

The Employment Contract as a Central Institute of Labour Law – Past vs. Present¹

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Abstract: *The freedom of contracts forms the basis of the private-law aspects of the labour law and, in the same time, it expresses a part of the parties' freedom in the form of contractual autonomy. Within the labour law we recognize the basic types of contracts which, by their legal importance, establish the respective contractual employment relationship (the employment contract and agreements on work performed outside the employment) and other types of contracts which provide, strengthen, deepen, alter, or terminate the already established employment relationship. In the presented study, we aim to outline the development of the legislation governing the employment contract during the 20th Century, with emphasis laid on its modifications which have been depended also on the turbulent political development on our territory.*

Key Words: *Labour Law; Employment Contract; Employment Relationship; Legal Development; Labour Code; Slovakia.*

Introduction

The emergence of the first employment regulations on our territory is associated with the period of the contemporary (“modern”) law of the late 19th and early 20th Centuries, following the European development and taking the Bismarck’s Germany as a model.² The employment contract (referred to in the 19th – 20th Centuries as a service contract) was at that time understood by the jurisprudence as *a type of contract under the*

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² See more in VYŠNÝ, P. Sociálne zákonodarstvo Nemeckej ríše v Bismarckovej ére. In: P. MOSNÝ, et al. *Právnohistorická realita sociálnej doktríny 20. storočia*. 1. vyd. Kraków: Towarzystwo Słowaków w Polsce, 2013, p. 207. ISBN 978-83-7490-587-9.

legislation of the law of obligations. Its theoretical structure was essentially based on the contractual balance. Only after the substantial factual distortions of this balance, due to the strengthening of the position of the entrepreneur in the employer's position, there arose concerns about the need to identify and determine (also via mandatory regulations) the content of the employment contract (working conditions, working hours, health and safety at work, protection of specific employee groups – women, adolescents, restriction, and later prohibition of the child labour). Radical social and economic changes that occurred in the mid-19th Century created a status threatening also the public (national) interest;³ on the one hand, there was established an economically (and legally) strong group of employers, and, on the other hand, there was increasing a sizeable mass of employees who often lived on the edge of poverty. Pauperization, the growth of the strike movement and organizing structures of workers in response to the strengthening of the position of left-wing parties were undoubtedly one of the factors of the institutionalization of an employment contract, which later gradually gained its special position within the labour regulations, beyond the typical private law relations.

The employment contract and its modifications until the adoption of the Labour Code in 1965

In the second half of the 19th Century there occurred the more accurate distinction and definition of the works contract and the employment contract,⁴ resulting in the enshrinement of the legal definition of the employment contract in the context of efforts to codify the Hungarian Civil Code.⁵ Adoption of partial, mutually independent legislation related to

³ Labour law which was in this period discussed rather as part of private law or the law of obligations, thus acquired under the influence of socialization tendencies and establishment of protection status of the employee a stable and strong public-law framework (stricter determination of working time, the participation of employees in the administration and management of the company, share of employees on company profit inter alia) and this trend continued also later. HOUSER, J. Die historische Entwicklung des Arbeitsvertrages in der Tschechoslowakei. In: A. CSIZMADIA and K. KOVÁCS, Hrsg. *Die Entwicklung des Zivilrechts in Mitteleuropa (1848 – 1944)*. 1. Aufl. Budapest: Akadémiai Kiadó, 1970, pp. 369-380.

⁴ For example the fundamental decision of the Royal Curia of February 14th, 1911, No. I.G. 257/1910.

⁵ The proposal of the Hungarian Civil Code of 1900 (Articles 1600 – 1625) defined an employment contract as a contract under which the employee undertakes to perform services in household, agriculture, or in trade of the employer and the employer is obliged to pay wages. See more in LACLÁVÍKOVÁ, M. and A. ŠVECOVÁ. *Pramene práva na území Slovenska II. (1790 – 1918)*. 1. vyd. Trnava: Typi Universitatis Tyrnaviensis, 2012, p. 150.

