is that both employer and employee are limited in their freedom. Both parties are limited in their freedom to contract because contracts which provide for the possibility of working hours longer than those allowed by law are invalid. Paradoxically, it is the employee who is limited the most because he/she has no possibility to work voluntarily above the set norms of working time regardless of whether he/she wishes to do so and even if it can bring him/her material benefits. Furthermore, an employee may be forced to use their holiday leave time even if they think they do not need it. The employer, in turn, is limited in the scope of running their business, including in particular their economic activity, because the law forbids him to employ employees above the defined norms of working time or on some days. In other words, the regulations on working time constitute socially justified limitation of freedom of the parties to contract an employment relationship because, by limiting the freedoms of employees and employers in the area of employment, at the same time they guarantee the employee freedom to grow in other areas than work.

2. Working time as a labour right

2.1. Subordination as a justification for limiting working time

At present, the regulations concerning working time focus on employment-based jobs understood as subordinate employment. For this reason, natural seeking of rationality of the existence of regulations on working time is its connection with subordination. The reasoning, therefore, is the following: since the employer has power over an employee's time, then the regulations on working time limit this power in the name of protecting the employee's health and his private or family time. In this perspective, the justification for legally regulating working time is the protection against the employer's domination and his inclination to maximize profits.

2.2. The issue of health and safety at work (BHP)

The regulations on working time also pertain to the matter of safe living and health conditions (whose formal proof is the title of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003). Limiting working time and the connected thereto limitation of the worker's fatigue minimizes the risk of accidents at work. Nevertheless, the analysis of the labour law doctrine (at least in Poland) shows that it is the employer and his decisions that is the ultimate source of risk. It is the employer who has the right to organize work, including deciding about working time. And it is he who is the source of hazards.

2.3. Other protected values

Certainly, arguments concerning the validity of the state's interference into a worker's working time are not limited to one's life and health. In particular (and rightly so), the protection of family, private and religious life, *etc.*, is also emphasized. However, in every case, the doctrine of labour law emphasizes that the risks the above values are exposed to come from the dominating position of the employer and the character itself of the risks has a private dimension, i.e., it pertains to the situation of an individual worker and their family.

2.4. Non-dependent employment

In the context of the above reasoning, regulations concerning working time should apply exclusively to dependent employment, i.e., the classic labour law and the discussion on their application to non-dependent employment, inclusive of self-employment, is groundless. A person who is not formally dependent organizes their work independently. And if so, then the person is not at risk.

3. Working time as an element of social order

3.1. Preliminary remarks

I consider the above reasoning for statutory interference into one's working time as pertinent only in a limited scope. In other words, indeed, some institutions of working time find their connection with dependence, however, the idea itself of limiting the length of working time does not. In particular, it is incorrect to reduce the sense of the regulations on working time exclusively to the protection of individual values (of a specific worker). Furthermore, a deepened analysis of dependence issues should be made, which in my opinion is mistakenly limited to formal dependency. And finally, considerations should be initiated over the issue of social effects of one's unlimited freedom in the scope of performing work and the social problem of division of labour.

Furthermore, the significant issue of whether the gainful or non-gainful character of one's work has an impact on justifying the introduction of regulations concerning working time. And finally, a question should be posed: what significance for the issues of working time have the rights of non-working people and the interests of society as a state community. Only after considering the above issues can one answer the question regarding whether regulations on working time should apply to those who work in forms of employment other than a classical employment relationship.

3.2. Economic dependence

First of all, the issues of formal dependency of an employee should be discussed as an alleged source of risks resulting from one's overwork. I am of the opinion that such a point of view is only partly accurate. The employer indeed has the right to organize working time. But the right is "only" contractual. An employee must formally agree to the employer's action even in such way where he accepts the employer's standard work rules. Yet from a formal standpoint, an employee can in their employment contract stipulate conditions which he/she thinks are better. What is more, the analyzed employer's right is relatively short-term because an employee can quit a job they consider inconvenient. While the period of the "employer's power" is limited to the period of employment notice. It should be pointed out that the employer does not have official authority over an employee and cannot force the employee to work by way of personal duress.

And yet, despite the abovementioned legal possibilities, as a rule, employees do not negotiate – not individually, at least – special and convenient terms of employment for themselves. The reason for this is easy and in fact trivial. The dominating position of the employing entity does not result from its formal power over the employee but from the fact that it holds the scarce good of work itself. An employee accepts the organization of work imposed by the employer not because

the employer has such a right but because the employee cannot afford to lose the job for social reasons. And even if that's the case, the economic dependence on the employing entity occurs both when the legal relation provides for a formal employment subordination (a typical employment relationship) or it consists in self-employment or a contract for services. As long as an economic dependence exists, in their behaviour, the person performing work will be taking into consideration the employing entity's expectations when taking up work in the quantity which the person probably does not accept. In this sense, there is no difference between a working employee and a non-employee and it is not about all persons performing work in other than employment-based job. It is about those who are in economic dependence.

Indirect evidence of such a dependence is the fact that an individual devotes their time to one or few employing entities for an extended period of time. It is the time-consumption of providing work for one or two entities which proves that a working person treats the work as their main source of income thereby confirming that his/her life affairs are connected with a given source of income to a significant enough degree that an economic dependence is created which forms a threat to one's freedom of choice.

As a final note in this fragment of my argumentation I wish to state that if the need to regulate the issue of working time were to be considered as connected with dependence, then in the first instance it is economic dependence we should discuss rather than formal dependence. And this means that application of regulations on working time to non-employees is justified already from this standpoint.

3.3. Social division of labour

The analysis of the subject matter made from the perspective of economic dependence focuses (though does not limit) the analysis of working time on the individual perspective. Thus, it is about limiting the employing entity's power (including the employer's power in a classic understanding) over the employed person (including the employee in a classic understanding). Yet, such a perspective does not exhaust all the social aspects of working time issues.

At this point, I wish to take up the issue of division of labour. Work is a social good of a limited availability. At the same time, it is a good which is indispensable for some members of the community. Hence, the regulations concerning working time constitute a tool in division of labour. As a rule, the lower the working time norms, the higher availability of work for a larger group of people. I wish to place an accent on "as a rule" because the above subject is more complex from the perspective of the economy as a whole. This results, among other things, from the non-pay costs of labour which do not undergo an automatic reduction with decrease of working hours.

The above results in the fact that not only the reduction of working time in specific circumstances must mean an increase of employment, but it can bring

about its reduction as a result of competitiveness of the employing entity or the economy of a given country. The above consists of the process of economic globalization and the connected thereto social dumping which diffuses the effects of reducing working hours on to the labour market. Still, the abovementioned circumstances do not change the fact that a typical effect of reducing working time is an increase in the number of those employed.

As a matter of fact, the case is not obvious from the economic perspective, either. Increasing the number of wage earners means increasing the demand which in turn, should result in increasing employment not only due to division of labour but also thanks to the improvement of the economic situation.

At this point it is worth stressing that every gainful employment, regardless of whether it is dependent or not, fulfils a similar social function because it supplies an individual with means of support. In this sense, division of each labour, including other than so-called employment-based work, counteracts social exclusion. That employment-based work, at least in its current construction, ensures to a higher degree that one can have a dignified life does not change the fact that self-employment and other forms of employment fulfill the same purpose although to a lesser degree. And, if increasing its availability is possible by dividing its limited resources, then there is no reason for not applying such legal means. For a person who faces poverty, every job matters. On a different note, perhaps the standards concerning rights of persons working on non-dependent employment terms should, perhaps, be increased. This issue, however, is suitable for discussion in another place.

3.4. Risks to life and health

The analysis concerning the life and health of a working person has appeared earlier in this text, however in a slightly different and individualistic perspective. Of course, it should stir no doubt that performing any excessive amount of work increases the risk of harm to one's life and health. From this perspective, it does not matter whether the work is performed upon one's free choice, as a result of the employer's formal order, or as a result of economic duress resulting from either too low remuneration or from one's fear for losing income. All work, including the work of the self-employed, generates a risk of accidents. But working in a state of overwork generates an especially high risk.

It should be pointed out that the risk connected with risking one's health and life does not have an individual nature only. Performing work beyond the limits of admissible tiredness generates risk for other people, i.e., for their property, their life and health. And for just this reason alone, limiting working time is justified regardless of the reason for its undertaking, be it a choice, pressure, or order. Thus, limiting working time finds social justification.

Also, overwork generates risks for the worker himself. At this point, we tackle a very important sphere, namely one's freedom, as the question is: does an indi-

vidual have the right to dispose of their person in a way which poses a risk to lose one's own health or life? In other words, is the individual's life and health their own private matter (I naturally disregard the information about one's health condition)?

My answer to the above is negative. In the system of a social state, i.e., one which guarantees a person help when in need, including in particular in the situation of losing one's health, or social (family) effects of losing one's health and life, one's failure to take care of themselves becomes a social issue. It is worth keeping in mind that health insurance systems (and sickness insurance) are based on the principle of social solidarity, which means that a person who is seriously or chronically ill has paid into the system an equivalent of the costs of treatment. And if so, then the members of a community have the right to protect themselves against lack of prudence on the part of their members. Hence, the community has the right to interfere in one's freedom in the scope of his/her work so that he/she does not perform it with exposure to someone else's loss of life or health. From such a perspective, then, there exists full rationalization for limiting the working time of all who work, i.e., employees, self-employed, and other persons performing gainful work. Moreover, the same perspective allows one to reason for the existence of arguments for admissibility to limit working time of the self-employed and of the people employed in non-gainful forms of work, e.g., children employed in family businesses and on their parents' farms.

3.5. Working time and health and safety at work

At this point it is worth tackling an issue which is characteristic for Polish law, although I do not exclude that it concerns other jurisdictions. The core matter of the issue is that, on constitutional and statutory grounds, it is indisputable that legal regulations concerning safety in the process of providing work are universal, i.e., they pertain to all workers (including the self-employed). The thing is, however, that the taxonomy of the regulations of Polish law suggests that the regulations concerning working time form a different part of labour law than the regulations concerning safe and hygienic working conditions (safety and health at work; Pol.: BHP). And if that should be the case, then the regulations on working time do not apply to non-employees.

Yet such a conclusion would be wrong. One of the most important, though not the only function of the regulations concerning working time is the protection of a working person's and other persons' health and life, as discussed above. Hence, since Polish law extended the application of health and safety regulations (BHP) to persons who perform non-dependent work, then there is no reason for not applying to such persons at least part of the regulations on working time. It is every person's health and life that are the subject of legal protection, not just the health and life of an employee. Therefore, if working too long generates risks in the above scope, then it does not matter whether a working person performs long-hours long work because he/she received a formal order from their employer or

because he/she decides to work longer out of their own choice (e.g., because the remuneration for work in a shorter time does not give them a chance to support himself). The word “choice” is especially inapt in the context of economic duress. Motivation has no significance in the context of risk for such significant values as one’s life and health.

3.6. Protection against social exclusion – freedom from work

The essence of social exclusion is that an individual cannot realize their freedom fully. There are numerous reasons for social exclusion although most often it is social exclusion resulting from lack of means. However, an individual can also be excluded also when he does have material means but has no time to participate in social and family life. Free time is indispensable for one’s development and the development of those closest to him/her. Part of his free time serves this purpose as time off work has a dual nature. Part of free time – eleven hours of daily rest and thirty-five hours of weekly rest – serves first of all one’s regeneration and pertains to the protection of life and health. The remaining time off work, in turn, serves to create space making it possible for the individual to pursue self-realization in the area of broadly understood personal matters of both workers and those close to them. And so, holiday leave and days off work serve the family and its members’ development. Religious holidays are for one’s realization in religious practices, whereas state holidays serve the integration of a national community.

Hence, what comes to the fore is something I call freedom from work. An individual who has no work is not free because he has no means to live on and to develop. But a person who has a job and the means, although the quantity of his work is excessive, is not free, either. Similarly excluded is the one who has no means because he has no real possibility to develop in any other area but work. Meanwhile, society has an interest in the universal development of its individual members because, in this way, the quality of social relations, political life, development of new generations *etc.* is guaranteed.

Similarly to earlier examples, from this perspective, it does not matter what the reasons are for someone to work excessively, regardless of an order or economic duress or a wrong evaluation of what is good for someone. Therefore, enforcing limits of working time is socially beneficial regardless of the form of employment. And lack of legal regulations in this scope violates the constitutional principle of equality. For instance, lack of paid holiday for the self-employed not only excludes such persons from a specific sphere of social life but also excludes their families as well. A holiday leave is paid not because of the fact that an employee performs dependent work. It is paid so that a space is created in which an individual is free from the pressure to take up gainful employment. There are no reasons for non-dependent workers not to have a right to such a space.

3.7. Social space of freedom from work

Regulations concerning working time also determine the space that is free from work in a social dimension, not just an individual one. The above has different sources. State holidays constitute a time of general integration around national matters. They form an element of building community. Everyone has a right, and even a social duty, to participate in such a process. Thereby, the time of holidays should be a time free of work for everyone, regardless of their being a dependent worker or performing non-dependent work. Furthermore, in order for such time to be a real holiday, state holidays should be paid either to all or non-paid to all. Today (at least in Poland), such days are paid for some workers, i.e., for those who receive remuneration according to fixed monthly rates.

One's right to real religious practice as regards holidays means that no one should interfere in celebrations with their work. A day is a holiday only when there is peace in the social space. Hence, a prohibition to work on holidays not only consists of the prohibition to employ so that a person can exercise their religious practices. It also consists of the premise that the non-practicing not disturb the holiday character of the day of those who are celebrating.

Again, we are dealing with a situation where dependent employment or lack of dependence is insignificant from the perspective of working time. Lack of regulations (at least in Poland) prohibiting hiring contractors or the self-employed on Sundays and holidays is an exclusion of these persons from public or religious life, hence it constitutes a violation of the persons' rights.

4. Subjective scope of regulations concerning working time

4.1. Protected values and subordination at work

Pointing to the reasons for which public law interferes into an individual's freedom in the scope of performing work, I have stated on many occasions that fundamental protected values are not connected with a worker's organizational subordination but with the risks resulting from the work itself which lasts excessively long. Subordination to the employer's decision can only increase the risk of occurrence of excessively long work. However, the ultimate reason for this phenomenon is economic subordination. It makes an employee continue onerous work due to his fear of losing his job and retaining the income. For the same reasons exactly, a self-employed or other non-dependent employee is also inclined to work longer than is justified by maintaining a life balance. It is especially the case when low remunerations stir the effect that the employed themselves get interested in longer work even at the expense of personal development and their family matters. After all, it is understandable if an individual is forced to ensure their basic needs.

4.2. Complementarity of legal regulations

The above remark points to the need to perceive the law in a complementary way. Integration of hired non-employed workers into the working time has no sense if such persons do not have an assured minimum pay. Limiting working time cannot lead those who work to destitution. Thereby, the remunerations of such persons should be protected at a minimum level as well as comparable (which does not mean identical) to the remuneration of typical employees. Assuring space for personal development and family life, in turn, commands to introduce regulations concerning paid leave and holidays as regards the non-dependent employees.

4.3. Broadening and narrowing the subjective scope

In this context a question arises about the direction of changes in law. The literature at times points to the process of the so-called expansion of labour law on to the non-dependent employment. I consider the above statement to be wrong. We should rather talk about a process of correcting the subjective scope of labour law which at present is incorrectly defined.

In the first instance, the axiological foundations of individual regulations, in particular those pertaining to working time, should be read. I am of the opinion that some of the regulations concerning working time pertain to persons who perform work of a specific minimum length. Risks to health and life, the risk of broadly understood social exclusion, a negative impact on family life, or the risks to excessive accumulation of work for some persons appears at employment of a specific duration and time consumption. Therefore, there is no justification (and what is more, it would be legally ineffective) to impose regulations concerning working time occasional jobs, short-term jobs or jobs with an insignificant daily burden. However, when applying such approach, one should be consistent and exclude from the regulations on working time short-term or non-time consuming dependent employment. Naturally, this remark is only hypothetical because, as experience shows, dependent employment for a few or a dozen or so hours practically does not happen. However, for the clarity of the model, the subjective scope of labour law should broaden on the one hand, and narrow on the other.

As regards the protection of such social values as risks to third persons, costs of treatment of the harmed persons, protection of the space free of work to ensure the possibility to common (state) or group (religious) celebrations justifies broadening of the regulations on working time on to any work, non-gainful work included.

