TERMINATION OF EMPLOYMENT RELATIONSHIP
LEGAL SITUATION IN THE SLOVAK REPUBLIC

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INTRODUCTION

The Slovak Republic belongs among the countries with one of the highest unemployment rates in the EU. The labour market displays a relatively large disproportion between supply and demand.

Most people of working age appreciate that they have a job and do all that is needed to keep it. On the other hand, in an effort to remain competitive, employers exert a permanent pressure towards increasing the flexibility of labour relations. Their endeavour to steadily enhance the flexibility of employment relations is targeted mainly at the termination of employment relationships and the length of working time.

A BRIEF OUTLINE OF THE EVOLUTION OF THE LABOUR LAW

The Slovak Republic has a codified labour law since 1965; the first Labour Code adopted in that year entered into effect on 1 January 1966.

Three major pieces of legislation adopted in the wake of revolutionary changes of 1989 included Employment Act No. 1/1991 Coll., Collective Bargaining Act No. 2/1991 Coll. and Act No. 3/1991 Coll. – an extensive amendment of the Labour Code. The only law from this threesome that continues to be in force today is the Collective Bargaining Act No. 2/19991 Coll. as amended. Employment Act No. 1/1991 was replaced in 2004 by Act No. 5/2004 Coll. on Employment Services and the Labour Code was replaced in 2001 by a brand new Labour Code – Act No. 311/2001 Coll. as amended.

The essential feature of the new Labour Code of 2001 was its harmonisation character. Harmonisation of the Slovak labour law with the Community law constitutes the core of the new Labour Code of 2001.

The second salient feature of the new Labour Code was an increase in the proportion of dispositive provisions at the expense of cogent provisions which, as the subsequent legal

development showed, was not quite adequate. Employers were not satisfied with the new Labour Code because of the low degree of contractual freedom it allowed.

As regards personal applicability, the new Labour Code applies only to business activities. The domain of public service is regulated under Public Service Act No. 313/2001 Coll. and that of civil service by Civil Service Act No. 312/2001 Coll.

At the same time, for the first time after more than forty years, the relationship between the Labour Code and the Civil Code was established on the principle of subsidiarity. Until that time, there had been no interconnection between the two Codes and the Civil Code could not be applied in relation to the Labour Code, be it in a subsidiary or in a delegated manner.

All three laws of 2001 governing labour relations had one feature in common – frequent amendments. This legal situation prevails up to the present.

Legal provisions governing the area of employment have witnessed numerous amendments. On the one hand, this seemingly looks like a factor of flexibility that responds to the latest needs of the labour market but, on the other hand, the result is the diminished legal certainty of the parties to employment relationships. They find it relatively difficult to find their way through the complex web of legal regulations and their amendments.

The most significant legislative change that followed the adoption of a new Labour Code in 2001 was its amendment No. 210/2003 Coll. which, compared with the normative text of the new Labour Code of 2001, introduced over 200 substantive, legislative and technical changes. The amendment significantly enhanced the flexibility of labour relations, in particular as regards provisions governing the termination of employment relationships and working time.

Due to the wide scope of Labour Code amendments introduced in 2003 and their significant impact, the professional community referred to it as a “reform of labour law reform“ in the Slovak Republic of 2003.

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SOURCES OF LAW

2.1 Constitutional status of the rules on the right to work

The constitutional framework for labour relations issues, including the termination of employment relationships, is represented by the Constitution of the Slovak Republic, Act No.

460/1992 Coll. as amended, whose Article 35 paragraph 3 enshrines the right to work and lays down the obligation of the state to provide adequate material support to those citizens who are unable to exercise that right without a fault of their own. Article 36 of the Constitution lays down the right of workers to be protected against arbitrary dismissal and discrimination in employment.

2. 2 International agreements and conventions

The International Labour Organization

Termination of employment relationships is also addressed in the international labour law, namely ILO Convention No. 158 concerning termination of employment adopted in 1982 and the 1982 Recommendation 166 of the International Labour Organisation on termination of employment.

The Slovak Republic did not yet ratify ILO Convention No. 158.

The Council of Europe

The issue of unilateral termination of employment at the initiative of the employer is also dealt with in several important instruments of the Council of Europe. The Slovak Republic is legally bound by the European Social Charter which was ratified by the National Council of the Slovak Republic in 1998. The Revised European Social Charter represents the goal that Slovakia would like to get closer to in the future. Certain of its provisions that are in conformity with the postulates of the Community law have already been incorporated into the Slovak Labour Code.

The European Union

Although the Community law does not regulate all aspects of termination of employment, some of its aspects are addressed, in particular, in Directive 75/129/EEC on collective redundancies.

Other instruments that are of relevance for the Slovak Republic as a new Member State of the EU include the Community Charter of the Fundamental Social Rights of Workers of 1989 and the Charter of Fundamental Rights of the European Union.

Article 30 of the Charter of Fundamental Rights of the European Union is almost identical with Article 36(c) of the Constitution of the Slovak Republic. It provides that every worker has the right to protection against unjustified dismissal, in accordance with

Community law and national laws and practices. Other provisions relevant for termination of employment include Article 21 on non-discrimination and, in particular, Article 1 of the Charter of Fundamental Rights of the European Union according to which human dignity is inviolable and must be respected and protected.

2. 3 Sources of law and their hierarchy

2. 3. 1 The list of the sources of law

The most important national sources of law concerning termination of employment include:

- **international law**
  - ILO conventions (ILO Convention 158 concerning termination of employment has not been ratified by the Slovak Republic)
  - the European Social Charter of 1966 ratified by the Slovak Republic in 1998
- **EU labour law**
  - primary law of the EU
  - secondary law of the EU and
  - decisions of the European Court of Justice (especially those concerning collective redundancies)
- **Normative legal acts**
  - ***Constitution of the Slovak Republic -- Articles 35 and 36***
  - ***laws:***
    - *Labour Code – Act No. 311/2001 Coll.*
    - *Act No. 2/1991 Coll. on Collective Bargaining*
    - *Act No. 461/2003 Coll. on Social Insurance*
    - *Act No. 5/2004 Coll. on Employment Services*
    - *Act No. 552/2003 Coll. on the Performance of Work in the Public Interest*
    - *Act No. 553/2003 Coll. on Compensation for Certain Employees in the Performance of Work in the Public Interest, amending and supplementing certain other laws*
    - *Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and Protection against Discrimination, amending and supplementing certain other laws (non-discrimination law)*
    - *Act No. 420/2004 Coll. on Mediation*

- *Act No. 125/2006 Coll. on Labour Inspection*
- *Act No. 124/2006 Coll. on Safety and Hygiene at Work*
- *Civil Code – Act No. 64/1964 Coll.*
- *Code of Civil Procedure – Act No. 99/1963 Coll.*

- ***implementing regulations*** (mainly those relating to work conditions for special categories of workers – work prohibited to juveniles, pregnant women and regulations on work safety and health)
- **collective agreements –** (company-level collective agreements, higher-level collective agreements) collective agreements consist of two parts: the normative part (a source of law) and the commitment part
- **company-level normative acts** (work rules, remuneration rules, organisational rules, labour input standards, company regulations on health and safety at work)
- **good morals –** in labour law, good morals are used as a kind of interpretation rule in the application and interpretation of the law. In particular, exercise of rights and responsibilities arising from labour law relationships must be in conformity with good morals.

2. 3. 2 Brief Characteristics of the Sources of Law

The key source of labour law is Labour Code, i.e. Act No. 311/2001 Coll. providing, in a comprehensive manner, for labour relationships along with the Civil Code which has a subsidiary validity in relation to the general part of the Labour Code.

The Labour Code applies to business activities in general and, in a subsidiary manner, to public servants (e.g. teachers). The Labour Code has a delegated applicability for civil servants.

The sphere of public service is currently regulated by two laws, namely Act No. 552/2003 Coll. on the performance of work in the public interest, and Act No. 553/2003 Coll. on compensation for certain employees in the performance of work in the public interest and on amendment of certain laws. Neither of these laws contains specific provisions concerning termination of employment other than the provisions of the Labour Code. Consequently, termination of employment in these particular situations is governed by the provisions of the Labour Code.

In contrast to many other EU countries, the sphere of civil service is regulated in a relatively non-standard manner. In addition to one general law on civil service – Act No. 312/2001 Coll. with its many amendments – there are a number of special categories of civil

servants whose legal status is regulated under separate laws. These include other types of labour relations, the so-called service relationships of e.g. customs officers, soldiers, and police officers, i.e. those that are not provided for under the Labour Code.

Based on the above, it may be concluded that practically all existing labour law provisions governing the termination of employment relationships are set out in the Labour Code, except for termination of employment relationships of university teachers.

Act No. 132/2002 Coll. on Universities provides for *ex lege* termination of employment for university teachers based on reaching a certain age. Employment relationship of a university teacher terminates, at the latest, at the conclusion of the school year in which the teacher reaches 65 years of age.

2. 3. 3 The role of judge-made law

In the Slovak legal system, the case law of courts does not have the character of a source of law, although it is generally adhered to by lower courts.

Regarding termination of employment relationships, the most extensive case law concerns termination at the initiative of the employer on structural grounds and on disciplinary grounds related to the conduct of the employee.

3

WAYS OF TERMINATING EMPLOYMENT RELATIONSHIPS

Under the Slovak labour law, analogically to the labour law of other member states of the European Union, the ways of terminating an employment relationship are exhaustively determined in the Labour Code. The provisions of the Slovak labour law governing termination of employment have a cogent character.

According to Section 59 of the Labour Code, employment relationship may be terminated by virtue of

a) **a legal act**, namely

- agreement,
- notice,
- immediate termination,
- termination during the probationary period;

b) **a legal event**, such as

- lapse of the agreed-upon period, or

- death of employee;

c) **official decision** (e.g. in case of employment relationship of foreign nationals);

d) **a statute** (e.g. employment relationship of university teachers governed by the University Act).

These are cogent provisions of the Labour Code and, as such, must be complied with in collective agreements and employment contracts. Thus, a collective agreement or an employment contract may not extend the grounds for termination over and above those laid down in the Labour Code.

The provision that is relevant for termination of employment by a legal act is Section 1 paragraph 2 of the Labour Code, which introduces the subsidiary applicability of the Civil Code in relation to the Labour Code.

This legal standard has introduced the subsidiary applicability of the Civil Code in relation to Part One of the Labour Code, which lays down such general labour law institutions as legal personality of employees and employers under the labour law, counting of time periods, invalidity of legal acts, or legal certainty measures.