the defined work activities⁶ (differing from each other often in a minimal range) became typical for the area of the labour law legislature.⁷ It was a very structured legislation of employment relations which despite being apparently incomprehensive in practice worked rather consistently. The fragmented casuistic legislation opened up new interpretative opportunities for jurisprudence and judicial practice and also in relation to the theoretical definition of employment (service) contract. *The legislation on the employment contract was initially based on its overall informality.* However, development in the legislation of individual employment relations aimed at setting more stringent formal conditions for the conclusion of the employment contract. For certain types of contracts (generally if the time of conclusion of the contract did not coincide with the date of commencement of work activities) there was required in addition to the written form also a qualified notary and witness form. If in practice there was not concluded a written employment contract, it was “replaced” to a certain extent by public provisions on groomer’s, service, and works identification and membership cards. They stated mandatory requirements of the employment contracts. *Among the regular requirements of employment contracts of that period belonged the type of work, place of employment, and determination of date of the commencement of employment.*⁸ The statutory legislation distinguished the conclusion of the employment contract and the actual commencement of employment. This corresponded also to a quite extensive legislation relating to the ob-

ISBN 978-80-8082-506-5; and ŠORL, R. Pracovné zákonodarstvo na Slovensku v rokoch 1848 – 1918. In: L. VOJÁČEK and K. SCHELLE, eds. *Stát a právo v letech 1848 – 1918 ve střeoevropském kontextu*. 1. vyd. Bratislava: Bratislavská vysoká škola práva, 2007, pp. 245-246. ISBN 978-80-969332-9-7.

⁶ Among those legislative rules there are included: Act Art. XIII/1876, Act Art. II/1898, Act Art. XLI/1899, Act Art. XLII/1899, Act Art. XXVII/1900, Act Art. XXVIII/1900, Act Art. XXIX/1900, Act Art. XLV/1907, Act Art. XIV/1914, Act Art. XVII/1914. The character of general framework legislation was typical for: the Business Law – Act Art. XXXVII/1875; Trade Licensing Policy of 1872 (Act Art. VIII/1872), and Trade Licensing Policy of 1884 (Act Art. XVII/1884); General Mining Act No. 146/1854.

⁷ See more in MOSNÝ, P. and M. LACLAVÍKOVÁ. *History of the State and Law on the Territory of Slovakia II. (1848 – 1948)*. 1st ed. Kraków: Towarzystwo Słowaków w Polsce, 2014. 190 p. ISBN 978-83-7490-768-2; and LACLAVÍKOVÁ, M. Modernizácia právneho poriadku a počiatky pracovnoprávnej úpravy (Vývoj pracovného zákonodarstva na našom území do roku 1918). In: A. OLŠOVSKÁ, ed. *Europeizácia a transnacionalizácia pracovných vzťahov*. 1. vyd. Plzeň: Aleš Čeněk, 2009, p. 39 and following. ISBN 978-80-7380-242-4.

⁸ ŠORL, R. Pracovné zákonodarstvo na Slovensku v rokoch 1848 – 1918. In: L. VOJÁČEK and K. SCHELLE, eds. *Stát a právo v letech 1848 – 1918 ve střeoevropském kontextu*. 1. vyd. Bratislava: Bratislavská vysoká škola práva, 2007, p. 241. ISBN 978-80-969332-9-7.

ligation of the employee to commence the work, respectively, of the employer to assign the employee for the employment. The legislation of the Dual Monarchy stipulated in considerable detail the possibilities of termination of employment – the passing of the assigned period of time, the death of an employee, the notice, or the immediate release.⁹ Part of the employment legislature were also provisions prohibiting the payment of the agreed remuneration in kind,¹⁰ in particular in spirit drinks (e.g. Act Art. II/1898, Act Art. XLI/1899, Act Art. XXVIII/1900, Act Art. XXIX/1900) or vouchers binding the employee to take goods from the employer. On the other hand, the negative element of the laws relating to agricultural workers were the provisions concerning disciplinary responsibility of employees which the employer could claim from the employees in the form of various penalties – from a reprimand to cuts in wages.¹¹

Given the creation of the Czechoslovak Republic and the realized reception of law there is created a legal dualism. In formal terms, the labour law in force in Slovakia and Ruthenia was largely based on statutory legislation stemming from the Dual Monarchy and only partially on the customary law – that used to be applied on the settled judicial practice and curia decisions (the case law of the Royal Curia as the Hungarian Supreme Court). The differences in the employment contracts in the Czech lands and Slovakia became more significant after the adoption of

⁹ Reasons for the termination and immediate release (immediate withdrawal of employment) were particularly elaborated by case reports. The notice period depended on the body which submitted the notice. A higher degree of protection via a provision of longer notice period was interestingly bound to higher skilled works and its duration to one year was established by the judicial practice. Cf. for example the fundamental decision of the Royal Curia of October 19th, 1905, No. P. 9791/1905. Quoted from FAJNOR, V. and A. ZÁTURECKÝ, eds. *Zásadné rozhodnutia býv. uh. kr. Kúrie (do 28. 10. 1918) a Najvyššieho súdu Československej republiky (do r. 1926) vo veciach občianskych z oboru práva súkromného platného na Slovensku a Podkarpatskej Rusi*. 1. vyd. Bratislava: Nákladom Právnickej jednoty na Slovensku v Bratislave, 1927, pp. 460-462.