4.4. Limiting the freedom of a working person

The above analysis shows that a number of arguments which speak for statutory interference into the regulations concerning working time limit the person working and not only the employing entity. A freelance and overworked surgeon

is as dangerous as a physician who works under an employment contract. An overtired vehicle driver is as dangerous as an employee as when self-employed. For this exact reason, as regards vehicle drivers, limiting working time is universal and does not depend on him/her being formally employed or not. The above means that not only employers should answer for violating working time regulations but also workers themselves if working over the fixed norms is the effect of their own choice and at least when exceeding the norms of working time generates danger to life and health. In this scope, a working person's freedom is subject to limitation.

Final remarks

In my opinion, all of the above arguments bespeak that the regulations on working time should be extended to non-dependent employees (and partly to persons performing non-gainful work) to uphold the principle of equality under the law on the one hand, and protection of public interest on the other. Therefore, as mentioned above, it is a matter of amending incorrectly constructed labour law which includes a category of workers too narrowly defined. The above does not mean that individual legal solutions should not differ from each other. However, the foundations (periods of rest, holiday leaves, the norms, freedom of social space from work) should be the same, although perhaps in different dimensions.

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LEGAL RULES ON WORKING TIME AND THE DEMOGRAPHIC FORECASTS

1. Introductory remarks

One of the most strongly marked social trends that will have an impact on the regulation of working time is that of the predicted profound changes in the demographic structure of society. The continued low fertility rate (currently 1.3 child per woman at childbearing age) connected with the lengthening of the life expectancy will result in population decline¹ and the aging of the Polish population. This will have severe consequences for the economy and the situation on the labour market. It seems that this trend will also have to be reflected in the regulation on working time.

The reactions of legislators to the consequences of the demographic crisis is visible on several levels. Firstly, it can be necessary (as has already occurred to certain extent) to create the institutions and structures conducive to the increasing of fertility. In this respect, an important role can be played, in particular, by regulations of working time to help employees reconcile work and family life². In the demographic crisis situation such actions will lie in the public interest reflected in retaining on the labour market as many working-age population members as possible. On the other hand (which the Polish legislator still seems not to notice) there may be a need to make available such solutions regarding working time to the employees taking care of the elderly family members unable to perform life functions independently. The number of the employees (especially women) overloaded with such duties will increase. Also in this case, the public interest will lie in keeping these people on the labour market. The aging of the Polish population is likely to cause an increase in the demand for nursing services. From this per-

¹ According to the forecasts, by the year 2035 the Polish population will fall by 2 million (Proгноza ludności na lata 2008–2035, Główny Urząd Statystyczny, Warszawa 2009).

² The results of the study confirm that the lack of childcare facilities as well as the lack of prospects for the harmonious combination of work and family responsibilities are major barriers to having children (the results of the special study module on combining work and family responsibilities, realized in the second quarter of 2005, together with the Study on Economic Activity of the Population).

spective, it is desirable to formulate adequately the provisions on working time for the institutionalized care facilities as well as to create the appropriate legal framework for home care exercised in the context of the employment in the household. In addition, a major challenge for the legislators will be the making of the provisions encouraging the employees to be active longer in their professional life. The first step in this case was the extension of the retirement age. In the context of the extension of the working lives of the employees it will be essential to prevent the burnout as well as introduce such solutions in the field of working time which will allow them to be professionally active as long as possible, taking into account the work intensity adapted to their age and capabilities. Finally, the new generation called “generation Y” is entering the labour market and demonstrates a new approach to their work and working time, especially expecting high flexibility in shaping their working time and harmonious reconciliation of work and non-work activities. It may also be another factor influencing working time in future.

The coming, unprecedented demographic situation will be a big challenge for the legislators. This paper is an attempt to analyze to what extent within the scope of regulating working time we are prepared to address these challenges and to what extent and in which direction the legal rules should be changed to meet these challenges.

2. The working time of those taking care of children or the elderly

Demographic projections indicate that the burden of caring responsibilities will increase. A large proportion of workers – especially women – will bear the double burden of these obligations, i.e., towards children and the elderly family members (the so-called sandwich generation). While the need to take into account the special needs of the workers taking care of the young children is discerned by the legislator to some extent, the problem of caring for the elderly family members so far was considered a private matter and, in principle, was not noticed by the legislator. In view of the shrinking labour force resources due to the population aging and the population decline, this situation may change. From the point of view of the public interest it will be important to keep the persons performing the caring duties on the labour market. This applies especially to women who traditionally are responsible for fulfilling these duties.

The measures which the legislator may undertake in order to enable the workers to remain on the labour market and to fulfill the caring responsibilities within the working time, **are essentially the same regardless of whether it comes to childcare or the elderly.** First of all, the workers’ access to flexible forms of em-

ployment, among other matters, flexible working hours³, part-time work, teleworking, working under the individually scheduled working time system shall be expanded.

Generally speaking, all of these forms of employment have already been incorporated into the Polish labour law. Polish labour law always made it possible to conclude part-time employment contracts, as from the year 2007 the provision on work in the form of teleworking was regulated in the Labour Code and by virtue of the amendment of 12.07.2013, the legislator introduced the option of using the flexitime, giving the employee the right to choose the time of starting work. There is also the possibility of determining the personal work schedule at the worker's request. The basic instruments that can be implemented to reconcile work and caring responsibilities have already been introduced to the Polish legal system.

For the future, it seems reasonable **to strengthen the position of the worker requesting the introduction of the hours of working time or the working time schedule convenient for them with regard to the taking care of a child or other person who is taken care of**. In all these cases, the worker has the opportunity to apply for the work performance in the form of flexible employment selected at their choice, however, there is different degree of binding the employer by such request. In the case of teleworking and part-time work, the employer shall, where possible, take into account the employee's request for the introduction of these forms of employment (Article 67⁷ §3 and art. 29² §2 of the Labour Code). The phrase "the employer should as far as possible" led the doctrine to the too far-reaching conclusion of the so-called "relative claim of the worker for the employment in the form requested by them"⁴. According to this view, the employee, whose request for the introduction of the teleworking or part-time work was rejected and in their opinion the employer had the possibility of such employment, can make a claim for the employment. However, as rightly noted in the literature in question, proving the evidence that the employer had the opportunity of the employment in the form of the working time requested by the employee is very difficult⁵. In the case of flexible working hours and individual working time it is only said that it can be implemented upon the written request of the worker – the decision to grant or reject the worker's request was left to the employer's discre-

³ Named by the legislators awkwardly in the Law amending the Labour Code of 12/7/2013, the individual work schedule, even though the name has long been used in the legal and juridical jargon for determining the institution regulated under art. 142 of the Labour Code. To distinguish I will use the term "flexible working time" which is quoted in the literature in question, which better captures the essence of the solution.

⁴ M. Gersdorf, J. Skoczyński, [in:] L. Florek (ed.), *Kodeks pracy, Komentarz*, Warszawa 2011, p. 376; M. Gersdorf, *Zatrudniania pracowników w formie telepracy*, PiZS Nr 5/2008, p. 11; M. Gersdorf, K. Rączka, J. Skoczyński, [in:] Z. Salwa (red.), *Kodeks pracy. Komentarz*, Warszawa 2007, p. 183.

⁵ As for teleworking, it is analyzed by A. Sobczyk, *Telepraca w prawie polskim*, Warszawa 2009, p. 81ff.

tion. The first step to enhance the status of the employee requesting the inclusion in the given form of the flexible working time could be to harmonize their legal situation and in all cases to introduce the same wording as in the case of teleworking and part-time work – “as far as possible the employer should consider the worker’s request”. The position of the employee could be strengthened by obliging the employer to provide – in the event of the rejection of the worker’s request – the reasons for the refusal⁶. Another far-reaching solution is the obligation of the employer to take into account the worker's request, if it does not preclude the relevant considerations relating to the protection of the interest of the employer (e.g., the nature and organization of work)⁷. In this case, however, the employer’s interest would be severely limited and sometimes would put the rationality of continuing its employment relationship under question mark. The scope of the workers’ protection could, however, be varied. As a general measure, for example, the obligation to provide reasons for the refusal can be predicted and in the special situation of the worker (for example when the worker has custody of the child up to a certain age or of the disabled person or the elder person who is unable to perform life functions independently) oblige the employer to accept the worker’s request if there are no objective reasons against it, for example, the reasons related to the nature and organization of the work. *De lege lata* of the Polish labour law to a limited extent imposes an obligation on the employer to accept the worker's request to introduce the working time opted for by the worker. In fact, it is currently provided only with regard to the parents who are entitled to parental leave and who can apply for the reduction in working time. In the future it may be necessary to extent such right to other situations.

The instrument, whose development can be postulated for the future, is flexible. The Polish legislator to date has been approaching this solution in a very distrustful way, while in many countries such working time organization has been implemented for years with great success. The turning point in this is the passing of the amendment to the Labour Code of 12.07.2013, though it also introduces flexible working time only in its simplest form, consisting of the possibility of starting work at different times on different days. Meanwhile, in other jurisdictions (e.g., Czech and Slovak law) there are much more advanced forms of flexible working time, giving the workers more possibilities for flexible organization of working time, not only during the day, but also during the working week and four-week periods⁸.

⁶ This solution works, for instance, under Australian law, see H. Strzemińska, *Czas pracy w krajach Ameryki Północnej i Australii*, the material reproduced.

⁷ This solution works, for example, under German law under which the circumstances which may justify the refusal of the employment as part-time work proposed by the worker shall be stated (see M. Rycak, *Polityka w zakresie czasu pracy oraz zasady jego prawnej regulacji w Holandii, Niemczech i Danii*, Warszawa 2011, p. 313).

⁸ M. Latos-Milkowska, *Prawne aspekty organizacji czasu pracy w nowoprzyjętych krajach UE*, [in:] H. Strzemińska (ed.), *Czas pracy w nowych krajach członkowskich UE*, Warszawa 2009, p. 198.

For the worker who, in order to meet their needs related to the caring responsibilities, applied for the employment in a particular form of working time, **it is also important to have the guarantees that the employer will not have the excessive possibility of modifying these rules one-sidedly.** From this point of view, the situation of the workers doing part-time job is particularly disadvantageous. Namely, under Art. 151 §5 of the Labour Code the employer has the right to assign the overtime tasks to the worker doing part-time job⁹ – within the limit fixed in the contract of employment – for which the worker does not receive any additional pay and after exceeding this limit, the worker receives the additional pay the same as for working overtime. From the point of view of the workers who work part-time due to the necessity of taking care, this situation is very unfavourable for them. Frequent exercising of the right by the employer which is stipulated in art. 151 §5 of the Labour Code prevents them for achieving a goal for which they undertook the part-time work. The right of the employer to employ part-time workers to perform overtime tasks should be restricted. In the future two ways of such limitation could be postulated – the introduction of the explicit limit for the permissible overtime work or the statement of the reasons for commissioning such duties to the worker¹⁰. It seems that the most effective way would be to implement both regulations jointly.

Although the conclusion of part-time employment contracts is fully allowed, there are some legal solutions which make the situation of part-time workers less favourable. Long periods of part-time employment can negatively influence the right of such workers to retirement. Besides, they don't gain the right to unemployment benefits if their incomes are less than minimum wage. For the future it is necessary to liquidate these obstacles.

To sum up this issue, it can be concluded that the Polish labour law already provides for the instruments in the field of working time, by means of which the worker can combine work with caring responsibilities. Further actions taken by the legislator may focus on developing and perfecting these instruments so that in the future they could fulfill their role more effectively.

3. Working time in caring institutions

It can be expected that the increase in demand for caring services (especially for the care of the elderly) will trigger an increase in the number of institutions offering such services. According to the report “Poland 2030” in the coming decades it should be expected a gradual defamilism and the commercialization of care. These trends will undoubtedly be strengthened, and perhaps even prompted

⁹ Ł. Pisarczyk, [in:] L. Florek (ed.), *Kodeks pracy. Komentarz*, Warszawa 2011, p. 733.

¹⁰ For example, the reservation that this is possible only if there are reasonable grounds for the overtime work.

by the changes in the age structure of the population. This may provide an opportunity for the development of the market driven forms of care, which are practically not present at this moment. Consequently, the caring services may likely to become one of the most dynamic sectors of the Polish labour market¹¹.

As institutions which as a rule operate round-the-clock, they will need appropriate forms for the organization of working time. The existing rules governing working time have already incorporated solutions which enable the operations of these caring facilities twenty-four hours a day. Commonly used equivalent working time (art. 135 od Labour Code) gives the possibility of keeping these facilities in round-the-clock operation. In such facilities it can also considered the implementation of working time in the continuous activity (art. 138 of labour Code) – it will be possible, if we find that the reason for “the continuous satisfaction of the needs of the population” also extends to the round-the-clock caring facilities or through the introduction of such possibility by way of special provision (e.g., in the legal acts governing the operations of such units). The week-long operations of such institutions call also for their availability on Sundays and public holidays. And again in this case, the Polish labour law provides such possibilities. Art 151¹⁰ item 9 of the Labour Code permits to work on Sundays and public holidays when doing jobs which are necessary due to their social utility and the daily needs of the population, in particular in accordance with item f, for the employment on Sundays and public holidays in health care institutions and other health care facilities destined for people whose health condition requires the provision of the round-the-clock or all day-long health services. Therefore, the current regulation on working time contains the provisions which make possible the operations of such facilities 24 hours a day, 7 days a week.

The demand for the services related to the care of the elderly and infirm people can also be temporary. The provision of personal care for the elderly and infirm person results in a very heavy physical and mental burden on the guardian – this is particularly true in the cases of exercising such care by the family. This phenomenon (and it will escalate) may result in the increased demand for the facilities offering caring services for the definite time – for example, for the time of the caregiver’s holiday so that they could rest and regenerate¹². In this case, in the activities performed by such facilities there may be an additional element – the seasonal fluctuations in the demand for labour, linked up with the increased demand for their services during periods such as summer and winter holidays. In this case, a useful tool would be the extended settlement periods, which will provide an opportunity for overtime employment during periods of the increased demand for labour and then compensate for the overtime later in the settlement period. The amendment of the Labour Code adopted on 12 July 2013 satisfies this need to

¹¹ Raport “Polska 2030”, edited by M. Boni.

¹² Currently, in the absence of such facilities the elderly in such situations are often placed in hospitals.

a large extent. In conclusion, it can be stated that the Polish legislation on working time already *de lege lata* contains solutions permitting the operations of the caring facilities, offering both permanent and temporary care for the elderly.

4. The working time of those employed in households to provide care services

It is expected that there will be an increase in the interest in employing the workers in the households to provide care for the elderly and the children. As for the childcare it is largely due to the insufficient institutional development of caring and educational facilities (perhaps in the future this situation will change and the availability of these facilities will increase). In the case of the elderly care an important factor strongly rooted in the Polish tradition is the habit of taking care of the elderly at home, while the sending of the elderly person to the nursing home is still not socially accepted in most cases¹³. However, not always the care giving is exercised fully by the family – it is often backed by (especially in those families with higher incomes) some support from the third parties hired for this purpose in the household. At present this solution has already been often used, especially for providing childcare (baby-sitters), except that it usually involves the grey-zone employment. In the public interest is, on the one hand, to detect this kind of “grey zone” work (this would result in the payment of the taxes and social security contributions by the employed) and on the other hand, retain on the market persons who use such forms of assistance for the care giving provided to the members of their families.

The advantage seems to be beyond dispute – in the place of two people absent from the labour market (the employed in the grey-zone, who, therefore, is officially unemployed and often gets benefits associated with their status, and the caregiver, who in the absence of the possibility of using this form of care would be forced to resign or limit their professional activity) two people become the legitimate participants in the labour market. One of the factors increasing the attractiveness of these jobs seems to be the appropriate regulation of working time. The current regulation of working time is, in fact, largely inadequate for this type of employment (which results mainly from the “grey-zone” employment).

It is therefore necessary to consider a far-reaching modification of the existing regulations in relation to this category of workers **in order to permit the parties to the employment relationship to have freedom in the field of the organization of working time**. The protective function in this case would be performed by the norms regulating working time and the rest periods of daily and weekly cycles. In this way there will be no breach of the guarantees under Art. 66 of the

¹³ Raport “Polska 2030” edited by M. Boni.

Constitution of the Republic of Poland, which requires that the norms of working time are covered by the act and the parties to the employment relationship shall be able to organize their working time in the way which is convenient for them. The lessening of the worker's protection in this case can be justified not only by the unusual type of work and the consequent objective conditions, but also by smaller imbalance between the employer and the employee. The employer in this case is usually a private person not having so much organizational and economic advantage over the employee, as it usually is. The negotiating power of the parties in such relationship is more equalized. Often this is the employer who to some extent is dependent on the employee, since the provision of the work by the employee conditions the normal functioning of the employer and the necessity of looking for the replacement is very burdensome and costly.