Thus, the legal act of terminating an employment relationship provided for in a separate part of the Labour Code will be governed, besides the provisions of the Labour Code, also by the provisions of the Civil Code that apply to legal acts.

Validity of a legal act is also examined on the basis of Section 17 of the Labour Code (a legal act is invalid if the employee has waived his rights in advance; if it is explicitly provided for in law; if employees' representatives did not grant the required consent with or did not discuss the legal act; or if the legal act is not carried out in the prescribed manner).

3.1

TERMINATION OF EMPLOYMENT RELATIONSHIP ON THE BASIS OF A LEGAL ACT – MUTUAL AGREEMENT

The agreement on the termination of employment relationship is a bilateral legal act whereby employment is terminated with effect from a certain date.

The agreement on termination of employment must meet all the requisites of a valid legal act, the absence of which would entail invalidity of the agreement.

3.1. 1 PROCEDURAL PRECONDITIONS

The process of drawing up an employment termination agreement must be viewed against the backdrop of Civil Code provisions concerning legal acts. The proposal to conclude an employment termination agreement should aim at terminating employment from a certain date. The content of an employment termination agreement needs not be included in the same deed. It may mean a written proposal and its acceptance.

Under the current law, in case of termination of employment by mutual agreement, employees' representatives or other bodies need not be involved in the discussion concerning termination of employment. The employer, however, is obliged to report the cases of termination of employment by mutual agreement to employees' representatives within the time limit agreed therewith.

In case of a planned termination of employment relationship by mutual agreement with a juvenile employee (i.e. a person under 18 years of age), Section 172 of the Labour Code stipulates that the employer must obtain the opinion of the juvenile's legal guardian. However, negative opinion of the legal guardian on the employment termination agreement has no influence on its validity because Section 11 of the Labour Code recognises full legal personality of natural persons in labour relations already upon the attainment of 15 years of age.

The Labour Code stipulates the obligation of the employer to provide one copy of the employment termination agreement to the employee even if the latter does not request it.

3.1.2 CONTENT REQUISITES OF THE AGREEMENT

The Labour Code does not explicitly lay down the content requisites of a valid employment termination agreement.

Special content requisites of employment termination agreements include the date of termination of the employment relationship between the employer and the employee. The Labour Code does not specify how the parties are to specify that date. It need not be fixed as a calendar day. It may, for instance, be agreed as the time needed to complete the performance of work, as the termination of work incapacity of the employee, etc.

Moreover, employment termination agreements best meet the principle of contractual character of labour law relationships. Nevertheless, the Labour Code partly restricts the contractual autonomy of the employer when employment is terminated by mutual agreement by obliging the employer to specify the grounds for termination in the agreement, if so requested by the employee. The employer must specify the grounds for termination in the agreement also in case of termination for organisational reasons irrespective of whether the employee has asked for it or not.

3.1. 3 FORM OF AGREEMENT

Although Section 60 of the Labour Code stipulates that employment termination agreements must be made out in writing, non-compliance with this requirement does not entail the legal effect of invalidity of the legal act (See Section 17 of the Labour Code). An oral employment termination agreement is also valid, although it diminishes the certainty of the parties to the employment relationship. In case of a court dispute concerning validity of an employment relationship it often creates the situation of the lack of evidence.

Under Section 60 of the Labour Code, the employer is obliged to conclude employment termination agreements in writing, even though non-compliance with this requirement does not entail the sanction of their invalidity. The failure by the employer to respect this obligation gives rise to sanctions imposed by labour inspection bodies in the form of various fines.

3.1. 4 REMEDIES

See Section 4.7 and Section 5

3.1. 5 RELATIONSHIP TO OTHER WAYS OF EMPLOYMENT TERMINATION

Although termination of employment by mutual agreement is the most natural way of employment termination because it corresponds to the contractual principle in the labour law (Article 2 of Basic Principles of the Labour Code), termination by notice given at the initiative of the employer is by far the most frequent form of employment termination in the application practice.

3.1. 6 PARTICULAR SITUATION

In case of termination of employment of a juvenile employee, the employer is obliged to request the opinion of the latter's legal guardian.

3.2
TERMINATION OTHERWISE
THAN AT THE WISH OF THE PARTIES

3.2.1
Termination of employment relationship on the basis of a legal event

In certain cases, employment relationship is terminated on the basis of a legal event, in which case there is no need for a legal act with a view to its termination. Such legal events may include the lapse of a certain time period, or completion of a certain task. An important legal event is also the death of the employee.

3.2.1.1
Termination of a fixed term employment relationship by passage of time

An employment relationship concluded for a limited period of time is terminated upon the expiry of that period.

The parties may agree on the length of employment relationship in different ways, e.g. by specifying a concrete date or a concrete event. It is, however, always necessary to fulfil the requirement of certainty of a legal act as defined in the Civil Code; otherwise, the legal act

would be invalid in its entirety or in part. The employment relationship is terminated upon the expiry of the defined period even if the termination falls within the protective period.

3.2.1.1.1 PROCEDURAL PRECONDITIONS

Before the termination of a fixed-term employment relationship, the employer has no obligation to offer the employee other suitable work or help him find a new employment. Involvement of employees' representatives or the consent of competent authorities is not necessary in case of termination of a fixed-term employment relationship, either.

3.2.1.1.2 SPECIFIC PRECONDITIONS

A fixed-term employment relationship must be concluded in conformity with the requirements set out in Section 48 of the Labour Code. If these statutory requirements are not met, a fixed-term employment relationship changes into an employment relationship concluded for indefinite period.

To ensure that a fixed-term employment relationship is not considered as an indefinite employment relationship *ex lege*, the employment contract must be concluded in writing.

Pursuant to Section 71 paragraph 2 the Labour Code, a fixed-term employment relationship changes into an indefinite employment relationship *ex lege* also where an employee keeps performing his work duties, with the employer's knowledge, even after the expiry of the agreed-upon period unless the employee and the employer have otherwise agreed.

However, no *ex lege* change in the character of the employment relationship applies to employment relationships specified in Section 49 paragraph 7 of the Labour Code, i.e. in case of part-time employment with weekly working hours of less than 20 hours; this creates a discriminatory environment for part-time employees whose working time is shorter than 20 hours a week.

3.2.1.1.3 COURT DISPUTES RELATING TO THE TERMINATION OF EMPLOYMENT RELATIONSHIP

The above-mentioned circumstances often give rise to court disputes seeking invalidity of the termination of a fixed-term employment relationship in which the employee files a declaratory action seeking a court ruling that he has an indefinite-term employment contract and that the termination of the fixed-term employment relationship is invalid. The onus of proof in such court disputes is on the employer.

Violations of the law in the conclusion of fixed-term employment relationships are also subject to the scrutiny of labour inspection authorities which may impose various penalties on the employers.

3.2.1.1.4 RELATIONSHIP TO OTHER WAYS AND MEANS OF TERMINATION OF EMPLOYMENT RELATIONSHIPS

A fixed-term employment relationship is often terminated before the expiry of its agreed duration; in this case, it is possible to apply any form of termination that is provided for in the Labour Code.

3.2.1.1.5 PARTICULAR SITUATION

Slovakia's labour law provisions allow the employers to enter without any restrictions into a chain of fixed-term employment relationships during a period of up to three years and, after the lapse of three years, to enter into a chain of fixed-term employment relationships on the basis of substantive reasons, which are defined too broadly.

3.2.1.2 Death of Employee

Employment relationship is terminated also on the basis of the legal event of employee's death. This reflects that fact that the performance of work in an employment relationship is exclusively linked to individual performance of an employee and the death of the employee entails the termination of his employment relationship.

3.2.2
Termination of employment relationship
on the basis of an official decision

Termination of employment by an official decision of the competent authority is applicable only to employment relationships of foreign nationals and stateless persons. The specific feature of this type of termination of employment relationship is that it does not necessitate any legal act and is effective from the date of expiry of residence permit of these persons in the territory of the Slovak Republic, based on the enforceable decision on the withdrawal of such residence permit, or from the date on which the sentence of expulsion of these persons from the territory of the Slovak Republic becomes final, or from the date of expiry of the period for which these persons were issued the residence permit in the territory of the Slovak Republic (Section 59 of the Labour Code).

3.2.3

Ex lege termination of the employment relationship

Although under applicable legislation the attainment of a certain age does not constitute the ground for terminating an employment relationship, an exemption from this principle applies to teaching and research staff of universities. Under University Act No. 132/2003 Coll., employment relationships of teaching and research staff of universities are terminated on the completion of the academic year in which the person concerned has reached 65 years of age, unless his employment relationship had been terminated earlier for other reasons.

This type of termination of employment relationship may not be appealed in court, since the claim on invalidity of the termination of employment relationship may be filed with the court only in the case of termination on the basis of a legal act.

3.3

TERMINATION OF EMPLOYMENT RELATIONSHIP ON THE BASIS OF A LEGAL ACT – UNILATERAL LEGAL ACT

Employment relationship may be unilaterally terminated during the probationary period, by notice, or with immediate effect.

3.3.1

TERMINATION OF EMPLOYMENT RELATIONSHIP DURING THE PROBATIONARY PERIOD

3.3.1.1 ESSENTIAL REQUISITES

Section 72 of the Labour Code provides that the employer and the employee may terminate their employment relationship during the probationary period for any reason or even without giving a reason.

The Labour Code lays down only the maximum length of the probationary period which, according to Section 45 the Labour Code, is three months. The length of the

probationary period must be agreed upon in writing and in the employment contract, otherwise it is invalid.

The probationary period expires on the lapse of the last day of the agreed period. If the employment relationship is not terminated during the probationary period, it continues beyond that period.

3.3.1.2 PROCEDURAL PRECONDITIONS

The Labour Code stipulates that a **written notification** about the termination of the employment relationship during the probationary period must be served on the other party at least three days before the termination of employment. Failure to adhere to this time limit and to use the written form of employment termination during the probationary period does not, however, have the consequence of invalidity of the legal act. The time limit has only a public order character. Non-compliance represents the breach of law and may be subject to sanctions imposed by labour inspection bodies.

No involvement of employees' representatives or other competent bodies is required in case of termination of employment during the probationary period – not even for labour categories enjoying special protection (such as persons with disabilities, pregnant women, or juvenile employees).

3.3.1.2 SPECIAL PRECONDITIONS

Impediments to work on the part of the employee *de facto* lengthen the probationary period. This means that in case of termination of an employment relationship during the probationary period only impediments to work on the part of the employee will be taken into consideration.

In case of termination of the employment relationship of a juvenile employee, the employer is obliged to obtain the opinion of the juvenile's legal guardian.