¹⁰ This was the so-called ban of “truck” (the “truck” system) – prohibition of payment in kind instead of cash remuneration and prohibition to force an employee to purchase at designated stores or to sell goods on credit to the employee. BIANCHI, L. et al. *Dejiny štátu a práva na území Československa v období kapitalizmu 1848 – 1945: Zväzok I: 1848 – 1918*. 1. vyd. Bratislava: Vydavateľstvo Slovenskej akadémie vied, 1971, p. 272.

¹¹ CSIZMADIA, A. Sozialpolitische Tendenzen in der Regelung der Arbeitsverhältnisse in Ungarn. In: A. CSIZMADIA and K. KOVÁCS, Hrs. *Die Entwicklung des Zivilrechts in Mitteleuropa (1848 – 1944)*. 1. Aufl. Budapest: Akadémiai Kiadó, 1970, p. 349. See also BIANCHI, L. et al. *Dejiny štátu a práva na území Československa v období kapitalizmu 1848 – 1945: Zväzok I: 1848 – 1918*. 1. vyd. Bratislava: Vydavateľstvo Slovenskej akadémie vied, 1971, p. 224.

amendments to the General Civil Code (ABGB) by the Act No. 155/1921 Coll., by which there was extended the employer's obligation to pay a part of wages in case of illness of the employee. The result of the necessity for unification of employment standards within Czechoslovakia was the Act No. 244/1922 Coll. on legislation governing the legal relations between employers and employees in Slovakia and Ruthenia (as the amendment of the Act No. 217/1924 Coll.)¹² which represented a fundamental legislation on employment relations in Slovakia until January 1st, 1966. However, in addition to this legislation there remained in force also a part of employment standards from the period of the Dual Monarchy. The Act defined *the employment (service) contract as a contract by which one party bound themselves to perform certain services in favour of other party for certain period of time*. Under the employment contract there was included also such an employment, within which wages were paid per fabricated piece or according to individual performance (which was logical in establishing contract types of the works contract and employment contract). If the wage had not been agreed, but nor the gratuitousness of the contractual relationship had been clearly expressed in the contract, there was applied the assumption of adequate wages. Unless the contract or the circumstances dictated otherwise, the work had to be performed personally by the employee. Formally an employment contract could be concluded orally, in writing, but also in silence. The law included also the protective provisions in relation to wages, payment of wages in case of illness and injury of the employee, and also the employer's duty of care (treatment, medical assistance, medicines) for a sick employee in employment. It imperatively stipulated the institute of notice (the same length of notice period for the employee and the employer) and the conditions of immediate termination of employment. The mentioned law did unify to certain extent the casuistic legislation of employment relations, which was based on the legislature of the Dual Monarchy for the territory of Slovakia and Ruthenia, and, on the other hand, in the same time there was ensured unification of employment standards within Czechoslovakia towards content compliance with the provisions of the ABGB (Articles 1151 – 1163) in their amended version. The legisla-

¹² The necessity for this relatively early amendment was caused by uncertainty of derogating provision of the Law No. 244/1922 Coll., as amended. The amendment in 1924 clarified the derogation provision § 26 in the following way: "All existing written and customary provisions, if they cause a detriment of employees and thus violate these provisions of this Act, are hereby repealed," with important and correct mention not only of the legal (and secondary) standards, but also of the customary law.

tion on employment relationships between entrepreneurs and their employees (the so-called extra employees which included sales assistants, journeymen, storekeepers, coachmen in traffic trades, factory workers, apprentices, and others) was included in the VI. Title (Articles 100 – 151) of the Trade Act for the territory of Slovakia and Ruthenia No. 259/1924 Coll.¹³ These provisions similarly remained in force until entering in force the first codification of the labour law on our territory.¹⁴

In relation to the status of the institute of the employment contract, or wider regulation of the individual and, consequently, also collective employment relations, since the beginning of the 20th Century, we can observe reflections on the possibility of creation of a separate legal sector – the labour law.¹⁵ Those ideas can be sporadically observed not only in the scientific literature,¹⁶ but also in the Parliament which was largely associated both with the need for unification of standards and also with the process of socialization¹⁷ and emphasizing the public interest in the field of labour law.¹⁸ The opposite view, refusing to separate the position of labour law within the legislation, can be found in the codification works on the Czechoslovak Civil Code.¹⁹ Most authors insisted on the

¹³ MOSNÝ, P. and L. HUBENÁK. *Dejiny štátu a práva na Slovensku*. 1. vyd. Košice: Aprilla, 2008, p. 245. ISBN 978-80-89346-02-8.