5. Working time and the lengthening period of the professional activity of employees

The demographic projections indicate that it will be necessary to extend the working life of the employees, of which the first manifestation is to raising of the retirement age. In order to neutralize the effects of the population aging it will also be necessary to support the professional activity of the elderly. Currently, in Poland the potential of the generation 55 + is utilized to a very small extent¹⁴. This group is one of the biggest unutilized labour reserves and it is expected that the demographic situation may induce the necessity of significant professional activation of this population group. It seems that this will require the implementation of certain institutional incentives for both the employers who would want to employ (an example of such regulation is the last amendment to Art. 92 of the Labour Code) and also especially for the workers at such age so that they would be interested in extending the period of their activity on the labour market (for example in the field of insurance – no necessity of terminating the employment relationship in order to acquire the right to the pension). An important motivating factor to remain longer on the labour market can also be the expected level of the pension benefits – all indications are that the pension benefits will be lower in the future than they are at present. Again, however, in case of such motivation, it is important that the working conditions are adapted to the possibilities arising from the age of such employees so that they remain active participants on the labour market and not the beneficiaries of the benefits associated with temporary or permanent inability to work due to their sickness¹⁵.

Such solutions have not been applied to date in the sphere of the regulation of working time – therefore, this will be a new challenge for the legislator. The

¹⁴ Raport "Polska 2030" edited by M. Boni.

¹⁵ Raport "Polska 2030" edited by M. Boni highlights such potential threat.

method which can prevent the phenomenon of fatigue and burnout, which has already been used in the systems of some foreign countries is sabbatical method – usually a half-year or longer holiday (usually paid or partially paid) for the employee to regenerate. Perhaps this is the solution whose introduction will be useful for combating the effects of the burnout¹⁶. Currently, the taking of such leave seems very unlikely – the workers associate the long absence from work with losing their jobs. In the same time the studies show that the Poles are one of the longest and hardest working nations in Europe¹⁷, so the risk of burnout and related negative consequences (not just for the employee but also for the society) are very real. The use of such instrument would entail major changes in the mentality of both the employers and the employees. It is possible, however, that for the younger generation who declares their willingness to use such breaks at work, and in the same time is fully affected by the extension of the retirement age, the use of such solution would be more natural. In a particular demographic situation the employers may also change slightly their attitude to this kind of breaks at work, treating them not as a whim of the employee, but as an instrument to ensure health and work safety for the employee, increasing the employee's efficiency and extending their suitability for further work. From this point of view, it also seems desirable to introduce the solutions allowing the temporary reduction in the intensity of work – for example, through the possibility of the temporary transfer to the part-time work. From this perspective the so-called banks of working time could be an interesting option, in which the employee would “save” the overtime above the norm of working time in order to “take” it later at convenient time in the form of more time off.

It seems that it is also possible to introduce solutions which help to retain the employees at the retirement age on the labour market. This applies, for example, to the facilitation of the smooth transition from the state of the professional activity to the resting state, e.g., through a gradual reduction of working time.

6. Working time and the changes in the customs and expectations of the young generation.

The survey conducted among young people just entering adulthood and the labour market shows that their work expectations are changing. First of all, the younger generation is no longer willing to engage in their work to such an extent as the elder generation, and especially devote so much of their time to work. Young people want to combine work with other types of activities (education, hobbies), and expect that the employers to a certain extent will make it possible

¹⁶ That was the goal of certain professional groups to take holiday for the recuperation of their health.

¹⁷ OECD data.

for them. First of all, they expect a considerable amount of flexibility in the organization of their working time¹⁸. They would prefer to be held accountable for their performance rather than being at disposal for the specified period of time. Thanks to this they could – after the successful completion of the task – gain additional time off for other activities. In contrast to the older generation, the representatives of the young generation entering the labour market are also not willing to work overtime, their time off is a very precious value for them. They also expect the possibility of smooth transition to atypical forms of employment, such as part-time work. They are also not as much as the older generation focused on permanent bond with one employer¹⁹ and the periodic joblessness does not appear to them as a life disaster. The prevalence of such bases can force the employers to change the approach to the management of the staff, especially the management of working time in the company. This indicates that the task and performance based systems of working time have the biggest potential for development. Such systems give the employee a large possibility of organizing their working time (no rigid working time schedules) and generate the time for other professional activity. The employee who quickly performs the task assigned to them, gains the additional time off. The Polish labour law already provides for the system of working time, which is based on the above assumptions – task based system of working time (art. 140 of the Labour Code). In this system, working time is measured on the basis of the tasks performed by the employees, the employee has a big impact on the organization of their working time, they are not required to work in the rigid working time schedules, the tasks are assigned to the employee in consultation with them in such a way that they could perform them within the core working time norms referred to in art. 129 of the Labour Code. In principle, such system should allow the employee to generate additional free time and freely determine the schedule of their working time, which seems to correspond with the expectations of the generation Y. Of course, not every job can be provided within the framework of the task-based working time, however, more and more types of work – especially highly qualified, assisted by modern IT technology, can be performed in this way.

However, in practice so far, one could observe the trends in the use of the task-based working time primarily to further the interests of the employers. This is manifested especially in maximizing the tasks assigned to the employee. The faster execution of the assigned tasks most often ends up not in having more extra free time for the employee, but in “burdening” them with the additional tasks. The employers also often do not respect the principle that the task-based working time rules out the employee’s obligation to comply with the rigid schedules of working time, and they require from the employee to work in specific time intervals. Therefore, it can be said that the employers often use task-based working time

¹⁸ R. Zgłobik, *Pokolenie Y*; Jan. A. Fazlagić, *Charakterystyka pokolenia Y*, E-mentor nr 3 (25) / 2008.

¹⁹ See there.

“selectively” and thus use only those of its components which are in line with their interests. The question arises of to what extent the future employers will be willing to change their attitude and start implementing the task-based working time in a way that takes into account the expectations of the young generation. Will the representatives of the generation Y be sticking consistently to the values they declare at this moment, which will force the change in the approach of the employers or maybe, “life will verify” those expectations and consequently they will incline to the expectations of the employers? The attitudes of the employees of the generation Y to certain extent could be supported by the situation on the labour market – shrinking labour force due to the population decline and aging of the Polish population can “make more flexible” the attitudes of the employers who up to now have been accustomed to high availability of the workers.

The studies on the attitudes of the generation Y clearly indicate an aversion to work overtime. This is a significant change as compared to the older generations, for whom (as it seems) overtime was something normal (even if it was not additionally rewarded by the employer) and was very often an element of the corporate culture. The existing legal regulation is favourable for the employers who may wish to use the overtime work. The Polish labour law states that the overtime work is the duty of the employee (resulting from the duty of care of the workplace), there are relatively liberal limits for overtime work (the limit can be increased easily) and the flexible regulation of the compensation for the overtime work. The employers are very eager to use such possibilities. And again the question arises whether the reluctance of the generation Y to do the overtime work will be translated into the change of the attitudes of the employers (not necessarily in the form of the change in the law, but in the form of less frequent use of the overtime work) or will the young workers adapt in this regard to the needs of the employers?

Conclusions

The above analysis shows that the currently applicable working time regulation already provides the tools by means of which the legislator can respond to the challenges arising from the projected demographic situation. The adjustment of the working time rules to the needs arising from the revised demographic situation should not be of a revolutionary nature, but rather shall be based on the improvement and development of existing solutions. The rules on working time will have to take greater account of the individual situation of the workers – in particular, of the circumstances, such as giving care to children or senior citizens incapable of independent living, health condition and age of the employee. It can therefore be expected that the further flexibility of working time rules will be progressing, however, unlike so far – they will be more orientated towards the needs of employees rather than employers.

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CHAPTER IV

**WORKING TIME
AND THE CHALLENGES OF THE FUTURE:
WHERE ARE WE HEADING?**

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WORKING TIME AND THE LAW. A FEW OBSERVATIONS DRAWN FROM THE CURRENT SITUATION

1. Public discourse on today's problems regarding legal regulation of working time in Poland includes issues relating to the regulation of working time in Polish law, which is often considered particularly important from the point of view of the proper functioning of labour relations. One of these issues is the level of legal regulation, which should be understood as its distribution between state legislation, autonomous law, and the rules determined directly between the parties of the labour relationship.

The regulation of working time contained in the provisions of the sixth chapter of the Labour Code since the beginning of the transformation was assessed as overcentralized and rigid. The legislator of the Third Republic of Poland guided by those assessments made several major amendments to the provisions of that chapter under the general slogan of making the rules more flexible, which was supposed to provide more freedom to entrepreneurs, lower labour costs and, consequently, should lead to the increase of workplaces. The first such amendment to the Labour Code carried out on a large scale, including its sixth chapter, was the amendment of the legal act of July 26, 2002, called the July amendment. The consideration for providing more flexibility to the provisions was associated in this case with the significant reduction of the workers' rights, among other matters, the amount of the overtime pay was "halved" then. The evaluation of those changes was extremely controversial both from the point of view of the protective function of the labour law as well as from the point of view of solving the problems on the labour market, which the reform in its assumptions was supposed to tackle in the face of the catastrophic unemployment rates.

Further changes in the field of working time resulted from the substantial amendment to the Labour Code of November 14, 2003, called the European amendment¹. Its motto was to further increase the flexibility of the working time rules in the context of the opportunities stated in the Directive 93/104/NE of 1993 on certain aspects of the organization of working time (subsequently replaced by

¹ Journal of Laws No. 213, item 2081. The provisions of the amending law came into force on January 1, 2004.

Directive 2003/88/EC). The reform in 2003 of the provisions of the sixth chapter of the Labour Code, which then received completely new meaning together with the new numbering of the provisions, consisted, among other matters, in the introduction of a wider range of solutions to the systems of working time; it was permitted, *inter alia*, to work within the shorter working week and at the week-ends. This time it was real flexibility and not the cutting of the employees' privileges under the slogan of greater flexibility. The changes in the provisions regulating working time introduced in 2013² were the most recent. The changes that were then offered upon the initiative of the employers and implemented so quickly, caused serious crisis in the relations between the trade unions and their partners in the Trilateral Commission, i.e., between the government and employers' organizations. The most contested change was the allowing of the possibility of the employers' extension of the working time settlement periods up to 12 months under any working time system (the so-called annualization) "if it is justified by the objective or technical reasons or reasons relating to the work organization (see art. 129 §2 of the Labour Code), whereas before it was only possible with respect to specific types of work in the event of the application of the so-called the equivalent working time. In the extended settlement periods it is allowed to accumulate working time exceeding the basic working time standard in the period of the employer's increased demand and compensating this overtime by the time off during the periods of reduced demand. The opponents argue, however, that the extension of the daily and weekly working time standards during certain periods of the annual cycle raises the danger of over-exploitation of the worker's strengths, which can be harmful to his/her health. Furthermore, in such a system of settling working time the employee's right to overtime remuneration is limited.

Other solutions adopted as a result of the last year's amendment do not raise similar doubts. These include, among other matters, the sanctioning of the use of the so-called flexitime eliminating the difficulties which this type of work schedule created previously in terms of the calculation of the overtime created due to the current definition of employee's working day (see art. 140¹ of the Labour Code)³.

2. The evaluation of the provisions serving the purpose of more flexible working time must also include the procedure for implementing specific solutions. In practice, the company should distinguish the sphere of the exclusivity of the management powers of the employer from the sphere reserved for the collective bargaining agreements, namely for the autonomous interpretations of the labour law. The co-participation of the social factor is to ensure the inclusion of the workers'

² The Legal Act of 12 July 2013 on the amendment of the legal act – The Labour Code and the Law on Trade Unions (Journal of Laws item 869). The amended regulations are valid as from the 23rd of August 2013.

³ The new developments in the labour law are critically commented by Ł. Pisarczyk and K. Schiffer in the article "Towards flexibility-amendment of the provisions on working time", Labour Law Monitor No. 10 of 2013.

interests in the definition of the exceptions to the general rules due to the needs of the enterprise.

So, in accordance with art. 150 § 3 of the Labour Code, the introduction of the extended settlement period of working time (maximum up to 12 months) and the introduction of the flexible working time should be determined in the collective bargaining agreement or under other agreement made with the trade unions, with the privileged vote belonging to the representative trade union organizations. However, in the case of non-existence of the trade unions (which is the rule in the vast majority of workplaces) the employer enters into the agreement with the workers' representatives "nominated under the procedure adopted by the given employer" (art. 150 § 3 point 2 of the Labour Code).

While the authorization granted to trade unions to act on behalf of the workers does not raise any doubts, the status of non-unionist representatives of the employees having a say about the regime of working time (and also under the provisions of the labour code and other rules in a number of other issues of major importance) raises major concerns. The panelists' attention focused mainly on that issue. It can be determined as an issue of regulating working time in the context of corporate social dialogue.

The concept of the employees' representatives nominated under the procedure adopted by the given employer, i.e., *ad hoc* representatives is legally under-regulated. In particular, the legislator did not specify even generally the principles of their nomination, which results in this – as the practice shows – that "the employees' representatives" tend to be persons designated by the employer. The drawback is that conditions for the performance of the assigned tasks were not created for the representatives, and in particular, the remuneration for the time worked not in connection with holding the function was not guaranteed in unreduced amount. The serious threat to their independence is lack of special protection of the long-term employment relationship of the *ad hoc* representatives, what makes this group different from other categories of representatives having such protection (e.g., trade unionists, members of the workers' councils). The doubts are also raised with regard to the legal enforceability of the agreement entered into with the non-unionist representatives and the consequences of non-compliance with their provisions⁴ by the employer. Without the institutional strengthening of the non-unionized employees' representation in the workplaces with no trade unions, the in-house dialogue on the matters related to the use of flexible forms of working time may in practice prove to be apparent. The panelists emphasized the purposefulness and possibility of reaching an agreement between the parties to the dialogue when the dilemma appears: protecting the workplaces at the cost of adopting the unconventional standards though falling within the protective norms

⁴ The status and the role of the *ad hoc* representatives I present in broader terms in the collective work "The trade unions and non-unionist employees' representation in the post-transformation economy", under the editorship of J. Wratny and M. Bednarski, Warsaw 2010, IPiSS, pp. 129–135.

(referring to e.g., ensuring minimum standards of daily and weekly rest). In turn, the apparent dialogue would only serve the employer's convenience not providing any real benefits to the employees. The creation of an appropriate forum for the dialogue in the non-unionized workplaces requires far – reaching transformations of the model of the collective labour law, which was many times the subject of the postulates *de lege ferenda* reported, for instance, by the Labour Law Codification Commission in the draft of the collective labour code.⁵

3. Another problem of the procedural nature is the so-called contractualization of the provisions on working time, i.e., the presentation of certain solutions to the parties to the employment relationship. The legislator's reliance on such agreement can be regarded as the expression of strengthening the autonomy of the will of the employer and the employee and therefore the favourable deregulation of the laws, particularly in the interest of the latter. In practice, however, this kind of the contractualization of the regulations leads to the imposition of the will of the stronger party on the weaker party, which is the employer. His advantage stems from the nature of the reciprocal position of the entities in the employment relationship and also from the fact of the imbalance on the labour market.

This problem is most visibly illustrated with the example of determining the number of the overtime working hours worked by the employees doing part-time job. Hence, according to art. 151 § 5 of the Labour Code the parties in the employment contract shall determine the allowable number of hours of work over the contractually agreed working time, which when exceeded in terms of the additional compensation for the hours worked by the employee shall be treated as overtime. The employers using their advantageous position impose on the workers the fixing of the permissible number of hours not paid by the additional remuneration on the highest possible level. So, the practice is not compliant with the intentions of the legislator who when introduced art. 151 § 5 to the Labour Code in 2003 assumed that the overtime work performed by this category of workers will be at least in its substantial part, rewarded with the additional compensation. In this regard, it is my view that the right solution would be to consider all the hours of part-time workers worked over the contractual working hours as overtime with all its consequences, and thus stiffen the regulation in the interest of the employee.

4. Proposing the solutions which are new and customized to the needs and challenges of modern economics, including the solutions in such sensitive area as the organization of working time is the task of the economic policy. The role of the labour law is ensuring that the flexibility of these solutions, which *de facto* sometimes means – the demanding from the employees to work longer or for

⁵ This especially refers to the concept of appointing in the workplaces in which there are no unions, the workers' counsels modelled partly on the German law, having powers which, with exceptions, are enjoyed in the unionized workplaces by the trade union organizations. The draft of the collective labour code prepared by the Codification Commission was published by the Publishing House of the University of Economics in Katowice, Katowice 2010, and on the websites of the Ministry of Labour and Social Policy.

lower remuneration did not stay in the collision with such values as life and health of the employees, the comfort of work and the assumption of roles outside professional life.