3.3.1.3 *REMEDIES, PENALTIES*

See Section 4.7 and Section 5

3.3.1.4 RELATIONSHIP TO OTHER WAYS OF EMPLOYMENT TERMINATION

During the probationary period, employment relationship may be terminated also in other ways, e. g. by mutual agreement, by notice, or by immediate termination.

3.3.1.5 PARTICULAR SITUATIONS

We are currently witnessing the occurrence of misuse of law by employers. The employers who are no longer able to chain up a series of fixed-term employment contracts conclude indefinite employment contracts for a probationary period with the employees concerned and, just when the probationary period is about to expire, they terminate the employment relationship without specifying the reason. This is a clear circumvention of the law.

3.3.2

TERMINATION OF EMPLOYMENT RELATIONSHIP BY NOTICE

As regards the terminology used in connection with termination of employment, the Slovak Labour Code does not make any distinction between a notice given by the employer (EU Member States use the term 'dismissal') and a notice given by the employee (EU Member States use the term 'resignation'). The Slovak Labour Code uses only one term for the termination of employment relationship after the lapse of the period of notice – i.e. the notice.

Besides giving a notice, the Slovak Labour Code enables the employer or the employee to unilaterally terminate their employment relationship with immediate effect. To refer to this way of terminating an employment relationship, the Slovak Labour Code uses the term 'immediate termination of employment relationship' (EU member states use the term 'summary dismissal' to refer to an immediate termination of employment relationships at the employer's initiative).

I. GENERAL PRECONDITIONS FOR VALIDITY OF NOTICE, ESSENTIAL REQUISITES

Notice is a legal act – **a unilateral targeted expression of the will to terminate an employment relationship irrespective of the will of the other party.**

The effect of the notice of termination is geared towards the future, i.e. termination of an employment relationship does not coincide with the date on which this unilateral legal act becomes binding, i.e. the moment of its service, and the notice becomes effective only **upon**

the lapse of the statutory notice period which starts running on the first day of the month following its service.

A notice issued by either an employee or an employer must be made out in writing and duly served, otherwise it is invalid.

Analogically to other legal acts, notice as the most important unilateral legal act in the labour law is invalid if it does not meet all the requisites of a legal act, i.e. when it is in conflict with the law, it circumvents the law, or it is in conflict with good morals.

The Slovak labour law provides that a notice applies to the employment relationship in its entirety and not only to a part thereof. The Slovak legislation therefore makes no provision for a partial notice of termination.

a) Grounds for the notice

A notice may be given by either an employer or an employee. The employer may give notice to an employee only on the grounds explicitly set out in Section 63 paragraph 1 of the Labour Code. This is a cogent provision of the Labour Code which does not allow narrowing down or expanding the range of grounds for the notice.

The employer must substantively define the grounds for the notice in the notice itself, clearly distinguishing them from other grounds; otherwise the notice is invalid.

No additional alteration of the grounds for the notice is allowed.

The provision of Section 49 paragraph 6 of the Labour Code sets out an exemption from the principle that termination by a notice given by the employer must contain statutory grounds for the dismissal. Under this Labour Code provision, part-time employment relationship of less than 20 hours a week may be terminated even without specifying the reason for the notice.

An employee may terminate his employment by notice for any reason or without specifying the reason. It is purely up to the employee to specify or not specify the reason for termination in the written notice.

b) Periods of notice

Section 62 of the Labour Code lays down only the minimum length of notice. In case of notice, employment relationship is terminated after the lapse of the notice period which is identical for the employee and the employer and may not be shorter than two months. The period of notice starts running on the first day of the month following the date of the notice.

In case the notice is given at the initiative of the employer, the employee who has worked no less than five years for the employer is entitled to an at least three-month notice.

By setting out only a minimum notice period without defining its maximum length the Labour Code creates a real space for collective bargaining and for enacting a more favourable exercise of such rights under the labour law in a collective agreement. Since most business entities in the Slovak Republic have no social partner, they are not able of making real use of this possibility offered by the Labour Code through a collective agreement. **Grounds for the notice have no influence on the length of the notice.** This concept of the length of notice, which takes account only of the duration of employment, has not been positively accepted in Slovakia.

There is a certain problem in the Slovak legislation connected with the length of notice in case of part-time employment contracts, which set the number of weekly working hours at less than 20; Section 49 paragraph 6 of the Labour Code provides for the notice of only 15 days in these cases, the period of notice running from the date of service of the notice. Admittedly, this legislative treatment is in conformity with ILO Convention 158 which, however, the Slovak Republic has not yet ratified. But, on the other hand, it leads to situations that may give rise to discrimination depending on the scope of employment contract of the employee.

The Labour Code provides also for certain particular situations where it is possible to lengthen the period of notice. Thus, notice may be lengthened also in case of a notice given by the employer to the employee who may no longer carry out his work duties because of the risk of occupational disease or because he has attained the limit of permissible exposure at the workplace. In such cases, the employer is obliged to ensure adequate employment for such employee and the notice period ends only after the employer has fulfilled his obligation to find a new suitable employment for the employee concerned, unless they agree otherwise. This Labour Code provision has been permanently criticised in the professional literature because it is forcing employers to exercise statutory competences of labour offices.

II. .FORMAL LEGAL PREREQUISITES

A common prerequisite for notices given at the initiative of employers or at the initiative of employees is that they must be issued **in writing; otherwise the notice is invalid**.

III. PROCEDURAL PRECONDITIONS

The precondition for validity of the notice is that it **has been served** on the other party to the employment relationship; otherwise it is invalid.

a) Service of documents relating to the creation, change and termination of employment relationships

The documents issued by the employer in connection with the creation, change or termination of the employment relationship must be personally served on the employee. The employer serves the documents on the employee at the workplace, at the employee's domicile or wherever the latter can be reached.

If this is not possible, the document may be served by registered mail bearing the note 'personal service required' to the last address known to the employer.

The documents drawn up by the employee in connection with the creation, change or termination of the employment relationship are served by the employee at the workplace or as a registered consignment.

The document is deemed to have been served when the employee or the employer accept the consignment, but also when they refuse to accept the document or when the postal service returns the consignment as undeliverable.

b) Withdrawal of termination notice

The notice that has already been served may be withdrawn only with the consent of the other party to the employment relationship. The consent of the other party with the withdrawal of notice is not required if the notice is withdrawn before it has been served, i.e. at the time when the withdrawal did not yet cause legal effects.

The withdrawal of notice and consent with the withdrawal must be made out in writing. The failure to adhere to the written form does render the legal act invalid.

The validity of notice may not be made conditional on the fulfilment of a requirement.

c) Juvenile employees

When the notice is given by a juvenile employee, according to Section 172 of the Labour Code the employer is obliged to obtain the opinion of the juvenile's legal guardian.

When a juvenile employee is given a notice at the initiative of the employer, the latter must make this fact known to the juvenile's legal guardian.

IV. REMEDIES, PENALTIES

See Section 4.7 and Section 5

3.3.2.A

TERMINATION OF EMPLOYMENT RELATIONSHIP BY NOTICE GIVEN BY THE EMPLOYER

I. SPECIAL ESSENTIAL REQUISITES

a) Employees with disabilities

Validity of a notice given to an employee with a disability is subject to a prior consent of the competent office of labour, social affairs and family (Section 66 of the Labour Code). No consent is required in case of a notice given on the ground of the employer's winding up or relocation, on the ground of the breach of work discipline by the employee (Section 63 paragraph 1(a) and (e) of the Labour Code), or if the employee has reached the statutory age for receiving old-age pension.

b) Prohibition of notice

In certain special situations, employees are protected against being given notice by the employer. During such 'protective period' employers may not give notice to these employees. The employer may not give notice to the employee during the protective period, namely

- during a temporary work incapacity of the employee due to illness or accident (unless the employee has deliberately provoked or caused his or her incapacity for work), and during the period between the filing of a proposal for residential treatment or commencement of spa treatment until the completion of that treatment
- during pregnancy or maternity leave of a female employee or during parental leave of a female or male employee
- during the leave granted for the performance of public office
- during the period when, based on a medical certificate, the employee performing night work is temporarily unable to perform night work.

However, prohibition of notice does not apply to certain types of notices (for more details see special requisites of the various grounds for notice).

c) Offer obligation

Before giving notice, the employer is obliged to offer the employee other suitable work, otherwise the notice would be invalid. This does not apply when the employer gives notice on the ground of unsatisfactory performance of work duties by the employee, of a less serious breach of work discipline, or of the winding up of the employer.

The offer obligation does not apply when the employer has no possibility to continue employing the employee concerned, not even on a part-time basis, at the place agreed as the place of work performance, and when the employee is not willing to perform other suitable work offered by the employer at the place agreed as the place of work performance.

II. SPECIAL PROCEDURAL PRECONDITIONS

a) Involvement of employees' representatives in the termination of employment

Employees' representatives mean the relevant trade union body, works council or workers' steward. Employees' representatives for safety and hygiene at work are also considered as employees' representatives under separate legislation.

Involvement of employees' representatives in the termination of the employment relationships is required. According to Section 74 paragraph 1 of the Labour Code, the employer is obliged to discuss planned dismissals with employees' representatives; otherwise the notice is invalid.

The representative of employees is obliged to discuss the notice given by the employer within ten calendar days from the date of service of a written request from the employer. If no such discussion takes place within the aforesaid time limit, an irrefutable legal presumption applies according to which the discussion is deemed to have taken place.

Validity of a notice given by the employer to an employees' representative is subject to a prior consent by employees' representatives (Section 240 paragraph 7 of the Labour Code); otherwise the notice is invalid.

A prior consent of employees' representatives is required if the notice is given to a representative of employees during his term of office and a period of six months upon its termination (Section 240 paragraph 7 of the Labour Code). If employees' representatives refuse to give their consent, the notice shall be deemed invalid. The failure of employees' representatives to give their written consent with the notice within 15 days of the employer's request thereof is also considered as a prior consent.

If employees' representatives refuse to give their consent with the termination of employment relationship by notice, other notice conditions being fulfilled, and if the court

hearing the claim on invalidity of termination filed pursuant to Section 77 of the Labour Code establishes that it may not rightfully demand the employer to continue employing the employee, the notice is valid.

II. Grounds for the notice

Section 63 paragraph 1 of the Slovak Labour Code exhaustively sets out the grounds for the notice. The range of the grounds for the notice may not be extended, even by agreement between the parties. Like in other Member States, Slovakia applies the principle that a notice given by the employer without justified substantive reason is invalid. In practice, all grounds for the notice can be divided into **economic reasons, reasons related to the individual workers concerned, and disciplinary reasons.**

According to Section 61 paragraph 2 of the Labour Code, the reason for giving notice must be formulated in a sufficiently concrete manner so that it may not be confused with a different reason; the notice given by the employer shall otherwise be deemed invalid.