¹⁴ *Act No. 65/1965 Coll. Labour Code* under the Article 280 came into force on January 1st, 1966.

¹⁵ *The tendencies to codify labour law in the form of a special code can be seen already in the period of the first Czechoslovak Republic by several authors* (J. Gruber, J. Heller, E. Hexner). See more VOJÁČEK, L. Sociální doktrína první Československé republiky a její odraz v právu. In: P. MOSNÝ, et al. *Právnohistorická realita sociálnej doktríny 20. storočia*. 1. vyd. Kraków: Towarzystwo Słowaków w Polsce, 2013, pp. 23-24. ISBN 978-83-7490-587-9.

¹⁶ For example HEXNER, E. Pracovná smluva priemyselných zamestnancov na Slovensku. *Právny obzor*. 1922, roč. 5, č. 1, p. 142. ISSN 0032-6984; and HELLER, J. Zákoník o práci. *Právnik*. 1919, roč. 58, p. 378. ISSN 0231-6625.

¹⁷ ŠORL, R. Právna úprava pracovnej zmluvy na Slovensku v období I. ČSR. In: V. KNOLL, ed. *Acta historico-iuridica Pilsnensia 2006*. 1. vyd. Plzeň: Aleš Čeněk, 2007, p. 245. ISBN 978-80-7380-085-7.

¹⁸ *"It is known that the English liberalism – the principle of "laissez faire, laissez passer" – has been weakening since the end of the 19th Century. In the public interest there are imposed various restrictions to the entrepreneur. This is, however, shaking the foundations of our legal generation. It is very difficult to adjust the new legislation to the basic principles of our private law. The German legislature has been working for a long time to form a single "labour law"."* HEXNER, E. Pracovná smluva priemyselných zamestnancov na Slovensku. *Právny obzor*. 1922, roč. 5, č. 1, p. 139. ISSN 0032-6984.

¹⁹ Legislation on the contract of employment contained in the Proposal of the Civil Code of 1931 (Articles 1022 – 1044) and in the government proposal of 1937 (Articles 980 – 1016) did not differ significantly from the legislation contained in the amended version of

opinion of the special nature of labour standards, arguing that they cannot be assigned to either the private or public law.²⁰

The period of the Slovak Republic (1939 – 1945) is characterized by a relatively abundant rule-making activity in the field of labour law and social security law and by their enrichment with a strong social context. The ideological basis of social doctrine of the Slovak Republic became the Basic Law – Constitutional Law on the Constitution of the Slovak Republic No. 185/1939 Coll.,²¹ under which *the work, whether physical or mental, was declared a civic duty*, the performance of tasks arising from employment became a duty of citizens,²² the wage level had to be appropriate not only to the job performance, but also to family circumstances and there was prohibited to exploit underprivileged citizens. The duty to work²³ applied to every unemployed person, aged 18 – 60 years, whose duty was to appoint to an imposed work and stay in it until the appeal (exception were cases when the appointment to work was not possible due to health or other serious reasons of the employee). The duty to work for the Roma and the Jews was stipulated in the regulation of Act No. 130/1940 Coll. on the temporary legislation on working duty for

the ABGB. Both proposals identically defined the employment contract (contract of work) as a contract by which one party has undertaken to perform work for salary (wage) for certain period of time. A special feature was the definition of the collective (referred to as mass) employment contract which was conceived as a contract specifying the conditions of individual contracts for the undertaking or more undertakings of a certain industry or district. The condition of validity for the collective agreement was its written form. The proposals subsequently stipulated the creation, content, and termination of employment, including the so-called protective provisions on care for the employee. Both proposals in a specially formulated provision expressed the imperative nature of most provisions of the employment contract. See the Government Bill establishing the Civil Code. The explanatory report. Prague, 1937.

