

# FEATURES OF THE LEGAL REGULATION OF THE BALANCE OF WORK AND REST OF JUDGES IN THE MEMBER STATES OF THE EUROPEAN UNION

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**Annotation.** The article delves into the nuances of legal regulations governing the equilibrium between work and leisure for judges across European Union member states. It is initially recognized that a robust model of work-life balance applies to judges in jurisdictions where they are regarded as employees by status. Similarly, in jurisdictions where judges are not classified as employees, yet are entitled to social security provisions, the principles of a balanced work-life structure are upheld. Through an examination of the prevailing legislation across EU member states, it becomes clear that some countries, particularly the Czech Republic and the Republic of Poland, do not adequately prioritize the protection of the necessary work-life balance of judges. Consequently, judges in these jurisdictions are compelled to operate amidst social risks stemming from the absence of a balanced work-rest dynamic. These risks include constraints on familial engagement, susceptibility to occupational hazards, and the onset of professional burnout, among others. Additionally, among the EU member states, there are those where the balance of work and rest of judges is appropriately regulated, such as Romania and the Republic of Lithuania. In these countries, the legislation accounts for the specific duration of a judge's work and recognizes the necessity to provide judges with the right to special short and paid leaves related to their personal life. The conclusions drawn in the article encapsulate the findings of the study and propose avenues for enhancing the legal framework governing the social protection of judges in Ukraine. Firstly, in regulating various facets of judges' work and rest, it is imperative to adopt a logical approach. If the nature of a judge's responsibilities precludes a precise determination of their working hours, it is essential to establish, within current legislation, the minimum duration of daily and weekly rest periods to ensure judges' right to rest without compromising their social security. Secondly, as part of enhancing the social protection mechanism for judges in Ukraine, it is recommended to introduce short (up to 3 working days) paid leaves for judges pertaining to family circumstances. These may include events such as the judge's marriage, the birth of a child, the marriage of a child, and the death of a spouse or parent, among others.

**Key words:** EU Member States, European integration, judge, social protection, social security, social state, work sphere, work-life balance.

## 1. Formulation of the problem.

The sphere of work is a sphere of human existence in which every able-bodied person is able not only to realize one of his key rights - the right to work, but also to find himself in a socially vulnerable position. This is due to the fact that the realization of the right to work is a complex of relations in which the general social risks of a person (in particular, disability, serious illness, old age, etc.) can be supplemented by special (industry) risks. In particular, workers may find themselves in a socially vulnerable position due to the employer's lack of compliance with decent work requirements (including a safe workplace, work-rest balance, etc.), and therefore workers may be at risk of injury or developing occupational diseases due to work in a dangerous workplace or under harmful working conditions. Also, employees may face a high level of stress and the emergence (development) of

psychological problems as a result of stressful and excessively intensive work. Therefore, in modern conditions, one way or another, risks are becoming widespread, caused by the insufficient provision of a harmonious balance of work and rest for employees, which is a problem that is extremely relevant also for judges in Ukraine and other countries. In order to solve this problem, in the process of improving the national mechanism of social protection of judges, there is a need to study the experience of solving this problem in foreign countries, and first of all (taking into account the European integration aspirations of Ukraine) - in the member states of the European Union.

## 2. Analysis of scientific literature and previously unresolved issues.

To date, attempts have not been made by domestic scientists to analyze the state of legal regulation of the balance of work and rest of judges in the EU member states, as an element of ensuring social security (hereinafter referred to as "SB") of judges. Despite this, it should also be noted that many European scientists have already revealed the problem of ensuring a balance of work and rest for employees in general and judges in particular, as well as the problem (negative impact on the life, health and social well-being of employees - the basis of human well-being) of not maintaining such a balance, including: F. Viapiana [1], J. M. Haar [2], A. Devry [3], M. K. La Barbera [4], E. Lombardo [5], I. Riboz Mureno [6], Sh. Roach Anley [7], S. Spach [8], M. Urbanikova [9] and others. Based on the scientific research of these and other scientists and researchers, as well as comprehensively analyzing the current legislation of the EU member states, we can find out the state of legal regulation of the balance of work and rest of judges in the respective member states.

3. Therefore, **the purpose of the article** is to establish the peculiarities of the legal regulation of the balance of work and rest of a judge in EU member states. To achieve this goal, the following tasks should be performed: 1) to clarify the spread of labor law models "work-leisure" on judges at member states EU; 2) to analyze the advantages and disadvantages of regulatory and legal provision of a harmonious balance of work and rest in the work of judges in individual EU member states; 3) generalize the results of the research, formulating proposals for improving the legal regulation of the socially safe "work-rest" model of judges in Ukraine.