3.3.2.A.a.
ECONOMIC REASONS ON THE PART OF THE EMPLOYER

Economic reasons on the part of the employer are considered as a social risk in relation to the employee not caused by the former. The Slovak Labour Code recognises two categories of economic reasons for a notice on the part of the employer:

- **reason for a notice pursuant to Section 63 paragraph 1(a) of the Labour Code**
- **reason for a notice pursuant to Section 63 paragraph 1(b) of the Labour Code.**

3.3.2.A.a.1 Reason for a notice pursuant to Section 63 paragraph 1 (a) of the Labour Code

a) Other specific requisites

An employer may give notice pursuant to Section 63 paragraph 1 (a) of the Labour Code for the following four categories of reasons:

- winding up of the employer without legal succession,
- winding up of a part of the employer,

- relocation of the employer as a whole, and
- relocation of a part of the employer.

In case of winding up the entire employing entity (i.e. its dissolution as a legal entity), the employer has no longer an objective possibility to continue employing his employees. Since the winding up of the employing entity does not automatically lead to the termination of employment relationships, the employer is obliged to terminate employment relationships of his employees before the dissolution becomes final and ensure that their notice periods come to term before the dissolution date.

In case of winding up of the entire employing entity, the employer has no objective possibility to offer his employees other suitable work (Section 63 paragraph 2 of the Labour Code). No protective period pursuant to Section 64 of the Labour Code (prohibition of termination for workers' categories enjoying special protection) or to Section 66 of the Labour Code concerning a prior consent by the competent office of labour, social affairs and family in case of notice given to an employee with a disability are applicable to the termination of employment relationship by a notice given by the employer for the aforesaid reason.

In case of winding up of only a part of the employing entity, the employer has the right to give notice to an employee only where he can offer no other suitable work pursuant to Section 63 paragraph 2 of the Labour Code, or if the latter has refused to accept that work. Prohibition of notice pursuant to Section 64 of the Labour Code does not apply to the use of this ground for termination, either. The employer has a duty to effectively help the employee find a new adequate employment.

The relocation of the employer or part thereof constitutes another economic reason for notice given by the employer to which the prohibition of notice pursuant to Section 64 of the Labour Code does not apply. In case of relocation of the entire employing entity or part thereof, the employer loses the possibility of fulfilling one of his basic duties under the employment contract, i.e. the duty to employ the employee at the agreed-upon place of the performance of work. Notice is obviously an option only after the employer has failed to reach an agreement with the employee on changing the place of the performance of work agreed in the employment contract. If the employee is not willing to work at a place other than agreed upon in the employment contract, the employer has the right to give notice to the employee concerned.

3.3.2.A.a.2

Reason for a notice pursuant to Section 63 paragraph 1(b) of the Labour Code

Redundancy may be used by the employer as a reason for notice pursuant to Section 63 paragraph 1(b) of the Labour Code if the employee becomes redundant as a result of a written decision of his employer or of the competent body on a change in the employee's tasks, use of new technologies, or workforce reduction with a view to increasing labour effectiveness, or other organisational changes.

In the application practice, this category includes a relatively wide range of economic reasons connected with rationalisation of work on the part of the employer.

This is a broadly formulated reason for notice, which gives the employer the possibility to give notice even if he intends to increase staff levels (e.g. in case of anticipated changes in the qualification structure of employees).

a) Other particular content requisites

This reason for notice may be used only after the employer has decided in writing about introducing organisational changes.

There must be a causal relationship between organisational changes and redundancy; in case of a court dispute, the burden of proof is on the employer. The employer has exclusive competence to decide which employees are to be made redundant. The court may not review the correctness of that decision.

b) Offer obligation

The employer who applies this reason for notice is obliged to offer the employee concerned other suitable work pursuant to Section 63 paragraph 2 of the Labour Code.

c) Prohibition of notice

Section 63 paragraph 2 of the Labour Code prohibits giving notice for reasons set out in Section 64 of the Labour Code (protective period – pregnant women, women on maternity or parental leave, or men on parental leave).

Involvement of employees' representatives pursuant to Section 74 paragraph 1 and Section 240 paragraph 7 of the Labour Code is also required.

d) Other procedural preconditions

Section 61 paragraph 3 of the Labour Code provides that the employer who applies redundancy as a reason for notice may not re-create the abolished job position and assign it to another employee during a three-month period. This is a special legal guarantee intended to prevent abusing redundancy as a reason for notice given at the employer's initiative.

e) Particular situation

Although redundancy as a ground for termination is formulated rather broadly, in practice it often includes the abolition of a job position, this abolition being quite often only fictitious. In the Slovak application practice, employers circumvent the aforesaid provision by terminating the employment relationship by agreement on the ground of abolishing the job position concerned; the agreement, being a bilateral legal act between the two parties, does not have the effect of prohibiting the employer to re-create the abolished job position during the three-month period following the termination.

3.3.2.A.b
OTHER THAN DISCIPLINARY REASONS
RELATED TO THE INDIVIDUAL WORKERS CONCERNED

3.3.2.A.b.1.
Reason for a notice pursuant to Section 63 paragraph 1(c) of the Labour Code

Another reason for giving notice at the employer's initiative is a long-term loss of employee's work capacity. The Labour Code does not give the definition of a long-term loss of employee's work capacity. Long-term inability to continue the performance of one's work duties may arise either on the basis of a medical opinion or on the basis of a decision of a public health authority.

According to Social Insurance Act No. 461/2003 as amended, the loss of more than 70% of work capacity can also be considered as a long-term inability to continue the performance of one's work duties. The employer may also give notice to an employee who has lost less than 70% loss of his work capacity if the continued performance of his work duties would require the creation of special conditions that the employer is unable to create.
The employer has the right to give notice also to the employee who may not continue performing his work duties because of occupational illness or the risk of occupational illness, or because according to the binding opinion of the competent hygienic service authority the employee has reached the permissible exposure threshold at the workplace.

a) Prohibition of notice

The application of this reason for notice is governed by Labour Code provisions on the prohibition of notice (Section 64 of the Labour Code).

b) Offer obligation

Also in this case, the employer is obliged to offer the employee other suitable work (Section 63 paragraph 2 of the Labour Code).

c) Obligation to secure a new employment

If the employee is given notice because he may no longer perform his work duties due to the risk of occupational disease or attainment of permissible exposure threshold at the workplace determined by a binding opinion of the competent authority, the employer is obliged to secure a new adequate employment for the employee (the mere offer of other suitable work is not sufficient).

d) Particular substantive legal requirement

Validity of a notice given to an employee with a disability is subject to the prior consent of the office of labour, social affairs and family (Section 66 of the Labour Code).

3.3.2.A.b.2

Reason for a notice pursuant to Section 63 paragraph 1(d) of the Labour Code

Section 63 paragraph 1(d) of the Labour Code lays down four reasons that the employer may use as a ground for notice. These reasons are related to the individual workers concerned.

The employer may give notice to an employee on the ground that the employee

1. **fails to meet the statutory requirements** for the performance of agreed work,
2. **has ceased to meet the requirements set out in Section 42 paragraph 2** of the Labour Code,
3. **fails to meet, without the employer's fault, the requirements** for proper performance of work as defined in the employer's internal rules, or
4. **fails to properly fulfil his work duties** and, although the employer has urged him in writing during the last six months to remedy the deficiencies, the employee did not do so in due time.

Regarding substantive elements of the first aforementioned reason for the notice, non-fulfilment must concern the requirements that are laid down in generally binding legal regulations. The reason for the notice that consists in the non-fulfilment of requirements may be used at any time throughout the duration of the employment relationship.

Regarding substantive elements of the second reason for the notice, it involves non-fulfilment of the requirements set out in Section 42 paragraph 2 of the Labour Code. It

applies only to those employers whose internal rules provide that the candidates for management positions with direct managerial competence of statutory bodies must be elected or appointed to their positions. In this case, employment contract is concluded only subsequent to the appointment to the respective position.

The recall from a position according to specific legal provisions or the resignation represent situations which *per se* constitute grounds for termination due to non-fulfilment of the requirements set out in Section 63 paragraph 1(d), point 2 of the Labour Code. Non-fulfilment of the requirements set out in Section 42 paragraph 2 should be seen as an objective situation in which causation by the employer has no legal relevance.

Regarding substantive elements of the third reason for the notice, the requirements related to proper performance of work are formulated much more broadly. Unlike the prerequisites, the requirements need not be laid down in generally binding legal regulations and may not be used to allege the breach of work discipline. They include, for instance, the requirement of moral integrity, special skills, employer's demands for the skill of communicating with clients, appropriate clothing, etc. The employer must not play any part in their non-fulfilment.

The failure to meet the requirements of this kind should not be considered as a breach of work discipline, and this ground for termination should not be confused with the breach of work discipline pursuant to Section 63 paragraph 1(e) of the Labour Code.

Regarding substantive elements of the fourth reason for the notice, it consists in a non-satisfactory performance of work duties. In order to be able to use this reason, the employer must have had requested the employee in writing during the last six months to remedy the deficiencies in his work, and the employee did not do so in due time.

When using this ground for termination it is important that the employer's written reminder be served on the employee in good time before the notice so as to give the employee enough time to remedy the deficiencies. Only after the employee has failed to remedy his unsatisfactory work performance within an appropriate time period, the employer may give him a notice. In such case the employer does not have a legal obligation to offer the employee other suitable work.

If the employee is not given sufficient time to remedy the deficiencies in his work after a written reminder from the employer, the notice is invalid.

a) Other particular essential requisites

Offer obligation of the employer

If the notice is given on account of unsatisfactory performance of work duties, the employer has no obligation to offer other suitable work to the employee concerned.

Prohibition of termination

If the notice is given to an employee on the ground that the employee has lost his ability to perform the agreed work through a fault of his own as provided for in a separate law, prohibition of termination is not applicable – not even during the protective period.

3.3.2.A.c

DISCIPLINARY REASONS

Reason for a notice pursuant to Section 63 paragraph 1(e) of the Labour Code

An employer may give immediate notice to an employee if there are reasons on the part of the employee for immediate termination of his employment relationship, or if the employee has committed a less serious breach of work discipline.

The seriousness of the breach of work discipline is assessed by the employer. The employer decides whether the breach of work discipline is serious or less serious. When assessing the gravity of the breach of work discipline, the employer should take into consideration the employee as an individual, causation, quality of work performance, context in which the breach occurred, consequences of the breach of work discipline (e.g. material damage, harm to the employer's reputation, etc.)