²⁰ The Labour Law is "... a peculiar intermediate link between public and private law. Instead of the traditional dual legal system there is created a triple division. The new, third branch of law is referred to as the social or economic law." HÁCHA, E. et al. *Slovník veřejného práva československého: Svazek III.* [Reprint vyd. z let 1929 – 1948] Praha: Eurolex Bohemia, 2000, p. 425. ISBN 80-902752-7-3.

²¹ See more in MOSNÝ, P. *Východiská sociálnej doktríny Slovenskej republiky 1939 – 1945.* In: P. MOSNÝ, et al. *Právnohistorická realita sociálnej doktríny 20. storočia.* 1. vyd. Kraków: Towarzystwo Słowaków w Polsce, 2013, p. 57. ISBN 978-83-7490-587-9.

²² Article 76 of the *Constitution of the Slovak Republic No. 185/1939 Coll.* says: "*Mental or physical work is a civic duty*" and Article 78 of the *Constitution of the Slovak Republic No. 185/1939 Coll.*: "*Citizens are obliged to perform the tasks of their profession, to assist public authorities in their activities, carry out the functions which they have assigned by law or order of the authorities.*"

²³ Regulation with "force of law" status No. 129/1940 Coll. on Duty of Work.

Jews²⁴ and Gypsies. Regulation with “force of law” status No. 188/1942 Coll. on occupational licenses (membership cards) introduced for workers mandatory occupational licenses, without which the employer could not take the worker to employment. The employee could have his/her occupational license (which was kept by the employer) back only after the proper termination of the employment.²⁵

After the World War II, practically until the adoption of the first Czechoslovak Labour Code, there remained in force the original (Czechoslovak) regulations. An important change was the *reintroduction of the general duty of work* by the Presidential Decree No. 88/1945 Coll. of October 1st, 1945. The above-mentioned decree formed the basis for the later practice of issuing consent of the District Office of Labour Protection for termination (but also the commencement) of employment (later there was required the approval of the District National Committee which ceased to be no longer required only in the 60s).²⁶ Other major interventions in the area of conclusion of employment contracts included the possibility of an employment creation by a unilateral act of the state administration body (i.e. conclusion of the employment contract not based on the employer’s and employee’s wills), the obligation of vocational schools graduates to work in companies designated by the central state administration body (similarly was created the employment for university graduates), etc.²⁷ The first Czechoslovak Civil Code No. 141/1950 Coll., adopted within the legal biennial, contained (unlike the ABGB and the Hungarian and Czechoslovak proposals for codification of the Civil Code) legislation on employment relations. They were planned to be stipulated in a separate forthcoming Labour Code, which, however, during the legal biennial (1949 – 1950) failed to be elaborated.

The basic “socialist” legislation on employment relations became the Labour Code, the Act No. 65/1965 Coll. It was based on new ideological

²⁴ The duty of work for Jews was subsequently stipulated in the regulations with “force of law” status No. 153/1941 Coll. on Duty of Work for Jews.

²⁵ BIANCHI, L. et al. *Dejiny štátu a práva na území Československa v období kapitalizmu 1848 – 1945: Zväzok II: 1918 – 1945*. 1. vyd. Bratislava: Vydavateľstvo Slovenskej akadémie vied, 1973, p. 559.

²⁶ VOJÁČEK, L., J. KOLÁRIK and T. GÁBRIŠ. *Československé právne dejiny (1918 – 1992)*. 2. preprac. vyd. Bratislava; Žilina: Paneurópska škola práva; Eurokódex, 2013, pp. 170-171. ISBN 978-80-89447-99-2.

²⁷ VOJÁČEK, L., J. KOLÁRIK and T. GÁBRIŠ. *Československé právne dejiny (1918 – 1992)*. 2. preprac. vyd. Bratislava; Žilina: Paneurópska škola práva; Eurokódex, 2013, p. 171. ISBN 978-80-89447-99-2.