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THE IMPACT OF WORKING TIME REGULATION ON THE QUALITY OF LIFE OF EMPLOYEES

Introduction

The resources of human time are limited. The year consists of 52 weeks, with seven days in a week and 24 hours in a day. Some of our activities are most often carried out with the exclusion of others. This mainly concerns professional work and family or social life. For ages people have divided their time mainly into working time, resting, playing, and family. For thousands of years the rhythm of work/private life was dictated, above all, by the seasons of the year or by day and night. The problem of working time and its impact on the family and social life, as well as on the health of the workers, arose on a large scale due to the emergence of industry and the working class employed in it.

The legislator, setting the maximum working time, determines the extent of the time subordination of the employee in the process of work. This range is extended further by such institutions as overtime, being on duty, or the business trip. The remaining time is the time after work serving the purpose of exercising the constitutional right to rest.¹

Approximately one in five of the surveyed working Europeans in 2004 complained about the difficulty in functioning in the society. The number of disappointed respondents was growing together with the number of hours worked. More than one in three of persons working 48 hours or more complained about the difficulty in functioning in the society (Alber and Fahey 2004, pp. 32–35).

The evidence of what a dangerous impact working with no proper rest can have on health and life was found in the mid-1990s, when the press reported

¹ The right to rest was guaranteed in art. 66 paragraph 2 of the Constitution of the Republic of Poland dated 1997, which granted the right to the employees to have the days-off and annual paid holidays set out in the legal act. The determination of the maximum norms of working time in the legal act also contributes to the exercising of this right. The right to rest is also ranked as one of the fundamental principles of the labour law in art. 14 of the Labour Code, which states that that right is guaranteed to the employees on the grounds of the provisions regulating the employees' working time, days-off and holidays.

about the epidemics which over a few years attacked more than two million Americans. This chronic fatigue syndrome, also called “yuppie flu” to define the “disease of young professionals from urban areas, working themselves almost to death”, was characterized by great fatigue, loss of energy, lack of sense of spatial orientation, memory disorder, as well as physical and mental suffering, and affected mainly areas in which the intense and prolonged work was not balanced by proper rest (Wójciak 1996).

1. Reduction of working time and its impact on the quality of life of employees

The length of working time and its organization govern the rhythm of life of the employed and define the amount of time remaining for personal, social, and family life, for leisure, education, and enjoyment of culture. The issue of working time is one of the most important if not the most important area of the employment relationship characterized by the stronger position of the employer. Historically, the experience shows that the lack of legal regulation of the maximum length of working time led to its excessive extension (Muszalski 1967, p. 14).

The greatest disparities to the disadvantage of free time took place in the late eighteenth century. Generally, it can be said that at present in most of the highly developed countries in the world people work less than about 100 years ago. The first regulations of working time from the beginning of the nineteenth century were aimed primarily at the protection of the life and health of the factory workers. Since the beginning of the industrial revolution, the average weekly working time decreased from 72 hours to 40 hours, and even went down to 35 hours (Strzemińska 2002, pp. 21–22).

The importance of the impact of the length of working time on non-work life is well illustrated by the I Internationale in 1899 in Paris, which articulated the principle of the eight-hour working day, promoted by the slogan of three eights: eight-hour work, eight-hour rest and eight-hour sleep (Muszalski 1967, pp. 13).

Two trends are described in the literature in the field of regulating working time: the reduction of working time and the differentiation of working time distribution. There are several sub-periods in the shortening of working time: “the years 1968–1973 – reduction of working time meant sharing the benefits of the economic growth; 1973 to 1978 – the years of the crisis when the tempo of reducing working time slowed down and the tendency was only to limit the overtime and ‘chimneys’ of working time; the years 1978–1983 when there was strong resistance and demands for reducing working time down to 35 hours in the hope of mitigating unemployment; the years 1983–1988 when the view took hold that the mere reduction of working time does not mitigate unemployment if it is not combined with adapting working time to the economic conditions, enabling better and

longer use of the machinery and equipment, which requires greater flexibility in the organization of working time” (A. Klimczyk-Duran, L. Machol-Zajda 1993).

By the end of the 70s the shortening of working time was not accompanied by the distribution of the working time schedules. In the period of Fordism/Taylorism² there was a clear distinction between working time and leisure time. Mostly, one male breadwinner in the family was employed full-time in the same company throughout his life, performing one or several similar jobs. The dominant model of working time was the time during which the employees performed work at specific hours, stopped always at the same time with the unchanged rhythm in a week, month, or year (W. Dymarczyk 2003, pp. 169–170). During that period, the shortening of working time was mainly justified by the necessity to protect the employee’s health, increase productivity, and enable the harmonization of work and family life. It was also emphasized that the introduction of the shorter working time standards for many employers will have beneficial implications in the sphere of improving the organization of working time. The proponents of the reduction of the working time pointed out that this is one of the ways to bring about growth of the labour productivity (Taylor, 1920, p. 104). For example, F. W. Taylor came to the conclusion that “based on thorough knowledge of working time you can achieve amazing results in terms of any system of working time, starting with the wage-based work” (Masewicz 1977, pp. 23). Taylor and his followers believed that it is possible, if we treat the worker as a piece of machinery through accurate determination of this worker’s operations, to achieve a mathematically calculable work efficiency (Kieżun 1997, p. 61).

Research into the rational organization of working time was begun by A. Smith, the originator of English classical economics. This problem was explored later by C. Babbage, F. W. Taylor, H. Le Chatelier, H. Fayol, H. Emerson and E. Hauswald (Pszczółowski 1967, pp. 78), among others. The authors developed the concept of the new organization of working time in the industry of which the purpose was to eliminate the extensive methods of human resource management by replacing them with methods in which the shortening of working time was accompanied by the increase of the labour productivity.

The theory of work organization initiated by Taylor and developed subsequently by Fayola, Monney’a, Allen, Koontz, and O. Donella was criticized mainly by psychologists and sociologists doing research into the labour relations prevailing in industry. The basic allegations referred to the lack of recognition of the non-economic aspects of the work and its social character, aspirations and job satisfaction, as well as the intellectual and emotional involvement of the employee in the work process. Despite the shorter and standardized working hours and the relatively higher wages, the worker’s resistance was aroused by too rigorously applied rules of Taylor’s work organization. That organization was accused of excessively technical and natural point of view of the production and human labour, the socio-

² The peak of the Fordist era falls in the period 1945–1973.

political blindness, the overlooking of micro-sociological, psychological, and moral aspects of work and the ignorance of physiology, the failure to take into account the adapting of the pace of the machine to the psycho-physiological traits of the human being, as well as breaking the solidarity of workers, for example, by dividing them according to the degree of psycho-physical ability (Jaroszewski 1960, p. 63).

In the sixties and seventies, most authors emphasized the physiological, psychological, and sociological aspects of shortening working time. It was accentuated that the reduction in working time can lead to more intense and faster work or to the elimination of the time not spent on the job. Another aspect that was also important was the increase in the average productivity followed by the reduction of non-productive time (Strzemińska 2002, p. 134). The observations on matching the pace of the production to the new standards of working time showed that the beneficial effect of shortening working time on the work efficiency was very often visible after some time.

The positive effect of reducing working time was also seen in the decrease of the absenteeism. That physiological, psychological, and sociological phenomenon was observed in all the countries surveyed and in all types of activities. The voluntary absenteeism, which in the work sociologists' opinion, resulted from the discouragement and indifference to work, especially in the case of production labour, dropped sharply after the shortening of working time (Rosner 1962, pp. 58–63). Very often, the basic loss of the time arises as a result of absenteeism and inadequate work organization. One of the most common causes of absenteeism at work is treating the absence from work as a form of the rejection of the burden of work and its conditions (Kamiński 1993, pp. 29–30).

The results of the study showed that the changes in working time (the increase or decrease) caused, usually proportionally, the changes in the key performance indicators of the production. The study showed that the reduction of working time below a certain level did not raise productivity per hour of work. Miles and Angles concluded, for example, that by lowering working time from 40 to 36 hours, the productivity decreased. Due to the fact that the reduction of working time led to the reduction of the use of equipment in the workplaces under survey, shift work was increasing (Strzemińska 2002, pp. 132–137).

In the late seventies and early eighties the proponents of the shortening of working time stressed that this is one of the most efficient ways to limit the extent of unemployment. In the second half of the 1980s the experience gained by many countries showed, however, that the reduction of working time without greater flexibility in the organization of working time is not enough to alleviate the unemployment. The results from the studies conducted in many countries also indicate that the reduction of working time without an increase in the productivity leads to a significant reduction in the standard of living of the society (Dymarczyk 2003, p. 170).

The example of the state in which the statutory reduction of working time had a rather negative impact on the working conditions and the quality of life of the

employees may be France, where the government set itself the goal of rapid and drastic reduction of the unemployment. The economic analysis showed that the best results in the fight against unemployment, which in 1995 was on the level of even 27% among young people, would be achieved, under some additional conditions³, by reducing working time to 35 hours per week. On June 13, 1998 the legal act No. 98-461, called the Aubry 1⁴ was passed, which introduced as from January 1, 2000 the shortening of the statutory working time up to 35 hours per week in the establishments employing more than 20 people. The reduction of working time, in whole or in part, was to be compensated by days off but partially the employee and partially the employer would decide about the dates of those days-off. On the 19th January 2000 the second legal act was passed, called Aubry 2. It introduced a number of changes to the first bill. According to art. 19 of the second legal act the employer who, under the collective bargaining agreement, introduced a 35-hour working week or 1,600 hours per year and pledged to create or preserve job positions, would benefit from the reduction of the social security contributions, as defined in art. L 2412-13-1 of the social security code. The novelty was also the introduction for certain groups of the employees of working time calculated in days. The employers were only restricted by the annual limit of 217 days. In practice it turned out that the measuring of the time in days led to the increase in the daily workload.

Although the pre-reform macroeconomic simulations and first evaluation of the reform were optimistic⁵, since mid-2001 the change in the economy and another increase of the unemployment led to doubts about the effectiveness of the reform. Although one of the objectives of the reform, in addition to the creation of the new jobs, was to improve the living and working conditions of the employees, the work as a result of the insufficient staffing became after the reform more intense and often the pay was reduced due to the elimination or reduction of the overtime as well as the standard of living did not improve significantly. Another

³ The additional conditions that had to be fulfilled were:

- reduction of working time should be cost-neutral for the entrepreneurs;
- costs resulting from the introduction of the shortened working week should be covered in equal parts by the increase in labour productivity due to changes in the work organization, government grants and inhibition of the growth of wages in the enterprises;
- state subsidies that employers might receive after fulfilling the following conditions: reduction of working time by at least about 10%, increase of employment by 6% and maintaining this status for at least two years as well as the signing of the agreement on this issue with the trade union.

⁴ The law was named after the socialist labour minister, Martine Aubry.

⁵ Macroeconomic simulations preceding the reform stipulated that as a result of the reduction of working time to 35 hours per week, 700,000 new jobs would be created. The data of the French Ministry of Labour and Solidarity published in July 2000 stated that with the employment growth of 8.3%, a reduction of working time to 35 hours per week resulted in net effect of the employment within 6.5%–7%. Prime Minister of France, L. Jospin, presented the data according to which the introduction of 35-hour weekly working time allowed to create 400 000 additional jobs, which resulted in the reduction in the number of the unemployed from 900 000 to 450 000 (see website of the French government at www.premierministre.gouv.fr).

effect of shortening working time was also an increase in the labour costs (Strzemińska 2004, pp. 27–34).

The examples given above lead to the conclusion that the reduction of working time not compensated by the increase in labour productivity, not streamlining the workflow and production and not improving the technology, can result in the reduction of the labour income and, consequently, in the worsening of the quality of life, the increase of the economic inequalities in the employment relationship and the weakening of the protection of the workers (Penc 1970, p. 7). The low income contributes, *inter alia*, to the dissemination of the phenomenon of work at few employers, which of course happens at the expense of time spent, under the assumptions of the legislator, on resting. In addition, it should be noted that the reduction of working time is often inefficient if at the same time it is not accompanied by the increase of the allowable number of overtime hours.

The statistics show that in the recent years the length of time actually worked by the European workers slowly decreases. For example, in 2001 in the states of the EU-15, the persons employed full-time worked on average 41.6 hours per week and those employed part-time worked on average 19.7 hours. Between 1997 and 2002, the average weekly hours worked by the employees in the EU15 employed full –time decreased by half an hour and in the case of workers employed part-time – by one hour. In the new member states which joined the European Union in May 2004, the weekly working time of the employees doing full -time job is generally longer by one to four hours, compared to the average for the EU-15. Most of the workers from the new Member States employed full -time are actually working more than 40 hours per week, of which 5–10% of full-time employees work more than 48 hours. Only in the United Kingdom that ratio was over 20%.⁶

According to Eurostat, in 2011 the average working time of the employees in the European Union amounted to 37.4 hours per week. The employees working in such countries as Greece, Czech Republic, Bulgaria, Slovakia, Poland, and Romania worked the longest hours. The shortest weekly working time was recorded by such countries as the Netherlands, Denmark and Ireland.⁷

The survey conducted in 1998 among employees of the EU15 showed that almost two-thirds of the workers would like to change the number of weekly working hours. More than half of the respondents (51%) would prefer to work fewer hours (including only 2% who would prefer not to work at all at the expense of lower wages) and 12% would prefer to work longer. Men more than women were willing to reduce their working hours (57% men, 44% women) (Fagan, Collette, Warren, Tracey).

The survey conducted in July 1997 by the Institut der deutschen Wirtschaft showed that the number of employees who would like to work less than 35 hours

⁶ <http://www.eurofound.europa.eu>.

⁷ <http://www.rynekpracy.pl>.

per week was higher among those in western Germany where the wages were higher than those working in eastern Germany.

In total, 33% of the surveyed employees wanted to work less than 35 hours per week. One-third of the workers from Germany and half of the workers from East Germany wanted to work more than 40 hours per week. Approximately 53% of surveyed employees complained that the reduction of working time has led to the increase in the level of stress at work and to the increase of overtime work. Only 13% of the workers in western Germany and 20% in eastern Germany pointed out at bigger sense of work safety. The employees also stressed out that the expected positive effects in the form of job creation were small (Schnabel, 1997).

And in Poland, one of the reasons which are mentioned for the overtime work, for not taking holidays or sick leaves, is the promotion of life model, in which the supreme and fundamental value is the professional work. In contrast to the period of real socialism, in which the higher social status was related to the bigger amount of free time, the free-market economy resulted in uneven distribution of time and the attribute of the high position on the labour market, of the professionalism and expertise was the lack of time, rush, chasing and work fatigue. Admitting to have free time is sometimes derogatory. Such perception of working time and the leisure time is undoubtedly highly influenced by the sense of the threat of unemployment (Tarkowska).

2. Flexible working time and its impact on the quality of life of employees

Under the influence of the new rules of the knowledge-based economy and the information and communications industry as well as the increasing competition on global scale, the organizational structure, hierarchy, and inter-sectorial internal division of labour, the relationship between the producers of goods and services as well as the principles of the organization of working time are subject to change. The traditional system of the organization of working time is often not able to meet the new challenges. The flexibility can take different forms. There are four main types of flexibility: the contract of employment, wages, organization of work and working time (Blanpain 1999, pp. 64–69).

The flexibility of working time is defined as the individualization of solutions in the field of developing working time, which involves the introduction, instead of one generally applicable model of working time, of many other models referring to both a daily, weekly and annual working time and to its distribution during the day, week and so on. This understanding of making working time more flexible allows at the same time to meet the needs of the entrepreneurs and the employees (Kopertyńska 1999, p. 179).

The needs of the enterprise include, among other matters, the adaption of the flexible working hours to the deployed forms for the organization of production,

better utilization of machines, adjusting the period of business activity to the terms of supply, the shelf life of the raw materials, the collection date of the performance results and the periodic increase in the amount of production and thus, the extension of working time to night hours and days-off (Strzemińska 2002, p. 33). The employee's needs comprise the adaptation of the working time of the employee to the individual employee's biorhythm and family life as well the reduction of the burden of commuting (Kopertyńska 1999, p.179). This indicates the existence of a number of flexible working time arrangements. Frequently, the ones that are mentioned are: flexible working hours, shift work, task-based work and the equivalent working time, as well as part-time work. The above mentioned classification is, however, not exhaustive and does not cover all the solutions which are known and applicable.

The traditional organization of working time dominates in some sectors of the economy, it most frequently happens in the sphere of the state administration, offices and production plants. This organization means that all employees start and finish work at the same time, work in the same working time system and it is mostly one shift work.