Section 63 paragraph 1(e) of the Labour Code outlines two reasons for the notice.

The first reason is a **less serious breach of work discipline**. The employer may use this reason only if he has reminded the employee in writing during the last six months that repeated commission of the same or of a different, e.g. less serious, breach of work discipline will result in the termination of his employment relationship.

The second reason for notice consists in a legal situation where an employee has committed **a serious breach** of discipline against his employer**.** In such case, the employer may decide either to give notice to the employee or to terminate his employment relationship with immediate effect.

Procedural steps

a) Reminder

In case of a less serious breach of work discipline, **a written reminder** mentioning the possibility of termination must have been issued during the last six months.

This means that the employer may respond to any less serious breach of work discipline, such as late arrival to work, by issuing a written reminder pointing out the possibility of termination; notice may be given already after the commission of another, i.e. the second less serious breach of work discipline.

b) Employee's right to comment

Section 63 paragraph 5 of the Labour Code provides that, before giving notice for the breach of work discipline, the employer must inform the employee of the reason for the notice and give him the possibility to comment on the notice.

c) Particular situation

Preclusive period for notice

The allegation of the breach of work discipline as a ground for termination has one particular feature – Section 63 paragraph 1(e) of the Labour Code provides that it may be used only within the preclusive period of two months from the date on which the employer has learned of the reason for termination (the so-called subjective time limit), but not later than within one year from the date on which this reason occurred (the so-called objective time limit). These time limits have a preclusive character.

In case the breach of work discipline has been committed by an employee posted abroad, the employer may give notice to that employee on the aforesaid ground only within two months of the return of the employee from abroad (a subjective time limit). The objective one-year time limit starts running for these employees from the date of the breach of work discipline. After the expiry of these time limits, the employer has no right to give the notice of termination on the aforesaid ground.

Employees with a disability

Section 66 of the Labour Code provides that in case of notice given to an employee with a disability the employer is not obliged to seek a prior consent of the competent office of labour, social affairs and family.

3.3.2.A.d
NOTICE GIVEN FOR DISCRIMINATORY REASONS

Under the Slovak Labour Code, employers may give notice to their employees exclusively for exhaustively listed reasons. These reasons do not explicitly include the prohibition of notice given by the employer for discriminatory reasons. Notice given for discriminatory reasons should be punished by harsher legal sanctions than the notice given for other reasons, which are exhaustively set out in Section 63 of the Labour Code.

Article 2 of Basic Principles of the Labour Code provides that any abuse of a right, including the employer's right to give notice, entails the legal sanction of absolute invalidity of legal acts concerned, using legal and procedural means that are applicable to any other form of discrimination.

3.3.2.B
LEGISLATION GOVERNING COLLECTIVE REDUNDANCIES

Slovak labour law provisions on collective redundancies are, in essence, in conformity with Directive 75/129/EEC codified by Directive 98/59/EC whose purpose is to mitigate the social consequences of collective redundancies. Directives on collective redundancies were incorporated into the Slovak legal system for the first time already in 1996, although not in a comprehensive manner.

I. THE CONCEPT OF COLLECTIVE REDUNDANCIES IN THE LABOUR CODE

In the first regulation of collective redundancies in the Slovak labour law, the Labour Code applied the first concept of collective redundancies used in Directive 75/129/EEC. Due to the fact that after several years of applying the aforesaid concept of 'collective redundancy' the Slovak Republic did not have positive experience with its definition, one of the subsequent amendments to the Labour Code introduced the second concept of collective redundancies used in Directive 129 whose definition does not depend on the number of employees affected.

According to Section 73 of the Labour Code, collective redundancy means the termination of employment contracts of at least 20 employees at the employer's initiative over

a period of 90 days by notice given on the grounds set out in Section 63 paragraph 1(a) and (b) of the Labour Code (economic reasons) or by agreement on the same grounds.

Besides general substantive law requirements that the employer must meet in every individual notice, labour law provisions governing collective redundancies lay down also other obligations vis-à-vis employees' representatives and the competent office of labour, social affairs and family.

II. CONSULTATION OBLIGATIONS OF THE EMPLOYER

Consultation obligations of employers – enterprises – vis-à-vis their social partners aim at reaching the agreement, especially on measures to prevent collective redundancies or reduce the number of affected workers. The purpose of consultations on collective redundancies is also to look for the possibilities of finding suitable jobs for employees at other workplaces, and to discuss measures to mitigate unfavourable consequences of collective redundancies.

The purpose of consultation procedures involving employers and employees' representatives is to reach an agreement relating to consequences of collective redundancies.

No employee representative bodies have been established within most employing entities. However, the Slovak Labour Code does not take this situation into account, since it does not lay down the obligation of the employer to conduct consultation procedures directly with the employees.

III. INFORMATION OBLIGATION OF THE EMPLOYER VIS-À-VIS THE COMPETENT OFFICE OF LABOUR, SOCIAL AFFAIRS AND FAMILY

Under the current legislation, the employer is obliged to provide information about collective redundancy and about the result of consultations with employees' representatives also to the competent office of labour, social affairs and family. Termination of the employment relationship by notice or by mutual agreement may not take place earlier than one month from the date of service of a written notification on planned collective redundancies.

Section 73 paragraph 7 of the Labour Code lays down the duty of the employer to consult the office of labour, social affairs and family about the ways and means of avoiding collective redundancies or reducing the number of workers affected, mainly about necessary steps for safeguarding jobs, possibilities of employing workers made redundant with other

employers, or possibilities of finding new jobs for workers made redundant who underwent retraining.

Consultation and information obligations laid down in the Labour Code need not be fulfilled in case of contracts of employment concluded for limited periods of time that have expired, in case of termination of employment contracts of the crews of sea-going vessels and in case of employers that filed for bankruptcy.

IV. SANCTIONS FOR NON-FULFILMENT OF EMPLOYER'S OBLIGATIONS IN CASE OF COLLECTIVE REDUNDANCIES

If the employer fails to fulfil his obligations towards social partners, i.e. employees' representatives, the employees whose employment relationship has been terminated are entitled to wage compensation equivalent to at least two months' earnings.

This represents a special type of satisfaction for employees and a sanction against employers, intended mainly to discourage employers from neglecting to fulfil their legal obligations in case of collective redundancies.

3.3.3
IMMEDIATE TERMINATION OF EMPLOYMENT

As regards the terminology used in connection with termination of employment, the Slovak Labour Code does not make any distinction between a notice given by the employer (EU Member States use the term 'dismissal') and a notice given by the employee (EU Member States use the term 'resignation'). The Slovak Labour Code uses only one term for the termination of employment relationship after the lapse of the period of notice – i.e. the notice.

Besides giving a notice, the Slovak Labour Code enables the employer or the employee to unilaterally terminate their employment relationship with immediate effect. To refer to this way of terminating an employment relationship, the Slovak Labour Code uses the term 'immediate termination of employment relationship' (EU member states use the term 'summary dismissal' to refer to an immediate termination of employment relationships at the employer's initiative).

A fundamental legislative turnaround took place in 2003 also in connection with increasing the flexibility of termination. After more than 40 years, amendment to the Labour

Code, Act No. 210/2003 Coll. introduced immediate termination of employment relationship as a standard way of termination.

I. IMMEDIATE TERMINATION OF EMPLOYMENT RELATIONSHIP AS A LEGAL ACT

Immediate termination of employment relationship is a unilateral legal act. Termination of employment relationship takes effect from the moment it has been served in writing on the party concerned.

II. CONTENT REQUISITES

Immediate termination of employment relationship at the initiative of either the employee or the employer is possible only for the reasons that are exhaustively enumerated in Sections 68 to 70 of the Labour Code. The reason for the termination must be specified as to the facts so as not to be confused with a different reason, otherwise it is invalid.

III. PROCEDURAL PRECONDITIONS

The notice of immediate termination is valid only after it has been served on the employee concerned.

IV. FORM

Analogically to a notice, immediate termination of employment relationship must be issued in writing, otherwise it is invalid.

V. PARTICULAR PRECONDITIONS

I. Juvenile employees

In case of immediate termination of the employment relationship of a juvenile employee, the employer is obliged to obtain the opinion of the juvenile's legal guardian. In case of immediate termination of employment relationship at the initiative of the employer, the employer must notify the juvenile's legal guardian of the termination.

The absence of such opinion or notification does not affect the validity of immediate termination of the employment relationship.

VI. *REMEDIES, PENALTIES*

See Section 4.7 and Section 5

3.3.3.A

IMMEDIATE TERMINATION OF EMPLOYMENT RELATIONSHIP AT THE INITIATIVE OF THE EMPLOYER

I. OTHER CONTENT REQUISITES

The employer may terminate the employment relationship of an employee with immediate effect only for the reasons that are exhaustively set out in Section 68 of the Labour Code. According to Section 68 of the Labour Code, the employer may immediately terminate employment relationship of an employee who:

a) has been finally convicted for an intentional criminal offence,

b) has committed a serious breach of work discipline.

According to the Labour Code, the facts that warrant immediate termination of employment relationship are present if the employee has been finally sentenced for an intentional criminal offence regardless of the type of punishment and/or the length of the imprisonment sentence received. The offence in question must be deliberate.

The second reason which warrants immediate termination of employment relationship is a serious breach of work discipline. The degree of violation of work discipline is determined by the employer. The Labour Code or any other labour regulation do not specify what is to be considered as a serious breach of work discipline. This reason for immediate termination of employment relationship may be applied if the employer can prove that the employee has committed a breach of work discipline.

II. PROCEDURAL PRECONDITIONS

The employer may immediately terminate an employment relationship for the above reasons at the latest within one month from the date on which the reason for immediate termination of employment relationship came to his knowledge, but no later than within one year from the date on which the event in question occurred.

Both time limits have a preclusive character. Upon their expiry, the employer has no longer the right to immediate termination of employment relationship.

I. Categories of workers granted special protection

The Labour Code lays down the prohibition of immediate termination of employment relationship at the employer's initiative for categories of workers that are granted special protection (pregnant employees; employees on maternity leave; male or female employees on

parental leave; single male or female employees taking care of a child under 3 years of age; male or female employees taking care of a seriously disabled close person). If there is any reason for immediate termination of employment relationship with these categories of workers, the Labour Code empowers the employers to terminate their employment by a notice, except for women on maternity or parental leave, and male employees on parental leave (See § 68 paragraph 3 of the Labour Code).