assumptions and it also abandoned the long-established concepts of “employer” and “employee” and replaced them by the terms “socialist organization” and “worker”. *In the meaning of its Article 29 the organization was obliged to agree with the worker a type of occupation (function) to which the worker is assigned, place of employment (municipality, plant, or otherwise designated place) and date of commencement of employment.* In the employment contract there was also generally agreed the wage classification of the worker, corresponding to the agreed type of work. In relation to the formal requirements of the employment contract, the Act enshrined in the Article 32 the cases when the organization shall conclude a contract in writing (e.g. it was the situation when the employee had requested the contract in writing, or if the employment contract was concluded by a juvenile worker or a worker who had been deprived by a court decision of his/her legal capacity); in other cases, the employment contract was also valid even though it was concluded orally or implicitly. The legislation gradually became stricter and required the employment contract in writing in any case (the exception was, for example, if the agreed employment lasted less than one month). Taking into account the absence of the clause of invalidity, the employment contract concluded orally or implicitly was still considered valid. The remuneration, as opposed to the current legislation, was not a compulsory requirement for the employment contract. A specific feature was that an employment could also arise under a framework agreement on works to allow the “voluntary” participation of workers in mass events organized for assistance in agricultural and similar short-term works or to ensure the performance of works in manufacturing and vocational training of pupils and students. The employment under the framework agreement on works commenced by beginning to perform works without necessity to conclude a contract of employment with individual workers and it ended with the execution of the agreed work or with the expiry of the agreed period, unless otherwise agreed.²⁸ The employment could terminate by agreement, dismissal, immediate termination of employment, and cancelling of employment within the probationary period. Throughout the whole period of its validity the Labour Code was characterized by predominant binding effect of its provisions.

²⁸ VOJÁČEK, L., J. KOLÁRIK and T. GÁBRIŠ. *Československé právní dějiny (1918 – 1992)*. 2. preprac. vyd. Bratislava; Žilina: Paneurópska škola práva; Eurokódex, 2013, p. 172. ISBN 978-80-89447-99-2.

Employment contract and its modifications at present, based on the Labour Code of 2001

Based on the legal status of *lex lata*, especially on the force of the Labour Code itself, on the enshrining concept of the employee in the Article 11 of the Act No. 311/2001 Coll. of the Labour Code, as amended (*hereinafter just as "the Labour Code"*), on the often discussed cohesiveness of the contract types in labour law – enshrined in the Article 18 of the Labour Code,²⁹ and on the still relatively high level of cogency of labour legislation, the scope of contract types in the labour law is substantially narrower than the range of contract types in the civil or commercial law. The labour law is currently specific thanks to the fact that the content of individual contracts and agreements is significantly determined by mandatory provisions. This aspect is very evident when concluding an employment contract. Contractual parties conclude an employment contract in which they agree their reciprocal rights and obligations, and by the simple act of concluding an employment contract they also undertake the responsibilities and working conditions which result directly from the Labour Code, other labour regulations, internal regulations of the employer, and the collective agreement, even though they did not agree them explicitly in the employment contract.

Within the contractual system of the labour law, *the employment contract* dominated in the past and it currently also dominates. It is not a simple contract, but it is the contract which, by its nature, creates a long-lasting working relationship (employment), within which there is performed the entire complex of the rights and responsibilities related to the labour law and creates the basis for further, successive rights and obligations arising from the employment relationship.³⁰ In addition to the employment contract it is possible to establish a basic employment relationship also via additional *agreements on work performed outside the employment*.

²⁹ Limitation, respectively cohesiveness of the contract types arises from the Article 18 of the Labour Code. According to the Article 18 of the Labour Code, a contract under the Labour Code or other labour legislation is concluded as soon as the parties agreed on its content. Based on this provision there can be stated the principle of "numerous clausus" of the contract types which forces the parties to labour relations adhere to only those types of contracts that are provided for under the employment regulations.

³⁰ GALVAS, M. *Pracovní poměr aneb Co by měl vědět každý zaměstnavatel i zaměstnanec*. 1. vyd. Brno: Elita Bohemia, 1995, p. 30. ISBN 80-901927-0-X.

The employment contract is a bilateral legal action. In practice, we can find a simple employment contract, but also a contract of employment which in itself contains a number of other employment agreements, for example the agreement on probationary period, agreement on material accountability, qualification agreement, or agreement on wage deductions and so on.

When drafting a contract, an agreement, in practice there shall be ensured in particular that there are met all the terms and conditions which the Labour Code requires for their validity. Given the subsidiary application of the general provisions of the Civil Code on the first, general part of the Labour Code and that the provision of legal action is enshrined in the Civil Code, it is necessary to apply the civil-legal legislation also on the legal actions within the labour law.

Application of the civil matter of legal action in the area of labour law depends on the enshrinement of the subsidiary application of the general part of the Civil Code in relation to the first, general part of the Labour Code (Art. 1 para. 4 of the Labour Code).³¹ The concept of legal action is defined in the Article 34 of the Civil Code,³² under which the action is the expression of will directed in particular to the creation, modification, or termination of the rights or obligations that the legislation associates with such expressions of will. Only the expression of will is considered as a valid legal action within labour law, if it complies with the conditions required by regulations of labour and also civil law. In order to be considered “as valid, the legal action must meet the criteria that the law provides as the conditions of validity, commonly referred to as formalities of legal actions.”³³ The required formalities relate to the various elements of a legal action – the subject, the will, the expression of will, the ratio of will and expression, and the object (i.e. formalities of a legal action as a whole).