On the other hand, when it comes to the popularity of the application of the flexible working time arrangements, Poland is in the middle of the European countries. We are ahead of such countries as Greece, Italy or Portugal and we are falling behind such countries as Sweden, Finland, and the Netherlands. The data obtained from Eurofound show that one-third of Polish companies are characterized by high flexibility in the organization of working time. Only in the 37% of the enterprises the flexibility stems from the needs of the employees. Most companies (63%) implemented the abovementioned organization of working time for the reason attributable to the employer. The similar practices are developed in other countries of the European Union (Strojek).

The European Foundation for the Improvement of Living and Working Conditions in 2004 launched a study in 21 member states. The studies were conducted in 21 thousand workplaces both in the public and private sectors. They showed that 42% of the surveyed employees regularly worked unsocial hours, including night hours between 10 pm and 6 am as well as the weekends. The most common type of work performed at non-standard hours was work on Saturdays (38% of respondents). 24% worked on Sundays and 19% regularly worked at night. The Saturday work was frequently performed in Lithuania (56% of respondents) and the UK (53%). In these two countries the Sunday work was most frequently performed (48% and 41% respectively) and at night (32% and 26%) (Riedmann 2006).

The Institute of Labour and Social Studies conducted empirical research in the 1990s within the framework of the Multiannual Programme "Security and Safeguarding of the human health in the workplace", which showed that the vast majority of the surveyed workers did not want to work on Saturdays at all (59.1% of women and 53.5% of men). About one-third of men and women reported that they

could work on Saturdays, as before. The work on Sundays aroused the biggest resistance, as 81.5% of the respondents did not want to work on Sundays at all.

Shift work is often mentioned among the flexible forms of working time. In art. 2 paragraph 5 of the Directive 2003/88 of the European Parliament and of the Council dated the 4th November 2003⁸ concerning certain aspects of the organization of working time in the shift work system was defined as each form of the organization of work in the shift system where the workers replace each other at the same work stations according to a certain schedule, including the rotation system, which could be continuous or interrupted and implies the necessity to do work by the employee at different times over a given period of days or weeks. The shift system is one of the criteria for the differentiation recognized by the EU legislator, who in point 10 of the preamble to the Directive 2003/88/EC states that “the situation of the workers performing night work and being in shift work system requires that the level of protection of health and safety is adapted to the nature of their work and that the organization and the operations of the services and the protection and prevention measures are effective.”

There is no doubt that shift workers perform their work under the conditions which are particularly arduous and harmful to their health. The empirical studies confirm that the shift workers are constantly exhausted and more prone to accidents in the workplace (Machol-Zajda, 2002, pp. 172–175) on the highway or at home than those working in traditional systems of working time. Shift work increases the tendency to make mistakes and is particularly negatively perceived by doctors and physiologists. The studies on the distribution of the accidents at work at different hours of the day, conducted in the US, showed a threefold higher rate of reports of the accidents at work during the night and early morning than during the daytime hours (Fathallah and GE Brogmus 1999). Shift workers have more difficulties in reconciling work and family life and to reconcile it with the caring and educational roles and participation in the cultural life and sports activities as well as further learning (Maas, 1999, p. 124). It has been scientifically proven that working at night is conducive to the formation of, *inter alia*, gastrointestinal disorders, gastric ulcer and duodenal ulcers, it increases the risk of heart attacks and other cardiac diseases as well as mood and mental health disorders, including depression and anxiety (Waterhouse, Minors, Waterhouse 1998).

The abovementioned study conducted by the Institute of Labour and Social Studies in Warsaw shows that shift work is negatively perceived not only by the doctors, but also by the employees themselves. Among the surveyed employees regularly employed at night 20.8% said they did not want to work in that system. 50% of workers who negatively evaluated shift work were employed in trade and services (Machol-Zajda, 2002, pp. 172–175). Also, the wives of shift workers suffer from the shift work performed by their husbands and 50% declared that they are unhappy because of this (Smith and Folkard 1993).

⁸ Journal of Laws of the EU L of the 18th November 2003.

The burdensome effect of shift work may be compensated by creating the possibilities for workers to rest. The financial compensation is meant to make the better-paid employee create the conditions for resting themselves, go on vacation, and not undertake additional employment. The second form of compensation makes shift workers rest, for example, by increasing the number of annual holiday days, increasing the number of days-off or shortening the working week. It is believed that the good results are also obtained by shortening the night shift, introducing longer paid breaks or decreasing the number of night shifts per year (Makowiec-Dąbrowska and others, 2003, p. 55–71).

The reference is made to the following criteria of shift work: rotation of shifts “forward” maximum 6 consecutive shifts, at least 2 consecutive the same shifts, up to the maximum of 4 consecutive the same shifts, the average weekly working time between 34 and 38 hours, at least half-an-hour break during the shifts, the shift lasting maximum up to nine hours, starting and ending of the shifts at the times: 7 am – 3 pm – 11 pm (Department of Ergonomics and Physiology of the Physical Effort, Collegium Medium, Jagiellonian University is of the opinion that the “daily work” should begin at the earliest at seven o'clock in the morning because in our latitude the starting of the morning shift at six o'clock forces many employees to get up at four o'clock or even earlier when it is still dark). If there are few morning shifts in a row we could experience a similar phenomenon as the night shifts, thus the deepening sleep deficit), the work schedule possible to predict, at least 40% of the evenings and weekends free (Makowiecka-Dąbrowska and others 2003, pp. 55–71).

The quality of life of the workers is affected not only by the length of working time, but also by its distribution on particular days or weeks as well as the by predictability of this distribution. The research shows that the employees prefer to work in accordance with the fixed and regular work schedules. They guarantee greater satisfaction from balancing private life and professional work, whereas any deviation from the regular distributions cause the raising of the level of dissatisfaction. The most appreciative type of work in terms of balancing the work and life is the regular work on 5 working days a week, during the day and the standard work for about 40 hours a week without long hours of work. “Regularity may be more important factor for workers than the flexibility from the perspective of adjusting their working hours to commitments outside work” (Parent-Thirion and others, 2007, p. 74–75). The fact of how much time in advance the employees are informed about the planned changes in the distribution of working time is also significant. The shorter the period of delivering the information about the changes, the worse assessed is the relation work/life. One of the most effective factors in promoting work life balance is the employee’s ability to influence the employee’s own work schedule (Foden 2007).

In accordance with art. 13 of the Directive 2003/88/EC the employers should organize their work according to the predetermined schedule. By organizing work the employer should alleviate the monotony of the tedious work as well as of the work with the predetermined rhythm, depending on the type of work and the re-

quirements of safety and health. The preferred course of action is to set breaks at work. Point 11 of the preamble of the Directive 2003/88/EC states that the organization of work according to certain schedules should take into account the general principle of adapting work to the worker, so it should take into account the principles of the functioning of the human body.

In turn, referring to part-time work, the experience gained by some member states shows that such work does not always bring the expected positive results. An example could be the Netherlands, where for many years the Dutch government actively promoted the part-time employment, subsidizing it and conducting information campaigns. In the longer term, however, it turned out that a high level of part-time employment among women leads to their discrimination on the labour market. Most workers employed part-time were women. In the 1980s and 1990s, part-time work was considered as a way to increase employment among women. In the recent years, the attitude of the politicians towards part-time work has changed. The data show that in the Netherlands, men on average work weekly 11 hours longer than women (men 37 hours – women 26 hours) (Burchel and others 2009, p. 36). Such employment often proves to be a trap, in which the professional potential of women is not fully exploited. Part-time work is less remunerated and limits the opportunities for promotion. The increase in the number of hours of work can be beneficial for enhancing the professional status of women (Gasińska 2002, p. 90).

Conclusions

In light of the foregoing considerations it shall be concluded that the regulation of working time has an impact on the quality of life of the employees influencing their lives and health, their functioning in the family and in the society, as well as their level of satisfaction with their life.

Relations between the periods of work and leisure are important not only for the individual, but for the of whole society, as well. The thesis that the issues related to the restrictions on working time have a significant impact on the proper working conditions was confirmed by historical experience, practice, and numerous scientific studies (Nycz 1999). The main aim of the regulation of the maximum working time was primarily to ensure adequate rest, which will allow for the regeneration of the mental and physical strengths of workers. The fatigue syndrome of the employee, escalating along with the passage of time, is conducive to situations that threaten the employee's health and even life. It does make a difference from the perspective of the employee's health and life what job the employee performs, for how many working hours, under what conditions, and how work is distributed over days and months. Among the determinants that affect health are: the environment in which people work, including working time, the time schedule, shifts, breaks at work, and work rhythm. The Committee of Experts of

the World Health Organization in the classification of health conditions mentions the time-off, rest and recreation as the needs of which the level of satisfaction has a significant impact on the public health.

On the other hand, a too short statutory maximum working time may contribute to an increase in labour costs, lower income from work, and the deterioration of the sense of social security. These abovementioned consequences have also effect on the worker's health (Gasińska 2002, pp. 80–101).

Too much time given to the employer or the mismatch between the distribution of working time and the needs of the employee often result in the lack of time for family life and can lead to the phenomenon of aging now widespread in highly developed countries.

Numerous empirical studies confirm that the proper management of the budget of working time, its corresponding amount per day, per week, per year – as well as throughout the whole life – and the amount of the time-off, including breaks and holidays, has a significant impact on the health and lives of people who are professionally active. The longer the worker is exposed to factors threatening their health, the greater is the risk of accidents at work. The work performed exceeding the working time norms recommended for a particular job position causes fatigue and sluggishness of the correct responses. Similar effects are also caused by the mismatch between the distribution of working time and the worker, in particular, the mismatch of night or shift work.

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**The Independent Self-Governing Trade Union “Solidarity”
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THE IMPACT OF TIME ON THE QUALITY OF WORK

Introduction

The first written definitions of quality are derived from the ancient Greek philosophers. The concept of “quality associated with excellence” was introduced into philosophy by Plato, who said, comparing quality to beauty, that it is a value judgment expressed by the user. If there is no user, there is no judgment (A. Kiliński 1979, p. 13). A different approach was represented by Aristotle, who described quality as “that which makes the thing to be the thing that it is”. So, he pointed to the close connection of this concept with its characteristics (E. Fiddler 2000, p. 15). Now it is obvious for most experts that quality cannot be considered separately from the cost of its acquisition.

The contemporary work ethos requires us to do more and faster. We have more customers to serve, more emails to answer, more calls to handle, more tasks to do, more meetings to attend, more places to visit, and we feel that we need to work longer and longer hours so as not to be left behind. Modern technology enabling instantaneous communication accelerates the decision-making process, improves efficiency, and drives the global market. The same technologies, however – without supervision and regulation – can overwhelm us. The merciless rush which is present in modern corporations hampers creativity, quality, commitment, personal observations – and ultimately, results.¹

The pace at which we work influences our concentration and results in less time spent on a given task, fewer observations, and lack of prospective vision. The question is whether we are able to win with time. Our efforts very often resemble Sisyphus’s hopeless efforts.

Is the employee acting in a hurry able to truly relax after work, even in the company of their family members? He has less energy, less time to relax and rest,

¹ Tony Schwartz, *Such work does not make sense*, Warsaw 2012, p. 11–12.

and sleeps shorter. So, the days, weeks, months go by and the level of self-fulfillment or satisfaction decreases. According to Tony Swartz, paradoxically, “more and more gives less and less”. That author points to studies that support his thesis. The consulting firm Towers Perrin examined a group of about 90 thousand employees from 18 countries in 2007–2008. Only 20% of the respondents felt fully engaged in their work – in the sense that they exerted themselves more than was required from them because they saw a meaningful purpose and were passionate about their work; 40% performed their duties, but without full involvement, and 38% were discouraged about their work and did not show their commitment. The companies having the most engaged employees achieved 19% revenue growth and those having the least engaged employees noted a decline in revenues of 32%. It is worth quoting the conclusions from the audit conducted by the inspectors from the State Labour Inspectorate, which showed, e.g., that doctors work several dozen hours non-stop. In nearly 250 medical centres it was disclosed that continuous work is performed in the same place on the basis of a number of different contracts. In hospitals, both public and private, such a situation is observed that the same doctors after work perform under an employment contract the same job – whether based on their contract or through running their own practice. And yet in accordance with the legal rules, a doctor on any given day is entitled to an eleven-hour uninterrupted rest. The doctors who conclude their duty should immediately have time off. The doctor’s duty may last up to 24 hours. Meanwhile, many doctors after work go to another hospital or medical centre. And everything is done in accordance with the law, as Danuta Rutkowska said, a spokeswoman for the State Labour Inspectorate. She stresses that the rules allow various forms of employment, the possibility of doing multiple jobs or jobs, is regulated on several legal grounds.

According to the State Labour Inspectorate such legislative changes are essential which would eliminate the possibility of working in the same place on the basis of different forms of employment, without retaining the right to rest. It is also necessary, in the opinion of the Inspection Authority, to introduce the unambiguous provision in the legal act on medical practice that the time of being available for work shall not violate the right to rest.

The inspection conducted by the State Labour Inspectorate showed that the problem of working for several hours without a break applies not only to doctors, but also drivers and miners.²

² <http://serwisy.gazetaprawna.pl/zdrowie/artykuly/774081,kontrola-pip-lekarze-pracuja-nawet-100-godzin-bez-przerwy.html>

1. Will flexible working time improve the work process organization?

Despite the protests of the trade unions, the suspension of their participation in the Trilateral Commission for Social and Economic Affairs, the changes in the Labour Code allowing, *inter alia*, the extension of the settlement periods and introducing the flexible working hours, were adopted and are valid (as of 23.08.2013).

The unions tried to stop the introduction of the new regulations through their information campaign and by requesting the intervention of international organizations, such as the European Trade Union Confederation and the International Trade Union Confederation. The unions pointed out that even before the starting of the legislative procedure, at the meeting of the Trilateral Commission for Social and Economic Affairs, the Prime Minister announced further negotiations, which, however, did not take place and the unions' proposals were ignored. So, the trade union organizations started an information campaign addressed to employees, in the course of which they voiced the possible consequences of the introduction of the amendment. The campaign of the Independent Self-Governing Trade Union "Solidarity" under the slogan "Changes in working time. You do not know how long you will work. You do not know how much you will earn" presented calculations which showed that in the new 12-month settlement period the employer will be able to force the employee to work 12 hours a day, from Monday to Saturday, even for 28 weeks. In the extreme case, if two settlement periods coincide, it can last even up to 56 weeks, i.e., for more than a year. The unions also emphasized that the new rules would allow the employers to effectively avoid paying for overtime and the situation may arise in which the employee working 12 hours a day will not receive a bigger salary.

The suspension of the participation of the trade unions in the Trilateral Commission, revealing a serious crisis of confidence in social dialogue, alarmed the biggest workers' international organizations, the governing bodies of which in July 2013 referred that matter to the head of the Polish government: "Much to our concern we have learned about the disruptions in social dialogue in Poland. (...) The fact that the draft of the legal act on the amendment of the Labour Code acting to the detriment of employees was sent to the parliament without the finalization of the consultations in the Trilateral Commission not only violates the principles of social dialogue, but also constitutes a breach of the Polish law" – wrote Sharan Burrow, ITUC General Secretary. "The government proposal to make the Labour Code more flexible undermines the legal acquis of the European Union, and in particular the proposed changes regarding the length of the settlement period from four to twelve months are in clear contradiction with the European directive on working time. The Polish trade unions try to convince the government about the harmful effects of unstable jobs and encourage it to take the necessary steps. (...) All of these issues can and should be the subject of the social dialogue without prejudice to the final outcome. Therefore, we appeal to You, Mr Prime Minister, to restore the conditions for the genuine and effective social dialogue, respecting

all the social partners in the spirit of partnership and preservation of the European values contained, *inter alia*, in the treaties and in the European Charter of Fundamental Rights” – appealed Bernadette Ségol, the Secretary General of the ETUC.³

Despite serious concerns from the employees’ organizations at the national and transnational level, the striving for flexible working time has many supporters on the employers’ side and, as it turned out, on the side of the government. The doubt arises whether indeed the current socio-economic situation required the introduction in a hurry and contrary to the trade unions of the changes in working time, when it is well known that the stabilization of the employment calls for immediate improvement.

3. The flexibility of the labour market

The literature distinguishes four main aspects of labour market flexibility: flexibility of employment, wage flexibility, elasticity of labour supply, and the flexibility of working time.

Outsourcing part-time jobs, employment in flexible or individually tailored working time, with variable weekly working time and extending the settlement period of working time, are the determinants of working time flexibility.