II. Involvement of employees' representatives in the termination of employment

Employees' representatives must be involved in the termination of employment relationships pursuant to Section 74 paragraph 1 of the Labour Code, according to which any immediate termination at the initiative of the employer must be notified to and consulted with employees' representatives, otherwise immediate termination of employment relationship is invalid.

Employees' representatives have a duty to discuss immediate termination at the initiative of the employer within ten calendar days from the date of service of the written notification by the employer. If no consultation takes place within the aforesaid time limit, the irrefutable legal presumption applies according to which the discussion is deemed to have taken place.

A prior consent of employees' representatives is required when employees' representatives themselves are to be terminated during their term of office or during a six-month period following the expiry of their term (Section 240 paragraph 7 of the Labour Code). If employees' representatives refuse to grant their consent, immediate termination on the aforesaid grounds is invalid.

Also considered as a prior consent is the failure of employees' representatives to refuse giving their consent in writing within 15 days of the date of the employer's request. The employer may use the prior consent only during two months from the date on which it was given.

If employees' representatives refuse to give their consent with termination of employment relationship by notice, other notice conditions being fulfilled, and if the court hearing the claim on invalidity of termination filed pursuant to Section 77 of the Labour Code establishes that it may not rightfully demand the employer to continue employing the employee, the notice is valid.

III. PARTICULAR SITUATION

In our view, a relatively non-standard procedure is also represented by the possibility to give immediate notice even without specifying the reason in case of contracts of employment concluded for limited periods of time pursuant to Section 71 paragraph 4 of the Labour Code. If the employer gives immediate notice to an employee working under this type of employment contract, the employer is obliged to provide wage compensation to the employee amounting to his average earnings until the end of fixed-term employment foreseen in the contract of employment.

IV. REMEDIES, PENALTIES

See Section 4.7 and Section 5

3.4

As regards the terminology used in connection with termination of employment, the Slovak Labour Code does not make any distinction between a notice given by the employer (EU Member States use the term 'dismissal') and a notice given by the employee (EU Member States use the term 'resignation'). The Slovak Labour Code uses only one term for the termination of employment relationship after the lapse of the period of notice – i.e. the notice.

Besides giving a notice, the Slovak Labour Code enables the employer or the employee to unilaterally terminate their employment relationship with immediate effect. To refer to this way of terminating an employment relationship, the Slovak Labour Code uses the term 'immediate termination of employment relationship' (EU member states use the term 'summary dismissal' to refer to an immediate termination of employment relationships at the employer's initiative).

3.4.1

NOTICE GIVEN BY THE EMPLOYEE

I. GENERAL PROVISION

See Section 3.3.2

II. CONTENT REQUISITES

An employee may give notice for any reason or without specifying the reason. His employment relationship is terminated upon the lapse of a minimum two-month period of notice.

III. PROCEDURAL PRECONDITIONS

Notice given by the employee must be served on the employer, otherwise it is not valid. No involvement of employees' representatives and no specific consent of the competent office of labour or other authority are required.

IV. FORM OF NOTICE

Notice given by an employee must be issued in writing, otherwise it is invalid.

V. REMEDIES, PENALTIES

See Section 4.7 and Section 5

3.4.2

IMMEDIATE TERMINATION OF EMPLOYMENT RELATIONSHIP AT THE INITIATIVE OF THE EMPLOYEE

I.GENERAL PROVISION

See Section 3.3.3

II. OTHER PARTICULAR CONTENT REQUISITES

Unlike in case of notice given by an employee without stating the reason, Section 69 of the Labour Code provides that the employee has the right to immediately terminate employment only on the basis of the following reasons enumerated in an exhaustive manner:

- if, according to a medical opinion, he is not able to continue performing his work without seriously endangering his health, and if the employer has not transferred such employee to other suitable work within 15 days from the date of receiving that opinion,

- if the employer has failed to pay the employee the wage or wage compensation within 15 days from the date on which it was due,
- if there is an immediate threat to the employee's life or health.

The employee may use the last above reason only if there is an immediate risk to his own life or health. The existence of the risk to the life or health of his co-workers does not constitute sufficient ground for requesting immediate termination of employment.

In a potential court dispute, it would be up to the experts to assess the existence of an immediate risk to health, although the actions of the employee himself will be reflect his subjective perception of the situation of immediate risk.

A juvenile employee may terminate his employment relationship with immediate effect also on the ground of moral endangerment during the performance of work under the employment contract.

III. PROCEDURAL PRECONDITIONS

Employees may give immediate notice of termination only within one month from the date on which the reason for termination came to their knowledge (a subjective time limit); this is a preclusive, foreclosing time limit.

Unlike in the case of immediate termination of employment at the initiative of the employer, immediate termination of employment at the initiative of the employee is perceived as a justified and legitimate legal defence by the employee against non-fulfilment of basic obligations on the part of the employer.

Section 69 paragraph 4 of the Labour Code provides that in the case of immediate termination of employment at the initiative of the employee, the employee is entitled to a wage compensation from his employer in the amount of his average earnings during the two-month notice period; this represents a kind of a special satisfaction for the employer's failure to fulfil his obligations.

IV. REMEDIES, PENALTIES

See Section 4.7 and Section 5

4

GENERAL QUESTION RELATING TO ALL FORMS OF TERMINATION OF EMPLOYMENT RELATIONSHIP

4.1 NON-COMPETITON AGREEMENT

Under current Slovak labour legislation it is not possible to conclude a non-competition agreement whereby the employee would pledge not to perform, during a certain time after the termination of his employment relationship, gainful work pursued in the same line of business as his previous employer or in competition therewith.

To increase the flexibility of labour law, it would be advisable to enable the conclusion of a non-competition agreement along with certain financial compensations, but the employers did not consider this area to be a priority at the time when the new Labour Code was being drafted.

4.2 AGREEMENTS TO THE EFFECT THAT EMPLOYEE WILL NOT TERMINATE THE CONTRACT DURING A CERTAIN PERIOD

Such agreements are not valid. According to Section 17 (1) of Labour Code a legal action whereby an employee disclaims his/her rights in advance shall be invalid.

4.3 EMPLOYMENT EVALUATION AND CONFIRMATION OF EMPLOYMENT

At the time of termination of an employment relationship, the employer is obliged to issue the confirmation of employment (no formal application from the employee is required).

In this confirmation of employment, the employer specifies, in particular:

- the length of the employment relationship,
- the type of work tasks performed,
- the data concerning wage withholdings, if any,
- the data on wages paid, wage compensations, the data necessary for tax or social insurance purposes

- the data concerning the agreement on qualification upgrading (in case the employee has pledged to continue working for the employer for a certain time after the passage of the relevant examination).

At the time of termination of employment, the employer is obliged to issue a work evaluation report when requested by the employee. The employer must issue the work evaluation report within 15 days from obtaining the request. However, the employer is not obliged to issue a work evaluation report to the employee earlier than two months preceding the termination of employment relationship.

The work evaluation report comprises the documents relating to the assessment of the employee's work performance, his qualifications, skills and other facts that are relevant for work performance. The employee has the right to inspect his personal file and to make copies thereof.

If the employee does not agree with the content of his work evaluation report or employment confirmation and asks the employer to revise the work evaluation report or the confirmation of employment, which the employer refuses to do, the employee may file a court action seeking the revision within three months of the date on which he learned of the content of the above.

4.4 FULL AND FINAL SETTLEMENT

The employee is entitled to the payment of remaining holidays.

4.5 SEVERANCE ALLOWANCE AND DISCHARGE BENEFIT

4.5.1 Legal provisions governing severance allowance in connection with the termination of employment relationship

The provision of severance allowance is regulated in Section 76 of the Labour Code. The employer may grant a severance allowance to an employee whose employment relationship is terminated on the grounds set out in Section 63 paragraph 1(a) to (c) of the Labour Code (i.e. notice given by the employer on economic or health grounds).

The employee whose employment relationship is thus terminated is entitled to a severance allowance of at least twice his average monthly earnings provided that the employee gives his consent with the termination of his employment relationship before the period of notice starts running. If the employee asks for this type of termination of

employment, the employer is obliged to grant such request. In other words, employees in the above cases are entitled to severance allowance only after they renounce to using up the notice period. The statutory principle that applies in these cases is: “severance allowance or using up the period of notice.”

The employee who has worked for at least five years for the employer is entitled to a severance allowance of at least three times average monthly earnings he would be entitled to receive during the period of notice.

Section 76 paragraph 3 of the Labour Code provides that if the employee whose employment relationship was terminated is re-employed by the same employer or its legal successor before the lapse of the time determined on the basis of the granted severance allowance, he must reimburse the severance allowance or its *pro rata* part to the employer.

The manner in which the employer pays a severance allowance to the employee is mutually agreed upon between the parties. If the parties do not make such agreement, the employer pays a severance allowance to the employee after the termination of the employment relationship at the nearest pay date.

4.5.2 Legal provisions governing discharge benefits

If the employee terminates his employment relationship for the first time (irrespective of the reason) after he has acquired entitlement to a pension (old age, early retirement, invalidity pension or retirement pension), he is entitled to a discharge benefit of at least one average monthly salary.

The Labour Code lays down only the minimum amount of discharge benefit. A more generous discharge benefit may be laid down in a collective agreement, applying only to the first termination of the employment relationship after acquiring pension entitlement.

4.6 COLLECTIVE AGREEMENTS

In conformity with the provision of Section 231 of the Labour Code and with the Collective Bargaining Act No. 2/1991 Coll., a collective agreement may, in essence, regulate all working conditions provided this is more favourable for the workers and is in conformity with the cogent provisions of the Labour Code.

However, the termination of employment relationship is regulated, for the most part, by cogent provisions, which also narrow down the space for collective bargaining in this sphere. Collective agreements may lay down mainly the following conditions:

- a longer notice period,
- a higher severance allowance, discharge benefit,
- severance allowance that the employer pledges to provide over and above the amount stipulated in the Labour Code.

At present, Slovakia has a low trade union participation rate and, consequently, a number of employers have no partners to conclude collective agreements with (the current labour legislation makes it possible to conclude collective agreements with the employer only for trade union bodies and not for works councils). To account for this situation, the legislator must lay down in the law at least minimum statutory requirements; more favourable labour law provisions exceeding these minimum statutory terms may be then laid down in the employment contract.

4.7 ADMINISTRATIVE PROCEEDINGS – PENALTIES

The protection of employees at work is ensured by labour inspection bodies. The law governing labour inspection is Act No. 125/2006 Coll. which entered into effect on 1 July 2006.

Labour inspection ensures, *inter alia*, supervision over compliance with labour law regulations governing employment relationships, mainly their conclusion, alteration and termination.