The same applies for legal actions in the labour law. Taking into account the legislation of the Civil Code, if the legal action is to be valid as

³¹ If this Act (i.e. the *Act No. 311/2001 Coll. Labour Code, as amended*) in the first part does not provide otherwise, under paragraph 1 (i.e. Art. 1 para. 1 of the *Act No. 311/2001 Coll. Labour Code, as amended*) general provisions of the Civil Code govern the legal relations.

³² A legal action is an expression of will directed mainly to the creation, modification, or termination of the rights or obligations that the legislation associates with such expressions.

³³ LAZAR, J., J. CIRÁK, A. DULAK, K. KIRSTOVÁ and J. ŠVIDROŇ. *Základy občianskeho hmotného práva*. 2. preprac. vyd. Bratislava: Iura Edition, 2004, p. 113. ISBN 80-89047-89-0.

a whole, there is required in addition to complying with the formalities required by law and which are related to its elements, also the possibility of the subject of the legal action (legal possibility or feasibility of the case) and its lawfulness (or there arises a no-lawfulness of the legal action, if the legal action in its content or purpose is contrary to the law, or it circumvents the law or contravenes good morals under Article 39 of the Civil Code). The process of concluding contracts and agreements in labour law is also governed by the Civil Code. The legislation on the process of contracting is also governed by Articles 43 – 49 of the Civil Code, with the condition that the Labour Code provides for the process of formation of contracts in Articles 18 and 19. According to the Article 18 of the Labour Code, a contract under the Labour Code or under other labour legislation is concluded in the moment, when the parties agreed on its content.

Given the specificity of the labour law and its protective function, the Labour Code also provides other formalities for the validity of legal actions.³⁴ In addition to the general formalities required by the Civil Code and the Article 17 of the Labour Code, the employment actions must also comply with other conditions (substantive legal conditions) which are enshrined in an individual section of the Labour Code, within the legislation on the individual institutes.

Validity of the legal action is to be assessed in accordance with generally binding legal regulations existing at the time the legal action was taken.³⁵

The performance of dependent work³⁶ is carried out mainly on the basis of an employment relationship – the employment. *The employment*

³⁴ Article 17 of the *Act No. 311/2001 Coll. Labour Code, as amended*: (1) A legal action by which the employee disclaims his/her rights in advance, is invalid. (2) A legal action to which a competent authority or legal representative has not prescribed consent or to which the employees' representatives have not prescribed consent; a legal action that has not been previously discussed with the employees' representatives, or a legal action which has not been performed in the form prescribed by this Act, is invalid, only if it is expressly provided by this Act or by a special regulation. (3) Invalidity of a legal action cannot be to the detriment of the employee, if the invalidity was not caused by him/her. If any damage arises for the employee due to an invalid legal action, the employer is obliged to refund it.

³⁵ SALAČ, J. *Rozpor s dobrými mravými a jeho následky v civilním právu*. 2. vyd. Praha: C. H. Beck, 2004, pp. 196-197. ISBN 80-7179-914-9.

³⁶ Article 1 para. 2 of the *Act No. 311/2001 Coll. Labour Code, as amended*: A dependent work is the work performed in respect of the employer's superiority and the employee's inferi-

may be under the current legislation embodied in the Article 42 of the Labour Code established only under the employment contract. The Labour Code recognizes also *the institute of election and appointment*, but only with prerequisite or requirement of the performance of a position for certain categories of employees. After the election and appointment, it is necessary to conclude the employment contract, because the contract of employment is an exclusive method of the establishment of an employment.

According to the Art. 42 para. 2 of the Labour Code, if a special regulation provides for the election or appointment as a condition of the performance of a position as statutory body or an internal regulation of the employer establishes election or appointment as a requirement for the performance of the position of managing employee in the direct activity as a statutory body, the employment of such an employee shall be based on a written employment contract only after his/her election or appointment. If the performance of the employee's work is not satisfying for the employer, the employer has the right to simply remove the employee from office and it is considered as a redeemable reason according to Art. 63 para. 1 let. d) pt. 2 of the Labour Code. The legislation enshrined in the Art. 42 para. 2, following the Art. 63 para. 1 let. d) pt. 2 of the Labour Code, allows the employer to easily terminate the employment by notice with certain categories of managers.³⁷

The Labour Code in a mandatory way provides for the form and content formalities of the employment contract, but in the same time it also allows the contractual parties to agree other formalities, working conditions in its dispositive standards. Agreed working conditions may not be agreed in breach of generally binding legal regulations and mandatory standards of labour law.