## 4. Presenting main material.

Although not all EU member states legally recognize the fact that judges are employees by their status, characterized by a specific set of rights and duties, everywhere judges are considered civil servants whose status is similar to employees. So, in particular, in Art. 204 of the Law of Romania "On the Status of Judges and Prosecutors" states that the rights of judges are determined by the legislator taking into account: first, the place and role of justice in the rule of law; secondly, the level of responsibility and complexity of the judge's function; thirdly, a number of prohibitions and rules on incompatibility provided by law for the implementation of functions and the achievement of the goals of justice; fourth, the need to guarantee the independence, autonomy and impartiality of judges. At the same time, in a number of social states that are EU member states, it is explicitly recognized that judges are employees, and therefore they are covered by labor and social protection measures. For example, in the Czech Republic, the labor law issues of a judge's work are regulated by paragraphs of Section 3 of the Law "On Courts, Judges, Magistrates and State Administration of Courts", which states that the employment relationship of a judge begins on the day determined by the date of entry into office and ends on the day of termination of the judge's powers.

Therefore, it is quite natural that in the EU member states, in which the status of a judge is directly recognized as an employee with a special constitutional and legal status that allows him to objectify the judiciary in the course of his duties, the model naturally applies to judges ensuring a healthy (socially safe) balance between work and rest. In the same states in which the judge is recognized as a state judge civil servant, however, civil servants are not interpreted as employees with a special cross-industry status (defined by the norms of legislation on social security, on labor and employment,

as well as norms of administrative and constitutional legislation), the model of ensuring a healthy balance between the performance of official duties and rest from such work applies to judges due to the state's obligations to ensure the socially safe (professional and non-professional) existence of judges. That is why the right to rest for judges in EU member states is either directly defined in special legislative acts on the status of judges and the judiciary, or is directly regulated by labor legislation. However, European legislators do not always pay due attention to the indication that a judge must perform his duties within the framework of the balance of work and rest, although this is assumed, in particular, when the legislator specifies the limits of the judge's working hours, which are consistent with general labor law working time standards.

For example, in Poland in Art.83 of the Law of the Republic of Poland "On the System of General Courts" indicates that "the working time of a judge is determined by the scope of his tasks." At the same time, the Polish legislator does not clarify this provision of the Law at all with instructions and caveats that the judge, as an employee with a special labor law status, is subject to general and special guarantees of balance between work and personal life. Therefore, the literal interpretation of Art.83 of the Law of the Republic of Poland allows us to conclude that a judge's working hours may be unlimited at all, if the volume of tasks that will be assigned to him so requires. It is important to emphasize that neither the Polish codified labor law nor the legislation on professional public servants act as a guarantee supplement in this case, since these legal acts protecting the interests of employees clearly establish an eight-hour working day and a 40-hour working week as the basic working legal norm and standard. That is why Polish judges state that the existing practice proves that "some judges are always overloaded with work. In addition to hearings, hearings and other activities in court, they study cases late at home, including Saturdays, Sundays and holidays, and write reasons for their decisions. They do not have time for the necessary rest, family responsibilities, further education or scientific work" [10].

At the same time, it should be borne in mind that in Poland, as a member state of the EU, the provisions of the Directive of the European Parliament and the Council of November 4, 2003 No. 2003/88/EC, in accordance with Clause 9 Part 1 of Art. 2 of which every worker in the Union has the right to adequate rest, which means that the worker is provided on a regular basis with "periods of rest, the duration of which is expressed in units of time, and which are sufficiently long and continuous to avoid injury by workers to themselves, colleagues or other persons and causing damage to their health in the short or long term as a result of fatigue or irregular work schedules". In addition, in point "b" of part 1 of Art.6 of Directive No. 2003/88/EC states that "the average duration of working hours during each seven-day period, including overtime hours, did not exceed 48 hours." In addition to this, the Directive of the European Parliament and the Council of June 20, 2019 No. 2019/1158 should also be taken into account. It is quite obvious that supranational norms (secondary EU legislation) prevail over national ones, and therefore judges in Poland, as employees, should be covered by the specified guarantees.

In addition, attention should be paid to the fact that in Art.83a of the mentioned Law of the Republic of Poland regulates the right of a judge to have a smaller volume of cases that he must consider, in connection with parental leave. This right can be exercised by a judge (it is necessary to submit a corresponding petition) by reducing the coefficient of distribution of cases by no more than 50% while reducing his basic salary by the same amount. At the same time, again, in this context, the legislator takes into account not so much the need to ensure the safety of the child of the judge and the judge himself, but the number of cases. Thus, a situation may arise when, when distributing cases, the number of cases to be considered by a judge in the exercise of the right to leave for child care, while the total number of cases in the court will increase, as a result of which 50% of cases will be the same volume of cases that prevented the judge from fulfilling the parental role.