State administration tasks in the area of inspection are carried out by the Ministry of Labour, Social Affairs and Family of the Slovak Republic.

If the employer violates labour law regulations, labour inspectorate has the right to impose on him various types of penalties depending on the seriousness of the violation of labour law regulations.

4.8 THE EFFECTS OF TERMINATION OF EMPLOYMENT RELATIONSHIP

A) Act on Employment Services

Act No. 5/2004 Coll. on Employment Services as amended lays down a system of various active labour market measures (such as assistance to labour market participants in the search for job, filling up job vacancies, training, professional counselling, job creation allowances, allowances for self-employed activities).

Registration of job seekers with the competent office of labour, social affairs and family is a precondition for the participation of job-seekers in active labour market measures and for receiving unemployment benefits. Job seekers are the citizens who want to work, can work and who apply to be entered on the job- seeker register.

B) Unemployment benefit

Termination of employment relationship on any ground has no influence on the provision of unemployment benefit. According to Social Insurance Act No. 461/2003 Coll. as amended, the provision of unemployment benefit is built exclusively on the insurance principle. The employee whose employment relationship has been terminated is entitled to unemployment benefit only provided that during the last four years before he was entered on the register of jobseekers he held unemployment insurance for at least three years.

The insured person is entitled to unemployment benefit from the date on which he was entered on the jobseekers' register. The entitlement to the payment of the benefit becomes extinct with the lapse of six months from being entered on the register.

The entitlement of the insured person to unemployment benefit arises only after the lapse of three years from the date of extinction of the previous entitlement to unemployment benefit.

C) Assistance in material need

Under Act No. 599/2003 Coll. on Assistance in Material Need as amended, benefits in material need are provided to natural persons whose level of income is not sufficient to cover basic life necessities and who are not capable of earning income through activities of their own.

The amount of subsistence minimum is set out in Act No. 601/2003 Coll. on subsistence minimum in force.

It should be mentioned that the amount of the benefit in material need is lower that the monthly subsistence minimum fixed by law (thus, the amount of subsistence minimum for one adult natural person is SKK 4,730, while the amount of material need benefit for covering basic life necessities is SKK 1,560/month).

Moreover, natural persons who meet relevant requirements are entitled, besides the benefit in material need, to healthcare allowance, activation allowance, housing allowance, protection allowance, or lump-sum allowance. However, the sum of these partial benefits does not amount to the level of the statutory subsistence minimum: this is not possible given the

mechanism used for the determination of their amount pursuant to Section 17 of the law on benefits in material need.

To support the acquisition, maintenance or upgrading of one's knowledge, professional skills, or work habits during the provision of assistance in material need, every jointly assessed natural person is entitled to activation allowance of SKK 1,700/month for a maximum period of 12 months. Under the conditions set out by law, activation allowance may be granted to workers – jobseekers entered in the relevant registers of offices of labour, social affairs and family who undergo training or perform minor services for the municipality, or who perform voluntary work.

This allowance helps people increase their income; however, in some regions of Slovakia with high unemployment people have no access to this type of activities.

5

SETTLEMENT OF DISPUTES RELATING TO EMPLOYMENT RELATIONSHIPS

In certain cases, termination of the employment relationship may be accompanied by violations of labour law regulations and/or non-fulfilment of preconditions for validity of various ways of terminating employment relationships.

These situations may be dealt with by both judicial and extrajudicial means, and through administrative proceedings (labour inspection, see § 10.1).

5.1 JUDICIAL DISPUTE RESOLUTION

INVALID TERMINATION OF EMPLOYMENT RELATIONSHIP

In case of invalid termination of employment relationship by mutual agreement, during the probationary period or in case of immediate termination, both parties, i.e. the employer and the employee, have the right pursuant to Sections 77 – 80 of the Labour Code to file a court action within a two-month preclusive period claiming invalidity of termination of the employment relationship.

Code of Civil Procedure

Section 7 paragraph 1 of the Code of Civil Procedure (CCP hereinafter) provides that the courts in civil proceedings hear and decide, *inter alia*, disputes and other legal matters arising from employment relationships.

Disputes concerning invalidity of employment relationships are heard and decided by ordinary courts that have territorial jurisdiction over the place of residence or the seat of the defendant.

Court fees

Section 4 paragraph 2(d) of Act No. 71/1992 Coll. concerning court fees and the fee for excerpts from the criminal register grants exemption from court fees to plaintiffs who claim invalidity of the termination of the employment relationship or enforce their claims arising from an invalid termination of their employment relationship.

Proceedings on invalidity of termination of the employment relationship

Since the claims alleging invalidity of termination of an employment relationship can be filed in those cases where the termination took place on the basis of a legal act, validity of termination of the employment relationship must be examined also in the light of general provisions of the Civil Code and the Labour Code concerning legal acts.

Invalidity of termination of the employment relationship is a relative invalidity, which can be claimed only by the party that is affected by the reason for invalidity. This constitutes an exception from the principle of absolute invalidity of legal acts set out in the Code of Labour.

Consequently, courts may examine the legality of legal acts, including the way of terminating an employment relationship, not only from the aspect of termination requirements under substantive law set out in the Labour Code (for instance, necessity of a written form of notice, service of notice, offer of other suitable work, etc.), but also from the aspect of the essentials of legal acts set out in the Civil Code, namely the will, manifestation of the will by the party, and conformity of the legal act with the law, with good morals, or from the aspect of avoiding the law.

The basic precondition for enforcing a claim arising from an invalid termination of employment by the employer is the **notification** whereby the employee notifies his employer that he insists on his continued employment. This applies analogically to the cases of invalid termination of employment at the initiative of the employee.

Invalidity of termination of employment relationship must be then sought in court.

A different situation arises when, although the termination of employment relationship was invalid, the employee does not insist on his continued employment, or the employer does not insist that the employee continues performing his work.

In case that the termination of employment relationship by the employer is invalid, but the employee does not insist on his continued employment, application of a **fiction** in conformity with Section 79 paragraph 3 the Labour Code means that the employment relationship is deemed to have been terminated by mutual agreement. In case of an invalid notice, employment is deemed to have been terminated upon the lapse of the notice period or, in case of an invalid notice given during the probationary period, from the date on which employment was to end.

The same **fiction** applies in case of an invalid termination of the employment relationship at the employee's initiative provided the employer does not insist that the employee continues performing his work (Section 80 paragraphs 1 and 2 of the Labour Code). These fictions apply only in case the parties to the employment relationship do not agree otherwise.

If, in case of an invalid notice given by the employer or in case of an invalid termination of the employment relationship by the employer with immediate effect or during the probationary period, the employee notifies the employer that he is determined to continue being employed by him, his employment relationship continues and the employer is obliged to grant him a **wage compensation** if he does not assign work to the employee in accordance with his employment contract. He is entitled to such compensation in the amount of average wage from the date on which he notified the employer that he is determined to continue being employed by him until the time when the employer enables him to continue performing his work or until the time when the court rules on the termination of employment pursuant to Section 79 of the Labour Code.

If the employee gives an invalid notice of termination or unlawfully terminates his employment relationship either with immediate effect or during the probationary period, and the employer notified him that he insists on him to continue performing his work, his employment relationship continues. Should the employee fail to continue performing his work, the employer is entitled to ask him for the **compensation of damage** sustained as a result of his conduct.

If it is proven that an employment relationship was terminated unlawfully, the court determines in its decision – judgment – that the termination of the employment relationship is invalid and that the employment relationship continues. The court that hears the subsequent action either awards wage compensation to the employee (if a ruling on invalidity of termination is sought by the employee) or awards damages to the employer (if a ruling on invalidity of termination is sought by the employer).

Claims arising from invalid termination of the employment relationship

If the court determines that the termination of the employment relationship by the employer is invalid, it imposes a fine on the employer in the form of wage compensation (for the period starting on the date of notification by the employee until the date when the employer enables the employee to continue working; if this period is longer than 9 months, the court – on a request from the employer – may adequately reduce or completely waive wage compensation) and, if the employee demands to be placed back to his former work team, the court may also rule on his return to work.

If the court determines that the termination of employment relationship by the employee is invalid, it holds the employee liable for the payment of damages (from the date of notification whereby the employer insists that the employee continue performing his work) and determines that the employment relationship continues and that the employee is obliged to perform his work.

Note:

Admittedly, the number of claims related to invalidity of termination in the application practice of Slovak courts is not high. One of the reasons for this situation is a marked imbalance on the Slovak labour market and the fact that the enforcement of law is a lengthy and difficult process.

The resolution of labour disputes would benefit from the introduction of a system of special labour courts.

5.2 DISPUTES RELATING TO THE VIOLATION OF THE EQUAL TREATMENT PRINCIPLE

Procedural guarantees of the respect for the equal treatment principle

Act No. 365/2004 Coll. on equal treatment in certain areas and protection against discrimination, and on amending and supplementing certain other laws (anti-discrimination law hereinafter) adopted with effect from 1 July 2004 constitutes a common legal basis for

applying the principle of equal treatment throughout the legal system of the Slovak Republic, including labour law.

Under the existing law, termination of the employment relationship by the employer on discriminatory grounds would entail the use of a special procedure set out in Act No. 365/2004 Coll., where the onus of proof is on the employer.

According to Section 9 of the anti-discrimination law, every person who considers himself wronged in his rights, interests protected by law and/or freedoms because the principle of equal treatment has not been applied to him, may pursue his claims by judicial process.

According to Section 9 of the aforesaid Act, this applies not only to discriminatory acts on the part of the employer but also to the misuse of the law; under Act No. 365/2004 Coll. these situations are systematically linked to the principle of equal treatment including procedural legal guarantees.

According to Section 9 of anti-discrimination law, the entitled persons may seek, in particular

- that such conduct be refrained from, where possible,
- that the illegal situation be remedied,
- adequate satisfaction, or
- cash compensation for non-pecuniary damages.

Proceedings on the matters involving violations of the equal treatment principle are initiated on the basis of claims brought by aggrieved persons.

The measures that are applicable to the cases of termination of the employment relationships by the employer involving the misuse of the law from the legal procedure aspect, include only remedying the unlawful situation (e.g. by re-employing the dismissed employee) and providing adequate satisfaction. The plaintiff, as provided for in Section 80 (b) of the Code of Civil Procedure, may enforce his right to remedying the unlawful situation, i.e. eliminating the consequences of unlawful acts, through filing an action for performance.

Only if the satisfaction is not adequate, in particular if the violation of the equal treatment principle considerably diminishes the dignity, social respect or social acceptability of the aggrieved person, can a cash compensation for non-pecuniary damages be considered; the law itself does not set the upper threshold of that compensation.