The flexible forms of employment are that of work under fixed-term contracts, part-time work, work performed by temporary workers, on-call work, home-based work, teleworking, working on a replacement, weekend work, casual work, employment of trainees or students, seasonal work, work sharing, task based working time, equivalent working time, intermittent working time, work in a continuous flow, flexitime, task-based contract, work-based contracts, self-employment, and the so-called contract work.

Having in mind the Polish labour market segmentation with the unsolved problem of the infamous leader in the quantity of fixed-term contracts, which the European Commission points out in its recommendations, the thesis should be formulated that the Polish labour market is characterized by sufficient flexibility.⁴

4. The aspect of health and the reconciliation of work and family responsibilities

The trade unions protested against the extension of the settlement period up to 12 months, indicating the concerns articulated by the employees. The most serious include forcing the employee to do twelve-hour work for e.g., during one

³ <http://www.solidarnosc.org.pl/index.php/aktualnosci/wiadomosci/zagranica/item/5224-miedzynarodowe-organizacje-upominaja-donalda-tuska>, access: 11.03.2014.

⁴ http://ec.europa.eu/europe2020/pdf/nd/swd2013_poland_pl.pdf, p. 18.

month, and then for the following month to do four hours' work a day for lower pay. It is worth noting that when doing work for 4 hours a day the cost of commuting is the same as in case of doing twelve-hour work, but wages are lower. Another disadvantage of changes is that of job safety. It can be expected that the number of employees having health problems will increase and the number of people on sick leave will also go up, which would entail a domino effect in the form of a bigger number of sick-leave related benefits. According to the government the changes will not interfere with the routine of the family life but this is controversial.

Extended working hours may, in practice, mean that the physical fatigue and the uncertainty associated with the inability to plan family life and relaxation time will bear serious psychological consequences. The solutions valid since August have been in force for too short a period of time, so it is not possible to determine their impact on family life and the employees' health while the earlier studies on the so-called flexible forms of employment clearly indicate that occupational instability and the lack of control over working time entail negative consequences.

An example of this could be the analysis of the social impact of work on the basis of the flexible forms of employment⁵ carried out in Lower Silesia. The authors suggest the following negative consequences associated with the area of personal and family life: the lack of predictability of work (both short-term – allowing the organization of the time during day or week and the long term – allowing the planning in the long-term horizon, such as taking credits or holidays), deteriorated sense of stability and security in the family (the working people in this way delay the decision to start a family and do not decide to have bigger number of children). In the area related to psychological welfare, those people are affected by the lack of sense of stability, security or sense of secured existence; in connection with the situation in which they were somehow not of their own choice, their level of frustration and stress increases, and this can lead to the deterioration of the general mental health; finally, the representatives of this group have fewer opportunities to pursue their own aspirations – whether professional, family or as consumers. The authors of the report highlight that forms of employment which are particularly negatively assessed in this respect are: weekend work, shift work, and on-call work. Their use may in the long term lead to serious consequences at the macro-social level, such as: the crisis of the family bonds due to the lack of stability, predictability, living from day to day and loosening of the binding ties as well as increasing the range of psychological problems caused by long-term stress and frustration, i.e., such as depression and addictions.⁶

⁵ Research carried out on behalf of the Centre for Social Monitoring and Civic Culture within the framework of the project "Observatory of the Labour and Education Market in the Lower Silesia" implemented within the framework of the subactivity 6.1.2 Operational Programme Human Capital co-financed by the European Union through the European Social Fund.

⁶ *Flexible forms of employment – social and economic impacts*. Final Report. Monitoring Centre for Social and Civic Culture, Wrocław 2013, p. 169–172.

The employee “on call” will not be able to find the time to pick up their children from kindergarten or school or go with them to the extra classes they attend. Very often they will also have to give up free Saturdays, family recreation time, and household duties. When both parents work in flexible working time system the organization of family life and provision of primary care to children can be really difficult, not to mention the psychological consequences for the child whose contact with parents will be very limited. It is worth noting that changes introduced in the law in August do not stipulate any exceptions. They are applicable to all the employees, even pregnant women and single mothers. The situation was supposed to be improved by the introduction of some facilitations announced a few years ago in the form of more nursery schools or kindergartens but in Poland such initiatives are still rare. The entrepreneurs, though – according to the research conducted by the Human Resources Development Centre – declare their supportive approach to the creation of such institutions, in practice, they rarely decide to have them (these are single cases citywide – for example, in Gdansk one such kindergarten was established).⁷ The companies justify this by pointing at the lack of adequate resources or too strict regulations governing the local conditions which the childcare facilities must meet. Even the Ministry of Labour and Social Policy who heralded such initiative in collaboration with the Ministry of Economy⁸ was not successful in starting such crèche or kindergartens in the workplace.

5. Negligence affecting the quality of work

The increasing flexibility of work is not accompanied by investments in human capital or developments in the ability of employees to learn, solve specific problems, or adapt to changing work environment. As a result, employment in the context of flexible forms of employment results in fewer opportunities to find a well-paid job. The flexible forms cause the disappearance of employees’ bonds tying them with the company, which seems to be overlooked by the employers, even in the long-term horizon and repeatedly replaced by the so-called “leash” in the form of non-competition agreement. In addition, companies do not invest in temporary workers, do not design the career paths for their employees, which facts can result in the decline of loyalty and performance degradation. On the other hand, in the situation when the employee is interested in making working time flexible for family reasons, the employer has difficulty in accepting his will because of not having the possibility of full direct control over the employee in the

⁷ Potorska J., *Przedszkola przyzakładowe: dlaczego nie powstają?*, www.trojmiasto.pl, 8.03.2013, <http://m.trojmiasto.pl/news/Przedszkola-przyzakładowe-dlaczego-nie-powstaja-n66867.html>; Accessed: 03/11/2014.

⁸ Kostrzewski L., Miączyński P., *Resortowy żłobek widmo. Minister zachęca innych, ale nie świeci przykładem*, www.wyborcza.biz, 27.02.2014, http://wyborcza.biz/biznes/1,100896,15532964,Resortowy_zlobek_widmo_Minister_zacheca_innych_ale.html#ixzz2veaGkt5n, dostęp: 11.03.2014.

workplace. In times of crisis the negative costs of reducing demand were frequently shifted from the group of employers to employees and the flexibility of the labour market exacerbated that phenomenon. The labour market flexibility through its deregulation causes the phenomenon of job insecurity and lowering of the social security. The flexible forms of employment entail the loss of workers' rights, not counting the time worked into the seniority and the loss or lack of creditworthiness of the employee.

6. The attempt to rebuild the trust between the social partners

No-one challenges the statement that mutual trust between the employees and the employers gives rise to the building of good quality jobs and the success of both small and large companies. The crisis of the social dialogue was caused not only by the loss of trust between the social partners but also, and perhaps above all, by the lack of government initiatives balancing the needs of the employers and the employees. The tripartite dialogue, according to the saying "the fish rots from the head", requires immediate remedial action by creating a new formula at the national level, but also deep insights into the issue not only by the representatives of the social partners – above all by the government. The departure from the Trilateral Commission and the Regional Social Dialogue Committees of the Independent Self-Governing Trade Union "Solidarity", FZZ, and OPZZ was not just a gesture of opposition – these organizations also came up with the initiative to create the new formula for social dialogue. The question whether the talks currently held with the representatives of the employers will deliver the desired solutions depends primarily on the will to rebuild the trust between them.

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[Employers of Poland]

THE RIGHT TO USE THE TWELVE-MONTH SETTLEMENT PERIODS AS A WAY TO HAVE MORE FLEXIBLE WORKING TIME

1. A brief genesis of the amendment

Since the autumn of 2012, the work in the Trilateral Commission for Socio-Economic Issues¹ on the amendment of the provisions of the sixth chapter of the labour code has entered a phase of advanced and serious consultation with the social partners. On September 18, 2012, the Ministry of Labour and Social Policy, at the meeting with the Team on problems related to the labour law and collective bargaining agreements, submitted two draft amendments to the provisions on working time. The first of those drafts covered a narrow scope and included the change of a few rules governing working time, and above all provided for the right to introduce the twelve-month settlement periods and the rules for creating the work schedule. The second draft represented a comprehensive change of the provisions of the entire sixth chapter of the labour code. The Ministry prepared a number of possible options for amending the given provisions. Ultimately it was decided that the social partners and the government would work on a small project, which was justified by the need to make quick amendments to the labour code. The social partners in their work on the draft were agreeable about the fact that the ability to extend the settlement period up to twelve months should cover all employers, regardless of the number of the employed staff, as otherwise the discrimination of smaller establishments would occur. However, this essentially ended the compatibility of the parties regarding the method, the scope, and the mode of introducing the settlement periods. The trade unions proposed that the longer settlement periods would be introduced only in the industry collective-bargaining agreements, which was justified by the need to revive social dialogue at this level. The employers, similarly to the government, did not agree to that proposal. Making use of such important powers for the employers dependent on

¹ See the Act of the 6th July 2001 on the Trilateral Commission for Socio-Economic Issues and regional commissions on social dialogue (Journal of Laws of 2001 No. 100, item. 1080 as amended).

the conclusion of the respective provision in the industry collective-bargaining agreements would in fact have meant the inability to exercise such right. In practice, industry collective-bargaining agreements are entered into extremely rarely, due to factors on the part of the employers' organizations and the trade unions. Z. Hajn defines this unique feature as the "bipolar model of industrial relations", which consists in conducting negotiations by the social partners at the company and central level, with little activity initiated by them at the intermediate or sectorial level².

Ultimately, the government decided that the twelve-month settlement periods could be introduced by each employer, subject to an appropriate clause in a collective-bargaining agreement or other collective agreement negotiated by the employer with the trade unions or other representation of the employees. On July 12, 2013 the parliament passed a law on amending the legal act – Labour Code and the Law on Trade Unions.³

2. The essence of the change

Pursuant to art. 129 §2 of the Labour Code in any working time system, unless it is justified by the objective or technical reasons or the reasons concerning the work organization, the settlement period may be extended to, but not exceed 12 months upon the general rules for the protection of the safety and health of the workers.

The conditions for exercising such right were defined very broadly – there must be justified objective or technical reasons, or reasons concerning the work organization. Since such reasons refer to work organization, the evaluation of their occurrence is made by the employer, which means that it is rather unlikely that a labour court will challenge it. The legislator appealed directly to the conditions specified in art.19 of Directive 2003/88/EC, according to which the Member States have the option, subject to compliance with the general principles governing the protection of the safety and health of the workers, of allowing, for objective or technical reasons or reasons concerning the work organization, the collective-bargaining agreements or agreements concluded between the social partners in order to set settlement periods in no event exceeding 12 months. Such broad indication of the reasons was criticized by the trade unions during the legislative work on the amendments to the regulations, which indeed resulted in bringing the complaint to the Constitutional Tribunal.

It need be explained that this provision permits the use of a shorter settlement period, such as a six-month period, since the period of 12 months is a maximum period, but not rigidly so. That regulation can be applicable to each employer who

² See Z. Hajn, *Zbiorowe prawo pracy. Zarys systemu*, Warsaw 2013, pp. 69–70 and 96.

³ *Journal of Laws* dated 2013 item 896.

fulfills the above-mentioned conditions. The condition for exercising the right to the twelve-month settlement period is the agreement on that decision made by the representation of the staff. In accordance with art. 150 §3 of the Labour Code the extension of the settlement period of working time is determined in: 1) the collective bargaining agreement or through consultations with the trade unions; if it is not possible to agree on the content of the agreement with all the trade unions, the employer agrees the content of the agreement with the trade unions' representative within the meaning of Art. 241^{25a} or 2) the agreement concluded with employees' representatives, selected in the mode adopted by a given employer – if there are no trade union organizations operating at the employer's working place.

The legal structure of the extension of the settlement period shall mean that in certain periods of working time (for example, in a given month) the employee works shorter hours or even does not do any work, but in the subsequent periods, his working time may be extended. In the literature based on the interpretation of the provisions of the non-binding legal act of July 1, 2009 on mitigating the effects of the economic crisis for employees and employers⁴ the view was presented that the extension of the settlement period is secondary to the applicable terms of the employee's working time system and it does not itself lead to changes in the system. Therefore, the extension of the settlement period in the basic system (art.129 of the Labour Code) does not give the employer the right to entrust the work to the employee on an hourly basis exceeding 8 hours a day (because such a possibility exists in other systems, such as the equivalent system)⁵. Now, because of the regulation which allows the use of the twelve-month settlement period in each working time system (including equivalent working time system), the above-presented view is significantly limited. The employers can, therefore in a very flexible way shape the working time of employees on the basis of daily or weekly work. In workplaces in which there is seasonal demand for labour (for example, the automotive industry, tourist industry, producers of household appliances), the new solutions enable significant lowering of labour costs, mainly by avoiding the necessity of paying salaries and compensation for overtime work. On the other hand, what was raised during the legislative work, during a downturn there is also the possibility of avoiding layoffs. It turns out, however, that in practice the scope of the provision's application is not broad because contrary to the initial assumptions, it is not always cost-effective for the company.⁶ The prolonged settlement period of up to 12 months is linked to the risk, among other such, of employee absenteeism or early termination of the employment relationship, which makes "making up for" shorter working hours impossible.

⁴ Journal of Laws dated 2009 No 125 as amended.

⁵ See J. Stelina, M. Zieleniecki, *Regulacje antykryzysowe z zakresu prawa pracy*, PiZS of 2009 No 11, p. 15.

⁶ PIP data show that on March the 21st, 2014 there were 693 agreements concluded and the settlement period was extended in 14 collective bargaining agreements. Most agreements were concluded in the manufacturing processing.

In accordance with the structure of the extended settlement period, the employee retains the monthly remuneration throughout the entire settlement period regardless of the number of hours worked in a given month. An additional guarantee for the employee's remuneration is mentioned in §5, which provides that the employee's salary regardless of hours worked in a given month cannot be lower than the minimum wage for work established under separate provisions. However, it seems that this guarantee was not essential because that rule directly results from the legal act of October 10, 2002 on minimum wages.⁷

3. Assessment of the regulation

Further considerations should be preceded by stating that the provisions of the sixth chapter of the Labour Code contain regulations that are mostly mandatory. This results from the assumption that the regulations governing working time are an expression of the protective function of labour law and even recall the necessity to single out this branch of the law. In the broad sense, the rules on working time are included in the concept of labour protection.⁸ In the light of that assumption, any regulations governing the flexible forms of work organization require the establishment of the specific conditions and sometimes, as it results from Directives 2003/88/EC, also the particular mode of introduction (by agreement between the social partners). The procedure for introducing the 12-month settlement period requires consultation with the trade unions, and if there are no trade unions in the workplace – with the representatives selected under the procedure adopted by the employer, which is an additional safeguarding of the interests of the workers so that such right not be abused by the employers. Another manifestation of the guarantees of the rights of the staff is the responsibility of the employer to pass on a copy of the agreement on the extension of the working time settlement to the competent regional labour inspector within 5 working days from the date of the conclusion of the agreement.

In the opinion of the trade unions and also in the opinion of many representatives of the doctrine of the labour law, the regulation regarding the right to introduce the twelve-month settlement period has a number of significant shortcomings. First of all, the conditions for exercising such right by employers were formulated so broadly that in practice they are not verifiable, for example, by the court or the regulatory authority⁹. In addition, on the basis of that provision the organizational risk is to a large degree transferred to the workers, who when the obli-

⁷ Journal of Laws dated 2002 No 2002 item1679 as amended

⁸ See W. Szubert, *Ochrona pracy. Studium społeczno-prawne*, Warsaw1968, p. 30 and subsequent pages.

⁹ See A. Sobczyk (in:) *Kodeks pracy. Komentarz*, under the editorship of A. Sobczyk, Warsaw 2014, p. 555.

gation arises to pay overtime will wait for it for more than 12 months. A major problem is that of employee representation in companies that are not unionized. The non-existence in the provisions of detailed rules for the election of non-union representatives and the lack of specific protection against termination of the employment relationship with them is highly criticized.

In assessing the new regulation, one should look at it in a broader context. The amendment reflects the new philosophy of the perception of labour law, which should not be a tool for the protection of workers' rights at all costs, even at the cost of losing jobs. From the point of view of the employers, this change means that it was finally understood what the organizational function means, the implementation of which is in the domain of the employer. The rigid forms and principles of the organization of working time, often intended for all employees, derived from the concept of Fordism and the socialist labour discipline, do not fit into the new methods and management conditions. Flexible working time means precisely this: that we ourselves choose the most appropriate form of work organization in order to meet the challenges of the market and free competition.