As another example, we can also consider the Czech Republic. In parts 1–3 par.84 of the Law of the Czech Republic "On Courts, Judges, Justices of the Peace and State Administration of Courts" regulates the issue of ensuring a balance between a judge's work and personal life. Thus, a Czech judge, being in an employment relationship, performs his duties within the limits of the working time schedule, which can also be established (if necessary) within the framework of flexible working hours and in other forms. The working hours of judges must be in accordance with the labor legislation of the

Czech Republic and be determined in the work schedule, which is approved by the head of the court for judges in order to ensure the proper administration of justice in the court. Thus, in order to ensure the proper administration of justice, the head of the court can appoint a judge to be on duty at his workplace, at his place of residence or at another appropriate place. However, a judge may be assigned no more than 400 hours of on-call work during a calendar year, taking into account the need for an even workload for all judges of the respective court.

In Lithuania, at the legislative level, there are also norms that fragmentarily regulate the balance between work and personal life of a judge. According to Art.98 of the Law "On the Courts of the Republic of Lithuania", judges are entitled to targeted vacations established by the 2016 Labor Code of the Republic of Lithuania, as well as annual vacations of a total duration of 22 working days. At the same time, every judge who is recognized as unable to work or is a person who independently raises a child under the age of 14 or a child with a disability under the age of 18 has the right to a longer annual vacation, namely 27 working days. At the same time, a judge with more than 5 years of experience as a judge receives an additional day of annual leave for each subsequent year of work as a judge, but the total duration of annual leave may not exceed 40 working days. In addition, judges who are raising a child with a disability under the age of 18 or two children under the age of 25, is granted (on a paid basis) 1 additional day of rest per month, and a judge raising 3 or more children under the age of 12 - 2 additional days of rest per month. At the same time, when a judge who is raising a child under the age of 14, who is studying in programs of preschool education, primary education or secondary education, and does not have the specified right to additional days of rest, then in this case he is provided (on a paid basis) at least half a working day of free time per year on the first day of the academic year. It should be borne in mind that the annual vacation of a judge in the LR can be postponed or extended in accordance with the procedure established by the 2016 Labor Code of the LR. The right to use all or part of such leave (or to receive cash compensation for annual leave in the event of dismissal) shall be forfeited 3 years after the end of the calendar year in which the judge acquired the right to full annual leave, except in cases where the judge was effectively unable to use it.

At the same time, leave is granted to judges, heads of judicial departments, and deputy heads of courts by the head of the relevant court, about which he informs the President of the Republic of Lithuania. In turn, the President of the Republic of Belarus can grant a judge a leave of absence (up to 1 year) for professional development, which can be taken once every 5 years. In this case, the judge remains with the status of a judge, retains the position of a judge of the corresponding court, however, he is not paid a salary, and the time spent on leave for professional development is such that it is included in the judge's work experience, which ensures the social security of maximizing social capital and the work potential of the judge within the specified leave.

As for Romania, in accordance with Art.209 of the Law "On the Status of Judges and Prosecutors" of 2022, judges can take a paid vacation of 35 working days each year. In addition, the Law provides that judges are also entitled to: first, paid special leave to attend courses or other forms of specialization organized within Romania or abroad, for preparation and qualification exams and doctoral exams. Secondly, for unpaid leave in accordance with the Regulation on leave of judges and prosecutors dated August 24, 2005 No. 325. In accordance with Art.18 of the said Regulation, judges have the right to leave without pay (however, while retaining their position as a judge) to resolve certain personal situations, however, the total duration of these leaves may not exceed 90 working days in a calendar year. At the same time, judges have the right to leave without salary without limitation in the duration of such leave under the following circumstances: a) care for a sick child older than 7 years during the period specified in the medical certificate; b) accompanying a husband (wife) or a close relative (son, daughter, sister, brother, parents) during their treatment abroad (with the mandatory consent of the Ministry of Health). In addition, in part 3 of Art.18 of the Regulation on vacations of judges and prosecutors states that a vacation without pay can be granted to a judge also due to a number of other circumstances caused by the personal interests of the judge for the duration established by the agreement of the parties. Third, for vacation and health insurance benefits (medical leave). Fourth, for other types of vacations and assistance in accordance with current legislation. Yes, in accordance with Art.21 Provisions on leave of judges and prosecutors judges have the right to leave to raise a child up to 2 years old and a child with a disability up to 3 years old, during which judges are entitled