As regards the effectiveness of legal guarantees and the prevention of the misuse of the termination of employment relationship at the initiative of the employer, mainly on

discrimination grounds, these issues would be more effectively provided for in the systematic part governing the termination of employment which would introduce a stricter legal mechanism compared with other ways of terminating employment relationships, in particular as regards the amount of compensation for the aggrieved employee.

5.3 EXTRAJUDICIAL DISPUTE RESOLUTION

Act No. 420/2004 Coll. on mediation which entered into effect on 1 September 2004 provides for the execution, principles, organisation and effects of mediation. Mediation represents an alternative approach to dispute resolution, including in the area of labour relations.

Mediation is an extrajudicial activity, a confidential process, in which a neutral person (the mediator) helps the parties at dispute to reach an agreement and settle the dispute that arises from their contractual or legal relationship.

Under the Slovak law, mediation can be used if:

- the opposing parties are willing to communicate,
- both parties are interested in the settlement of their dispute,
- both parties feel responsibility for the existence of the conflict.

Mediation can be used at any stage of the procedure. It may precede a court dispute, or it may be used in parallel to a court dispute. However, the failure to reach the desired objective has no effect on legal standing of the parties in court proceedings.

Even though mediation as a special way of dispute resolution has many advantages, such as informal conduct, speedier attainment of the result, lower costs, this form of dispute resolution has not yet taken ground in Slovakia, also because the law on mediation has been in effect only for a relatively short time.

6

CONCLUSION

Over 90% of working-age persons in the Slovak Republic earn their living by means of dependent employment governed by the labour law.

Analogically to the rest of the European Union and the world, this type of work is the only source of livelihood for most members of the working-age population and of livelihood for their families. This simple fact should serve to encourage the endeavour to increase the flexibility of labour relations also in the area of the termination of employment relationships not only in the framework of the Slovak Republic, but also of the entire European Union.

On the one hand, existing labour law provisions governing the termination of employment relationships should not unduly tie up the hands of employers and prevent them from the needed renewal of their workforce. On the other hand, labour law provisions governing the termination of employment relationships should not mean that honest workers live in a permanent state of fear from unilateral termination at the employer's initiative throughout their entire professional life.

We are of the opinion that, in addition to the need for flexibility of labour law also in the area of termination of employment relationships (Slovak entrepreneurs have two basic priorities: "elimination of legal impediments to a unilateral dismissal of workers, and regulation of the duration of working hours in an individual agreement between the employee and the employer"), any future legislative solutions for increasing the flexibility of unilateral termination of employment relationship at the initiative of the employer must respect one important benchmark, which must be applied also in other systematic parts of the labour law, i.e. the need to respect human dignity of the employee.

A general phenomenon in the Slovak Republic is its very low unionisation rate and a relatively rare creation and functioning of works councils. Yet, the Labour Code of the Slovak Republic makes a provision for legal dualism in the representation of rights and interests of workers – not only through trade unions but also through works councils.

Due to the low unionisation rate in the Slovak Republic, employers do not have social partners with whom to conclude collective agreements.

Given the highly adverse situation on the labour market where the demand markedly outstrips the supply and due to the absence of the social partner, there is no 'control' over the employer by employees' representatives. The employer thus autonomously performs all unilateral terminations of employment relationships.

In this situation, the legislator must ensure at least minimum legal protection of workers by means of the law which sets out minimum and maximum terms, e.g. by setting out the minimum notice period, minimum severance allowance and discharge benefits, and must cogently regulate the cases of unilateral termination of employment relationship at the initiative of the employer.

I. Forms of termination of employment relationships

A. Employment termination agreement (Section 60)

Unlike in other EU countries, the content of employment termination agreements in the Slovak Republic is regulated in a slightly less standard manner as regards the contractual autonomy of the parties: the legislator prescribes that the employer must state the reason for the termination of employment relationship if the employee concerned asks for it and, if the termination is due to economic reasons on the part of the employer, he must state the termination reason even without the employee' request.

B. Notice

a) Period of notice

The Labour Code sets out the period of notice in case of employee's resignation at no less than two months. Labour Code provisions governing the notice of dismissal given by the employer are formulated in a relatively cogent manner since they provide only for minimum duration of the period of notice at the employer's initiative.

The provision that appears to be problematic in the application practice, mainly as regards the equal treatment principle, is the 15-day notice period for part-time employment of less than 20 hours a week pursuant to Section 49 paragraph 6 of the Labour Code.

The Slovak application practice does not have positive experience with the linking the length of the notice period only to the number of years worked for the same employer. In the future, it would be appropriate to consider a combination of the nature of the reasons for the notice with the duration of employment for the same employer.

b) Notice at the employer's initiative

The Labour Code gives an exhaustive list of the grounds for the notice which, in the light of legal provisions governing this area in other countries, could be grouped into three main areas:

A) economic reasons on the part of the employer,

B) reasons related to the individual workers concerned,

C) disciplinary grounds on the part of the employee.

In our view, cases where notice if prohibited should also include notice given by the employer on discriminatory grounds; this should be set out as a separate type of notice entailing stricter sanctions and consequences than other types of notice.

In the situation of *de lege lata*, this type of termination could be challenged also under anti-discrimination Act No. 365/2004 Coll.

C. Collective redundancies

As already mentioned above, the Slovak Republic introduced the legislation on collective redundancies as early as 1996.

1. The Labour Code of the Slovak Republic lacks a provision specifying when the notice given at the employer's initiative becomes effective – at the moment of service of the notice or at some other time. The latest case law of the ECJ suggests that this moment cannot be linked to the termination/dissolution of an employment relationship, but that it should be linked to the declaration of intent by the employer to go ahead with collective redundancies in the nearest future. In this regard, the Slovak legislation is not compatible with the Community law.

Pursuant to Section 73 paragraph 1 of the Labour Code, the concept of collective redundancy starts to apply only when the employer or part thereof terminates employment relationships by notice with at least 20 employees over a period of 90 days on organisational grounds, or by mutual agreement on the same grounds. We firmly believe that when the employer terminates the employment relationship by a notice or by mutual agreement in this case, it is already too late. It follows from the above that in the Slovak labour law the concept of collective redundancy starts to apply only at the moment of termination by a notice or by mutual agreement. This wording of Section 73 paragraph 1 of the Labour Code does not, however, correspond with the judgment of the second chamber in the case of C-188/03 (Wolfgang Kühnel).

2. The second problem of this part of Slovak labour legislation governing collective redundancies is connected with the definition of the term of collective redundancy. The Labour Code limits the concept of collective redundancy only to collective redundancy on structural, technical or cyclical grounds, and does not comprise other reasons that are not related to the individual workers concerned; this represents a divergence from ECJ opinion C-55/02 of 11 March 2004 (Commission/Republic of Portugal). According to that opinion, the notion of collective redundancies cannot be limited only to collective redundancies for

structural, technological or cyclical reasons, but should be extended also to other reasons not related to the individual workers concerned. **The Community law provides that the dismissal of the employee means any involuntary termination of employment contract including where it took place independently on the will of the employer** (e.g. termination of employment contract by court decision, sale of insolvent employer, winding-up of the company based on the law, termination of employment due to the death of the employer, company closure without takeover). According to the reasoning for this decision, this should include any involuntary termination of employment relationship which occurred independently on the will of the employee.

Within the meaning of the above, Slovak labour legislation provides for collective redundancy only on organisational grounds pursuant to Section 63 paragraph 1(a) and (b) of the Labour Code

3. The second outstanding issue related to the legislation on collective redundancies is connected with the existence of supranational corporations and implementation of consultation procedures with the companies that do not necessarily have legal personality and that may not have made the decision on collective redundancies; this fact is not adequately reflected in the Labour Code. This is related, above all, to the procedure connected with the number of employees for the aforesaid reasons (see decision C-449/93 Rockforn). This kind of labour law provision is still missing in the Slovak Labour Code

4. The fourth outstanding issue related to the provisions on collective redundancies in Section 73 of the Labour Code is connected with the fact that most employers have no social partner within the company and have thus no counterpart for consultation procedures. It therefore appears to be necessary to enact an alternative solution where the entire workforce of the enterprise would be the partner for consultation procedures with the employer.

5. Finally, an outstanding issue is represented also by the fact that the provisions of Section 73 of the Slovak Labour Code on collective redundancies do not apply to the employers who have been declared bankrupt by court (Section 73 paragraph 11 of the Labour Code) in connection with ECJ decision C- 215/1983 (Commission/Belgium).

D. The issue of immediate termination at the employer's initiative in case of fixed-term employment contracts

In general, EU countries recognise the need to state the reasons for unilateral termination of the employment relationship at the employer's initiative.

The legal situation *de lege lata* in the Slovak Republic is laid down in Section 71 of the Labour Code.

According to Section 71 paragraph 4 the Labour Code, the employer may terminate the employment contract with immediate effect even without stating the reason. However, the employee is entitled to wage compensation amounting to his average monthly wage for the entire anticipated duration of his employment relationship (we believe this is a certain form of satisfaction).

Article 36 of the Constitution of the Slovak Republic prohibits the dismissal of a worker without stating the reason.

Conclusions *de lege ferenda* for further development of labour law provisions governing termination of employment relationship within the European Union

1. A new ground for notice should be introduced in the Slovak labour law – notice given by the employer on discriminatory grounds.

2. Although labour law provisions concerning termination of employment relationships laid down in the Labour Code contain an exhaustive list of reasons for notice, the situation of employers would be greatly facilitated if the reasons for notice at the employer's initiative were grouped in three broader areas: notice for economic reasons, notice for reasons not related to the individual workers concerned, and notice for disciplinary reasons.

3. Notice given at the employer's initiative without stating proper reasons should be deemed to be unfounded, unlawful and contrary to the law.

4. Minimum duration of the period of notice set out in the collective agreement or in the law should apply to all categories of workers irrespective of their working time arrangements. The argument favouring this solution is the growing proportion of non-standard employment arrangements, including part-time employment. Optimum duration of notice period should reflect a combination of the length of employment relationship and the nature of the reasons for notice.

5. Immediate termination of employment relationship (immediate notice) at the employer's initiative should continue to be used only exceptionally when it is not fair to ask the employer to continue employing certain workers.

6. It is desirable to more consistently monitor the size of the group of workers who fall outside of standard labour law provisions governing the termination of employment contract of indefinite duration.

In view of the fact that the Slovak Republic had parliamentary elections in June 2006, the new government is expected to make amendments to the existing labour law. However, as regards the termination of employment relationships, no major changes are expected.