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INCREASING WORKING TIME FLEXIBILITY – THE BUMPY POLISH ROAD: REMARKS ON SOCIAL DIALOGUE, TRADE UNIONS, COLLECTIVE AGREEMENTS, AND THE STATE

Should the state continue to take a top-down approach to regulating working time in companies by means of the Labour Code? Or should it leave this decision to be made by social partners within collective agreements negotiated by employers and trade unions at the industry or company level? How can this be carried out in Poland, where in most companies there are no trade unions, and where employers are rarely affiliated with one of the existing employers' confederations?

In a situation where – in a given company – there are no trade unions, is it possible for the employer to enter into an agreement with a staff representative who has been selected according to a vague formula, namely “following procedures adopted by a given employer”? What is the degree of actual independence of a “staff representative”, an institution introduced into the Labour Code through a number of scattered amendments? This institution emerges in various detailed regulations regarding the need to make arrangements between an employer and staff: for example, for allocating funds from a company's social benefits fund or for agreeing a holiday leave schedule. Recently, a “staff representative” appeared again in the July 2013 amendment to working time provisions.¹ Interestingly, “representatives”, as parties to agreements making arrangements with an employer on behalf of other members of staff, have not received any special legal protection from the legislator (as is the case with, for example, trade union activists). In reality, “representatives” will not receive any organizational or technical support either. They will be able to depend only on themselves and their employers. Moreover, there are no unified and universally applicable rules for selecting staff representatives. Is a staff representative, therefore, not just a sham institution used to legitimize decisions that are beneficial only to employers?

¹ Act of 12 July 2013 on Amending the Labour Code and the Act on Trade Unions (Journal of Laws of 2013 item. 896) made significant changes in section 6 (“Working Time”) of the Labour Code.

These are only some of the questions that dominated a discussion panel at last year's conference "Working Time in the Modern Economy"², jointly held by the Institute of Labour and Social Studies (IPiSS) and the Friedrich Ebert Foundation. The panel included representatives of Poland's two major union umbrella groups – namely, the All-Poland Alliance of Trade Unions (OPZZ) and the "Solidarność" Independent and Self-Governing Trade Union (NSZZ) – along with representatives of the two leading employers' organizations – the Polish Confederation Lewiatan (Konfederacja Lewiatan) and Employers of Poland (Pracodawcy RP). Having participated in the panel, I would like to share some thoughts that will serve as a commentary on that discussion. I believe these thoughts to still be as valid as they were a year ago.

In the context of the amendment to working time regulations, a more general question arises: what is the actual role played by both trade unions and social dialogue in the changes in working conditions? In the last twenty-five years, framework conditions for running a business have undergone radical changes both in Poland and in Europe at large. Globalization has changed the power structure between employees and trade unions as well as between employers and their organizations. The constant high level of unemployment and much greater possibility for moving production to other countries have changed the power structure to the benefit of capital. In most European countries the privatization of state-owned enterprises and the public services sector, as well as the deregulation and liberalization of labour law, have undermined and destabilized labour relations based on collective agreements which used to be highly stable.

Thus, the question arises: what is the effectiveness, under the new conditions, of institutionalized social partnership in a country like Poland? What is the actual role of dialogue when it comes to deciding on and regulating working conditions, such as the issue of the length and form of working time?³ To what degree can dialogue be helpful in distributing the existing labour force given the decreasing demand for workers and the constant, practically unlimited inflow of cheap labour from overpopulated, underdeveloped regions? All of this is happening in a situa-

² Two prominent experts from Polish employers' organisations took part in the debate: Dr Monika Gładoch from the Employers of Poland and Dr Grażyna Spytek-Bandurska from the Polish Confederation Lewiatan. Also, Katarzyna Zimmer-Drabczyk from the NSZZ "Solidarność" and Paweł Śmigielski from the OPZZ participated in the discussion. The position of the West European trade union movement was presented by Clemens Rode, a trade unionist from Germany, former regional coordinator of the Friedrich Ebert Foundation for labour relations and social dialogue in Central and Eastern Europe, prominent expert on labour relations in the West, as well as in Poland and other Central and Eastern European countries.

³ "In a transition to sustainable cultures and economies, people are going to have to adapt to new schedules and temporal rhythms. The culture of long working hours and excessive busy-ness that characterizes a number of wealthy countries will need to be replaced by more sustainable patterns of time use. While there will be adjustment costs, a slower and more humane pace of life brings social benefits to family, community and individual wellbeing." Juliet Schor, *Plenitude New Economics of True Wealth*, 2010, 91.

tion where over the last thirty years neoliberal economic policy has “liberated” capital from any limitations of the industrial era and led to the weakening of the state’s position as controller of economic processes.

For at least two decades, the trade union movement has been growing weaker the world over, and not least in Europe, where it previously had the strongest position and influence. Today’s trade unions have not been able to find good answers to the difficult challenges they face in the 21st century. In a situation where we have less work, employment is subject to growing segmentation into “better” and “worse” sectors. Moreover, the wage gap and social disparities are growing, the role of the state as the initiator and organizer of active labour market policy remains passive, and finally the role and importance of institutionalized social dialogue is decreasing.

A recent amendment to Polish labour law clearly illustrates this phenomenon. The amendment introduced flexible working hours and increased the maximum allowable working time reference period from four to twelve months.⁴ The lively discussion on this issue that has been ongoing for months is primarily concerned with the following question: in whose interest was the amendment introduced? Experts representing employers defend the introduced changes by saying they signify “a step forward in the development of social dialogue” and “the end of the legislator’s diktat”. “Indeed”, say trade unionists, but sometimes the legislator’s diktat is in the interest of employees, the weaker partner in labour relations, especially when trade unions are – for various reasons – unable to effectively perform their protective functions. In such cases, out of sheer necessity, government acts can perform this protective function.

Theoretically, the amendment delegates decision-making powers to the company level. However, in the accepted formula, this does not necessarily mean extending the scope and improving the functioning of dialogue in practice. It would be difficult to disagree with the trade unionists’ opinion that concluding agreements according to vague rules on the extension of reference periods in a company with a representative “selected on an ad-hoc basis” most certainly does not strengthen authentic dialogue between the two parties to labour relations. The new regulation provides that if there are no trade unions or collective agreements

⁴ Act of 12 July 2013 on Amending the Labour Code and the Act on Trade Unions (Journal of Laws of 2013 item. 896 of 8 August 2013). “The possibility to use extended reference periods will facilitate more advantageous working time planning and management for those employers whose business activity fluctuates due to unevenly placed orders for their products or services or due to the seasonal nature of their business (e.g. tourism, construction, farming). It will allow for the accumulation of a greater number of hours in periods of intensified work and for the planning of a smaller number of hours when the amount of work decreases. Consequently, it will be possible to significantly reduce additional costs that have so far been generated by overtime in the periods of intensified work and the need to pay staff for slack periods at other times”. Anna Rykulska, 24.09.2013, Czy należy obawiać się 12-miesięcznego okresu rozliczeniowego? [Should We Fear a 12-Month Reference Period?], <http://www.pulshr.pl/prawo-pracy/czy-nalez-y-sie-obawiac-12-miesiecznego-okresu-rozliczeniowego>

in a company, then the agreement on the extension of reference periods is concluded and signed with a “staff representative”. At the same time, “staff representatives” are not given any special legal protection, nor are there any universally applicable rules as to the selection procedure. The question of whether the institution of “staff representative” in its current form can genuinely and independently represent employees is thus only rhetorical.

In the “staff representative” debate we do hear opinions voiced, mainly by experts and researchers, which state that this institution should be “strengthened and recognized”, or even that a “works council” should be introduced. In fact, however, none of the parties to social dialogue “are in any rush to make this a reality”. For employers a weak “partner” is convenient: for their “own” employee who receives no organizational or technical support from the outside is given practically no genuine protection. Any possibility of intervention on the part of the Polish Chief Labour Inspectorate is strongly limited here. The Inspectorate can check whether a particular person has indeed been chosen following “selection procedures” adopted by a given employer, but it is not able to assess the degree of the “authenticity and freedom” of such a choice. Neither is it able to assess whether the introduction of extended reference periods and other related working time regulations were necessary.

Trade unions, on the other hand, worry about yet another non-unionized staff representation that weakens their position in companies. They perceive it as competition, strongly protest against its introduction, and try to prevent it from happening. However, they probably do not realize that by doing so, they are protecting the status quo, which means that they hardly improve the situation of that majority of employees who lack any kind of representation at the company level.⁵

It is just as well that trade unions do not want to allow the creation of yet another sham institution that keeps up the appearances of Polish law’s compliance with EU law. On the other hand, however, the unions have not developed any strategy that would help them use this kind of institution to benefit employees and strengthen their own influence in those companies which (for various reasons) they are unable to enter and most likely never will. It is perhaps worth considering what competences and protection should be given to such non-unionized representation for it to be truly able to perform its function regardless of any pressure from the employer. Such non-unionized representation should have its own real powers – powers that are not at odds with those of trade unions, but that enable genuine opportunities for action. This would enable the creation of a breakthrough into the private sector that has so far been inaccessible (to trade unions), especially in small and medium-sized companies. Perhaps it would be better not

⁵ In October “Solidarność” submitted an application to the Constitutional Tribunal requesting an investigation into the compliance of the extension of reference periods with the ILO Convention No. 135 (in the part concerning the entering into agreements with staff representatives). According to the applicant, this type of agreement with the staff clearly shows the dominance of the employer because representatives are not covered by the protection referred to in the ILO Convention.

to focus on blocking or neutralizing the potential competition, but to look at this institution as a future ally.

A genuine staff representative with real, though limited powers, that is legitimate and – unlike voluntary trade unions – selected on a compulsory basis, would be “a step forward” in labour relations. Such a well-designed representative institution could be created and actually function in companies. It would be worth analyzing all the pros and cons of this representation, considering equipping it with relevant powers and protection and then using it for the benefit of employees and trade unions themselves. It would be good to consider how to involve staff representatives into broader trade-union strategies, how to support their day-to-day activities, how to train them, and how to attract them to join trade unions. The example of the employee councils that were introduced in 2006 is significant here. It was partly the trade unions’ fault that employee councils became a practically meaningless sham institution. In non-unionized companies, where employee councils were created, it quickly became clear that they were unable to do much and were often confronted with expectations on the part of employees that went far beyond their scope of activity. It soon became clear that the councils had a “glass ceiling” above them that they were unable to break on their own and that they needed “someone bigger and stronger” with relevant expert and organizational resources.

A similar process of the evolution of attitudes happened between trade unions and works councils in post-war Germany: from the initial negation and resistance on the part of trade unions, through the inclusion of council representatives into trade unions’ strategies and activities, and the gradual “takeover” of councils by trade unions, to the current situation, where the majority of council members are also members of trade unions. Staff representatives could play the role of trade union “Trojan horses” in many companies that display a negative attitude towards trade unions. There would be a chance to “identify” the potential leaders across companies. Then it would be possible to try and share the trade union offer among these people and include them into wider strategies, give them training, etc.

So far, trade unions have tried not to let other non-unionized representations into companies (or at least to make them rather insignificant), something they have been quite efficient in. They have acted rationally from their particular, short-term point of view. Unfortunately, they have also managed to forget about employees, the majority of whom are deprived of any representation whatsoever. Sometimes, though, something small is better than nothing at all. Without much chance to enter a company as a trade union, striking the right balance between the competences of trade unions and staff representatives would be a sensible thing to do. Not to weaken the trade unions, but to strengthen them. At the end of the day, there is no reason why staff representatives could not be the unions’ trusted people, as is the case in Germany. Of course, this is risky for trade unions, and needs a well thought-out strategy, financial resources, and a degree of work – and this understandably gives rise to some resistance.

In light of the dissent over the increase in the flexibility of working time, the issue of the effectiveness of institutionalized social dialogue in Poland in its cur-

rent shape becomes very clear. Firstly, it reveals that trade unions have been pushed entirely into defensive position. Trade unions can get upset and protest, but the government simply returns to business as usual and carries on. One researcher of social dialogue, a participant and observer of the Polish Tripartite Commission, made the following assessment of social dialogue carried out within the Commission: “The government puts its proposal on the table (e.g., next year’s budget), presents its calculations, and explains its objectives. It ‘smiles’, but leaves no room for negotiation. Trade unionists get angry, protest loudly, but are in fact too weak and have too few ‘deterrent powers’. They are unable to mobilize their members to strike action or mass protests”. In conclusion, the researcher admitted that social dialogue in Poland is not fictional, but there is a situation in which two junior partners, with limited possibilities to mobilize their members and with a low protesting potential, are consulted on and informed about the government’s plans and projects. They are partners who are recognized both in Poland and across Europe. But at the same time they do not have to be reckoned with too much. This is the message the government is sending: “you cannot do much harm to us, but as you can do a bit of damage, it is worth playing with you, otherwise things might be quite expensive for us. But that threat is not big enough for us to forget our own policies and preferences”.⁶ The exact same thing happened in the case of the introduction of regulations for the extension of reference periods and for making working time more flexible. Under existing conditions, this solution is much more beneficial for employers. It could also be beneficial for employees, but only after a relevant “negotiation treatment” between genuine social partners. Dialogue is a situation in which an employer decides that flexible working time solutions need to be introduced, staff agree, and the interests and needs of both parties are settled. Unfortunately, this is rarely the case. “We often receive information about instances where an employer introduced a 12-month reference period not in order to save the company, but to maximize their profit. Such an introduction of flexible working time is certainly not in the interests of employees. It should therefore be assessed through the method of introducing a particular solution into a company, through the mutual trust of both parties, and concern for the company not only on the part of the employer, but also the employee.”⁷

Indeed, Poland could truly benefit from authentic dialogue based on mutual trust at both the industry and company level. Experts from trade union and professional employers’ organizations have been saying this for many years now. It is true that the legislator is not able to foresee and regulate (by statute) everything that might later happen in a company. It is here, at the industry or company level, where parties should have the possibility to adjust the general framework statuto-

⁶ Krzysztof Getka, “Staat, Kapital und Arbeit im System der kollektiven Arbeitsverhältnisse in Polen nach 1989“ *Jahrbuch Polen 2013 Arbeitswelt*, Deutsches Polen-Institut, Darmstadt, 2013.

⁷ Paweł Śmigieński, legal advisor to the All-Poland Alliance of Trade Unions (OPZZ), unauthorised remark made during a discussion panel at the “Working Time in the Modern Economy” conference organised by the IPISS and the Friedrich Ebert Foundation, Warsaw, 18.10.2013.

ry regulations to their needs and possibilities. The industry level of agreeing regulations such as increasing the flexibility of working time would make it easier for employers to run their businesses according to foreseeable conditions. Moreover, it would balance out the asymmetry of the employer-employee relationship in a company and would also strengthen both employers' organizations and trade unions by giving them tangible possibilities to influence the actual shape of the adopted solutions. However, the above scenario seems completely utopian in the current Polish reality. The prerequisite for using industry-level arrangements is the existence of employers' organizations and also strong trade unions at the level of industries. This does not exist in Poland. Complaining about employers that avoid collective agreements and the lack of supra-company organizations will not be of any use. The Polish model of social dialogue is the "soft" representation of parties to collective labour relations. This representation is not well institutionalized. It lacks support from supra-company collective agreements and has a low level of actual party representativeness. The Polish model also features a "confrontational" pluralism of employers' and employees' organizations, which does not make agreeing mutual interests and party stances any easier. In the case of both trade unions and employers, the possibility of exercising influence on the behaviour of the membership base on the part of any superior structure is rather minimal. These conditions are certainly not favourable in terms of the creation of social dialogue structures on a supra-company level. Even when it comes to the implementation of those EU regulations that require consultation with employees, this issue remains a problem for the Polish legislator. In the case of trade unions, the changes would have to start from re-building a grassroots movement and strongly increasing the number of members in order to "force" a similar (unification) movement on the part of employers. This does not seem possible at the beginning of the 21st century within the "new economy".

A modernized, effective social dialogue, along with collective agreements, strong states, strong international organizations, and strong trade unions are all needed in order to stop the destructive "race to the bottom" caused by globalization and the neoliberal policies of the 1980s and 1990s. This all started with low prices, which in turn brought about lower taxes, costs, salaries, the deconstruction and limitation of welfare and, effectively, a negative rate of natural increase, unemployment, poverty, and the progressive deconstruction of pension systems. In order to stop this destructive process, strong trade unions that function – just like business – on an international scale are needed more than ever.

Moreover, the growing dysfunctionality of the state and state institutions must be brought to a halt. "Nearly every crisis is inevitably caused by a destructive race to the bottom. However, it also presents a chance to re-evaluate thinking and introduce changes to how things are done. Unfortunately, this happens only in a crisis situation."⁸ One is free to wonder, however, if that view is not overly optimistic.

⁸ Grzegorz Kołodko, "Wędrujący świat" [Volatile World], Warszawa, 2008, p. 253.