to an allowance established in accordance with the law. According to Part 1 of Art.22 of the specified Regulation, judges also have the right to paid leave, which is not counted against the duration of other ongoing leave (including annual leave), in such special family circumstances as: a) marriage of a judge - 5 working days (granted no later than 30 days from judge's marriage dates); b) marriage of a child - 3 working days (cannot be granted later than 30 days from the date of the event); c) death of a husband or wife, or a relative up to the 3rd generation inclusive (both the judge and his (her) wife (husband)) - 3 working days (granted no later than 30 days from the date of death); d) annual medical examination - 1 working day.

## 5. Conclusions.

Summarizing what has been stated, we note that the normative legal provision of the balance of working time and non-working (personal life) time is most successfully reflected in the legislation of Lithuania and Romania, while in the Czech Republic and Poland this principle in relation to judges is reflected in a desocialized form, which in general is not advisable to use in the process of formation of the modern doctrine of social protection of judges in Ukraine. In general, the experience of legal regulation of the work and rest of judges in Lithuania and Romania indicates several important circumstances that should be taken into account during the legal regulation of the socially safe "work-rest" model of judges in Ukraine. The first circumstance - if due to the specifics of the work duties of judges it is impossible to clearly determine the duration of their work, then, taking into account the fact that the duties of judges cannot be performed at the expense of the SC of judges, which may be harmed by a work regime that is not coordinated with social a safe model of work and rest, it is necessary to define at the level of current legislation the minimum number of hours per day and per week, which must be provided to a judge in order to satisfy the judge's right to rest and make it impossible to work in conditions that do not correspond to the judge's human dignity. The second circumstance - within the framework of ensuring a harmonious balance of work and rest of a judge, the full implementation of the judge's right to contact with the family should also be ensured, in particular, by enshrining at the level of a special legislative act on the judicial system and the status of judges a list of family circumstances (for example, a judge's marriage, birth of a child, marriage of a child, death of one of the spouses, death of one of the parents, etc.), in view of which a judge can receive a paid leave of up to 3 working days.

## References:

1. Viapiana F., van Dijk F., Diephuis B. Pressure on judges: How managerialisation and evolving professional standards affect judges' autonomy, efficiency and stress. *Oñati Socio-Legal Series. Series: Empirical research with judicial officers and courts: Methods and practices.* 2023. Vol. 13 (S1). P. S347– S385. doi:10.35295/osls.iisl.1672.
2. Haar J.M., Russo M., Suñe A., Ollier-Malaterre A. Outcomes of work–life balance on job satisfaction, life satisfaction and mental health: A study across seven cultures. *Journal of Vocational Behavior.* 2014. Vol. 85 (3). P. 361–373.
3. Dyevre A. EU judicial behaviour research: a look back and a look ahead. *European Politics and Society.* 2023. Vol. 1. P. 1–16.
4. La Barbera M.C., Lombardo E. "The long and winding road": A comparative policy analysis of multilevel judicial implementation of work–life balance in Spain. *Journal of Comparative Policy Analysis: Research and Practice.* 2019. Vol. 21 (1). P. 9–24. doi:10.1080/13876988.2017.1363949.
5. La Barbera M.C., Lombardo E. Towards equal sharing of care? Judicial implementation of EU equal employment and work–life balance policies in Spain. *Policy and Society.* 2019. Vol. 38 (4). P. 626–642.
6. Ribes Moreno I. Women's rights in the workplace – EU vs. Spanish legislation on co-responsibility rights. *Stanovništvo.* 2023. G. 61 (2). P. 85–107.



7. Roach Anleu S., Mack K. Job satisfaction in the judiciary. *Work, Employment and Society*. 2014. Vol. 28 (5). P. 683–701.
8. Spáč S. Recruiting European judges in the age of judicial self-government. *German Law Journal*. 2018. Vol. 19 (7). P. 2077–2104.
9. Urbániková M., Havelková B., Kosař D. The Art of Waiting Humbly: Women Judges Reflect on Vertical Gender Segregation. *Feminist Legal Studies*. 2023. Vol. 1. P. 1–26. doi:10.1007/s10691-023-09533-w.
10. Does the judge benefit from legal protection of working time? *Rzeczpospolita*, 10/09/2010. URL: <https://www.rp.pl/opinie-prawne/art14954401-czy-sedzia-zdrowie-z-prawnej-ochrony-czasu-pracy> (дата звернення: 26/01/2023).

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