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tional Office, then as a researcher and program manager in the CEE-Regional Project. In 1996–1997 he worked as the training coordinator at the Austrian brokerage insurance company MBI Agentur Ltd. For several years he was a correspondent-participant of the research project of the World Economy Survey by the Institute for Economic Research (ifo) in Munich. He studied Journalism and Political Science at the University of Warsaw and Social Science at Humboldt University, Berlin. He is a graduate of the Trainer's School of Non-Governmental Organizations.

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Law graduate of Nicolaus Copernicus University in Torun, 2001. Legal Counsel, Doctor of Laws. Assistant Professor at the Department of Labour Law, Faculty of Law and Administration of Cardinal Stefan Wyszyński University in Warsaw. She is an advisor to the President of the Employers of Poland for labour law. On behalf of the employers' organization she is a member of the Supreme Council of Employment and the Solutions Team for Labour law and collective agreements of the Trilateral Commission.

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Assistant Professor in the Department of Family Issues, Institute of Labour and Social Studies. She graduated from the Faculty of Journalism and Political Science having specialized in social policy. She is the author and co-author of books and articles on the material conditions of family life, the functioning of the institutions of family policy, and determinants of the labor force participation of women, including solutions for reconciling professional and family obligations. Member of the Scientific Council of IPiSS. The author of the publication "Women employed in part-time work. Consequences for work and family life", IPiSS 2007; co-author of publications issued by IPiSS, among them: "Women and men in the labour market. Reality years 1990–1999", "Women's work in the private sector. Opportunities and barriers", and "Work-life programs of theory and practice".

Monika Latos-Milkowska

Employee (PhD) of the Law Faculty of the University of Warsaw. Author of many publications on labour law. Especially interested in the problems of working time, protection of the duration of employment contracts, collective labour law, and employee rights connected with parenthood. Co-worker of the Institute of Labour and Social Studies.

Steffen Lehdorff

Economist, Research Fellow at the Institut Arbeit und Qualifikation (Institute for Work, Skills and Qualification / IAQ), University of Duisburg in Essen, Germany. Steffen graduated from Cologne University in 1973 and wrote his thesis on collective bargaining and unemployment (PhD in 1979). After more than a decade

of full-time political work he returned to academia in 1990. He worked as a Research Director at the Institute Work and Technology (IAT), Gelsenkirchen, Germany and later as the Head of Department on Working-Time and Work Organisation at IAQ. He retired in 2012 and continues to work with his institute as a Research Fellow. His research focuses on employment relations and working-time at organizational, national, and international levels and includes comparative research into European employment models and industrial relations systems. Recent publications include: Lehndorff, Steffen (ed.), 2012: *A triumph of failed ideas. European models of capitalism in the crisis*. Brussels: ETUI; Lehndorff, Steffen, 2011: "Before the crisis, in the crisis, and beyond: the upheaval of collective bargaining in Germany", in: *Transfer: European Review of Labour and Research* 17 (3), pp. 341–354; Lehndorff, Steffen, Christine Franz, and Alexandra Wagner, 2010: "Working time developments in Europe", Brussels: European United Left/Nordic Green Left – GUE/NGL / European Parliamentary Group.

Jacek P. Męcina

Lawyer, social politician, graduate of the Faculty of Journalism and Social Sciences (1993), and the Faculty of Law and Administration (1996) of the University of Warsaw. Since 1993 lecturer at the Faculty of Journalism and Social Policy, University of Warsaw, associate professor at the Institute of Social Policy. Specialist in the field of the labour market, labour law, social legislation, and social dialogue. Recipient of scholarships from several European programs and the Alexander von Humboldt Foundation. Since 2003 Męcina has participated in the Plenary Session of International Labour Organization every year. He combines his intellectual interests with his public activities as a member of the Tripartite Committee for Socio-economic Affairs (since 2004) and the chairman of the Team for Labour Law and Collective Labour Agreements. Advisor to the Polish Confederation of Private Employers *Lewiatan* (since year 2000), chairman of Personal Director Council. He was the vice-director of the Institute of Labour and Social Studies (1997–2000), Deputy Minister of Economy and Labour responsible for the labour market, labour law, compensation, occupational safety and health, collective labour agreements, and social dialogue (2005). Member of the Labour Protection Council at the Polish Sejm, mediator from the list of the Minister of Labour and Social Policy, active participant of negotiations concerning collective labour agreements on the institutional level. Member of the Polish Society for Social Policy, Labour Law Association, and *Societas Humboldtiana Polonorum*. Member of the program advisory board of the bimonthly journal "Zarządzanie Zasobami Ludzkimi" (Human Resource Management) and the quarterly journal "Dialog Społeczny" (Social Dialogue). Author of several dozen articles, books, law commentaries, and papers in the field of labour law, the labour market, employment relations, and social dialogue. He tries to balance his professional passions with family duties, cultural pursuits, and recreation.

Joanna Mirosław

Researcher at the Institute of Labour and Social Studies. Her academic and research interests are related to the problems of the processes taking place in the labour market with particular regard to the situation of women, work-life balance, and changes in family models (sandwich generation). Joanna has experience in planning and conducting social research. Since 2005 she has participated in many research projects in the field of the labour market and vocational education. Joanna is also the author and co-author of research reports and recommendations on the labour market and vocational education (e.g., “Entrepreneurship women in Poland”, PARP, Warsaw, 2011; “Modernization of methods and forms of vocational training in Poland. Diagnosis and expected trends”, IPISS, Warsaw 2012; and “The digital divide in the labor market”, IPISS, Warsaw 2010. She is also the author of articles and chapters in a range of publications.

Daiva Petrylaitė

Dr. Daiva Petrylaitė works as associate professor at the Labour Law Department of Vilnius University, Lithuania. Her research fields are: industrial relations, collective labour disputes, right to strike, social partnership, and social dialog. Petrylaitė is the author of the monograph “Collective Labour Disputes”, which deals with the theoretical and practical problems of the right to strike and ADR methods in solving industrial conflicts. She is also the co-author of the Lithuanian Labour Code Commentary (and is the author of the chapter dealing with industrial disputes). She has published a number of articles on current industrial relations, collective labour disputes, and right-to-strike questions. For example: “Strikes as *ultima ratio* method of social conflicts resolution: Lithuanian Case”. Bulletin of comparative labour relations: “The laval and viking cases: freedom of services and establishment v. industrial conflict in the European economic area and Russia”. Vol. 69. Austin: Wolters Kluwer, 2009; “The right to strike in Lithuania and its conformability to the international labour Standards. Labour and Social Security Law in the XXI Century: Challenges and Perspectives”. Material of the International Scientific Conference held on May 11–13, Vilnius; “Collective Labour Disputes in the Republic of Lithuania: national and international aspects. Contemporary Tendencies of the Labour and Social Security Law”, Material of the International Scientific Conference. Moscow: 2007; “Going on strike is not smart, going on strike is not in fashion”, Spectrum. 2008, nr. 2; Petrylaitė, D.; Woolfson, Ch. “Missing in Action”; and “The Right to Strike in the Baltic New Member States – an Absent EU Competence”, International Journal of Comparative Labour Law and Industrial Relations, 2006, vol. 22. Dr. Daiva Petrylaitė actively participates in labour law-making processes. She has been a member of working groups preparing such drafts as amendments to the Labour Code, Working Councils law, European Works Councils law, etc. From June 2010 Daiva Petrylaitė has been involved on the list of Lithuanian mediators responsible for investigating industrial conflicts.

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Magdalena Barbara Rycak

Alumna of the Faculty of Law and Administration and the Faculty of Journalism and Political Science, University of Warsaw. Doctor of Laws. Legal advisor specializing in individual and collective labour law. Since 2010 she has been a Deputy Dean at the Faculty of Law and Administration at Łazarski University in Warsaw. Since 2009 manager of postgraduate studies in labor law and social security at Łazarski University. Deputy Judge of the Administrative Court operating under the Council of Europe. For years she has cooperated with the Institute of Labour and Social Studies, the National School of the Judiciary and Public Prosecution, the Regional Chamber of Legal Advisers in Warsaw, Labour Law and Social Security Services, Wolters Kluwer Publishing House, and with more than a dozen training companies. Since 2000 she has provided training and written legal opinions in the field of working time for drivers and in health care, protection of personal data, and business travel. She has appeared as an expert of the Trade Union Forum within the work of the Tripartite Commission for Socio-Economic Issues. She is the author of numerous scholarly and publicist publications, including the monograph “Wymiar i rozkład czasu pracy” [The scope and breakdown of working time] and the commentary to the Act on the working time of drivers.

Agnieszka Smoder

Master of andragogy (UW), an assistant at the Department of Employment and Labour Market IPISS. Her research interests focus around the issue of flexible working hours, work-life balance, women in the labor market, corporate social responsibility, and family-friendly employment. She has participated in a number of educational and research projects, including “Partnership for Development Competencies in Poland”, EQUAL, “Potential and prospects of cooperation employment agencies and public employment services”, “Homelessness in Mazowsze”, “Flexible working time in the context of socio-economic”, “Work-Life Programs as a factor of competitiveness of companies and the achievement of the social environment”, “Family friendly employment (FFE) as a part of creating the working

conditions of those with family obligations – attitudes of employers”, “The digital divide in Mazovia”, “Analysis of the processes occurring on the Polish labour market and social inclusion in the context of economic policy”, and “Developing a set of national standards of occupational competencies required by employers”. She is an author of scientific articles in publications and journals, co-author of research reports, among them: “Work-life programs in theory and practice”, IPiSS, Warsaw 2011; “The digital divide in the labour market, IPiSS, Warsaw 2010”. Member of the Scientific Council of IPiSS, 2011–2015 term.

Arkadiusz Sobczyk

Assistant Professor at the Chair of Labour Law and Social Policy of the Jagiellonian University in Kraków. Sobczyk is a graduate of the Law and Administration Department of the Jagiellonian University and holds scholarships from many universities outside Poland (Italy, Belgium, Scotland). He is a member of the European Institute of Social Security (EISS). Author of approx. 80 publications in the field of labour law. He is also an active practitioner – he has long-term experience as a judge. Currently, as a legal advisor in Kraków, he runs a law firm specializing in matters of employment law, and is acclaimed both in international and national rankings. Arkadiusz Sobczyk is also a consultant and expert for professional journals, and a well-known educator.

Helena Strzemińska

Professor of economy at the Institute of Labour and Social Studies in Warsaw, Department of Collective Labour Relations. Over the last three decades she has researched problems of organization of labour with particular interest in working time, its shortening in Poland and other European countries, as well as the economic and social aspects of working time reforms.

Her other areas of interest include:

- humanization of work, social problems of industrial work,
- flexible working time management, free time, budgets of time,
- direct and indirect participation of employees in enterprise managing, industrial democracy,
- value of work in social consciousness (ethos of work),

Scholarship holder of the Friedrich Ebert Foundation in Bonn, she has cooperated with Polish and foreign universities, among them in Cologne, Stuttgart, Bonn, Budapest, Dresden – along with international organizations such as UNESCO in Paris, the European Coordination Centre for Research and Documentation in Social Science in Vienna, and the European Committee for Work and Pay in Amsterdam. In 2002–2010 she won 4 grants for financing research projects in open competition announced by the Committee for Scientific Research in Kraków. Currently she is working on the research project funded by the Committee: “The Factor of Time in the New Economy. Where we are Heading ?” Author of such publications as: “Czas pracy w przedsiębiorstwie. Wyniki badań nad rozkładami

czasu pracy i zdrowiem pracowników” [Working time in an enterprise. Investigation results on the distribution of working time and health of workers], IPiSS, Warszawa, 2002. Helena Strzezińska (ed.), co-authors Halina Ćwirko, Maria Gasińska, Lucyna Machol-Zajda (published in Polish); “Zarządzanie zasobami czasu pracy. Doświadczenia krajów europejskich” (Managing of working time resources. Experiences of European countries), IPiSS, Warszawa 2004, Helena Strzezińska (published in Polish); “Czas pracy w nowych krajach członkowskich Unii Europejskiej. Aspekty ekonomiczne, prawne i społeczne” (Working time and its organization in the New Member States of UE. Economic, legal and social aspects), IPiSS, Warszawa 2008, Helena Strzezińska (ed.), co-authors: Monika Latos-Miłkowska, Magdalena Barbara Rycak, (Published in Polish); IPiSS, Warszawa 2008. She is the author or co-author of over 200 publications, including books, scientific reports, scientific papers, contributions, and expertises. The full list of her publications is available in the catalogue of the Central Library of Labour and Social Security. She has promoted 3 scientists to their PhD degrees, and has conducted postgraduate studies (MBA) at two colleges in Warsaw. Member of the Polish Economic Society and the Polish Sociological Association, the Program Council of the bimonthly “Human Resource Management”, Program Council of the bimonthly “Humanizacja Pracy”.

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Ania Zbyszewska

Postdoctoral Research Fellow at the University of Warwick, School of Law (UK), having earned her doctorate in Law and Society from the University of Victoria (Canada), Faculty of Law in November 2012. Her research interests include the intersection of law and politics, particularly in relation to the laws regulating the labour market and employment in the context of the European Union (EU) and its post-socialist member states. Drawing on feminist theories of law

and feminist political economy, she is also interested in how law manages the interface between work, social reproduction, and gender, particularly in relation to the regulation of working time, organization of care, and work-family reconciliation. Dr. Zbyszewska has presented her work at many international conferences and her work has been published by journals and working paper series, including the Women's Studies International Forum, the International Journal of Comparative Labour Law and Industrial Relations, and the York University EU Centre of Excellence Working Paper Series. Her doctoral thesis was awarded the 2013 Best PhD Thesis Prize by the UK-based Academic Association for Contemporary European Studies (UACES), and she has also received awards and fellowships from CRIMT, the Social Sciences and Humanities Research Council (SSHRC), and the Law Foundation of BC. She is a member of the Labour Law Research Network, the Inter-University Research Centre on Globalization and Work (CRIMT), the Canada-Europe Transatlantic Dialogue, and the Association for Contemporary European Studies (UACES).

Katarzyna Zimmer-Drabczyk

Lawyer, alumna of the Faculty of Law at the University of Gdańsk and Post-graduate Studies of Medical Law, Bioethics and Medical Sociology at the University of Warsaw. Member of such organizations as: Monitoring Committee of the Operational Programme Technical Assistance, Interministerial Team for "Europe 2020". She represented the International Confederation of Trade Unions at the Conference of the World Trade Organization on International Labour Standards issues. Director of the Expert Office of the National Commission "Solidarity". At the Expert Office of the National Commission she conducts legal and economic advice, disseminates information in the field of law and economics, and is engaged in giving opinions and analysis of draft laws, organizing seminars and conferences in the field of economic policy, social law (with particular emphasis on labour law), and cooperates with research centers in Poland and abroad, monitors violations of trade union rights, and prepares draft legislation.

This publication addresses the extremely important and topical issue of shaping working time under the conditions of the "new economy". Globalization and integration have changed the nature of working time management – indeed, it has ceased to be an internal matter of individual countries, having taken on an international scope because of increasing competitiveness and labour costs. Thus, analysis of the experiences of diverse countries at divergent levels of development, which this work is devoted to, offers important cognitive and practical usefulness.

The book is based on the rich achievements of world science, the vast literature on the subject, and the authors' original research. It adds many new elements to our knowledge of both the present and future of working time in the new economy. I am convinced that no future researcher of working time issues will be able to skip or ignore this work.

From the review by Prof. Mieczysław Kabaj

The Friedrich-Ebert-Stiftung (FES) is a German non-profit, private educational foundation committed to the concepts and basic values of social democracy. With seats in Berlin and Bonn and offices in more than 100 countries, the FES supports and provides political and social education, promotes research, and contributes to international understanding and cooperation. The Regional Project "Labour Relations and Social Dialogue in Central and Eastern Europe" of the FES provides an agency for dialog and is a centre for special events, highly competent information reports, studies, and bulletins, as well as for network meetings, further education, and training courses on labour relations and social dialog. Through its regional activities the FES contributes to the efforts of national unions and their regional organizations in the aim of developing joint strategies and projects designed to reinforce the social dimension of both European unification and globalization processes.

The Institute of Labour and Social Studies is a research institute which for over 50 years has been addressing the issues of labour and social policy in an interdisciplinary way. The high scientific standing of IPiSS is a result of the thinking of a group of distinguished professors and their committed carrying out of the Institute's purpose – namely, to continuously adapt the thrusts of research to the pressing needs of socio-economic policy in Poland. The fruits of the Institute's work are disseminated in the form of books, articles, interviews, conferences, seminars, and voices in public discussions and debates.