Employment is specific in the fact that in addition to the terms agreed in the employment contract, the parties to the employment relationship must also govern those conditions that are determined by the generally binding labour regulations or collective agreements, or internal regulations of the employer. The working conditions determined in such

ority, and is performed personally by the employee for the employer, according to the instructions of the employer, on behalf of the employer, and during the working time determined by the employer.

³⁷ BARANCOVÁ, H. *Slovenské a európske pracovné právo: slovenská a česká judikatúra, judikatúra európskych súdov*. 1. vyd. Žilina: Poradca podnikateľa, 2004, p. 316. ISBN 80-88931-32-0.

way are binding for the parties to the employment relationship; they do not have to enshrine them in the employment contract. When negotiating working conditions the parties to the employment relationship are limited by the specified conditions and must not negotiate such working conditions which would be contrary to the conditions prescribed.³⁸

According to the Article 42 of the Labour Code, the employment is established by *a written employment contract* between the employer and the employee. The employer must give one copy of the employment contract to the employee. From the above-mentioned arises the obligation to conclude a contract in writing. Given that the provision does not contain a clause of invalidity under the Art. 17 para. 2 of the Labour Code, the employment contract concluded in other than written form is also valid.

Article 43 of the Labour Code enshrines the content requirements of the employment contract and it distinguishes the essential, regular, and additional content requirements. The employment relationship is established under a contract of employment which is concluded properly if the employee and employer agree on the *essential terms* under the Art. 43 para. 1 of the Labour Code, i.e. *the type of work and its brief characteristics, place of employment, date of commencement of employment, and remuneration conditions*. However, pursuant to the Article 46 of the Labour Code, the creation of employment occurs only on the date agreed in the employment contract as a date of commencement of employment.

There must be agreed the *type of work* in the employment contract for which the employee is appointed and there must be defined also its brief characteristics. The scope of the dispositive authorization of the employer depends on the type of work agreed in the employment contract. The employer may agree with the employee in the employment contract one or more types of work, and they may be determined alternatively or cumulatively. The Labour Code requires in addition to the definition of the type of work also the enshrinement of a brief description of the work in the employment contract. This should be a brief description of the work activities that the employee is obliged to perform. Given that the employment contract is a bilateral legal action to be valid, it must meet all the requirements of a legal action under the civil and labour laws. The Civil Code, inter alia, requires that a legal action be clear and understandable, therefore, also the type of work must be agreed trans-

³⁸ BERNARD, F. and J. PAVLÁTOVÁ. *Pracovný pomer a dohody o prácach vykonávaných mimo pracovného pomeru*. 1. vyd. Bratislava: Práca, 1966, p. 32.

parently (a very broadly defined type of work may cause uncertainty, because it will not clearly define the tasks of the employee, e.g. if in the production company which has more different production lines all the employees have in their employment contract stated the type of work – “worker” without further characteristics). The work which is performed within an employment relationship shall be determined by its type, wherein “when identifying the type of work in more detail the most appropriate way is to mention some typical work activities that an employee will perform.”³⁹ If the employer exceeds his/her disposal authorization and assigns work to the employee which deviates from the agreed type of work, the employee may refuse to perform such work and this behaviour of the employee cannot be considered as a misconduct by the employer.

The scope of the dispositive authorization of an employer depends not only on the agreed type of work, but also on the definition of *the place of employment* in the employment contract. The place of employment can be defined by specifying the address of the municipality (e.g. the employer’s head office), the municipality, or by other means, for example indicating the district, region, and so on. In the employment contract there may be specified one or more places of employment;⁴⁰ the definition of the place of employment will depend on the particular organizational structure of the employer (whether the employer performs its activities in several places or its operations are concentrated in one place), the type of performed work (e.g. for the position – the director of marketing and advertising the place of employment will be agreed in a broader way and for the position of a shop assistant in a more specified way).

The concept of the place of employment differentiates from the concept of workplace. The place of employment may or may not coincide

³⁹ BARANCOVÁ, H. *Zákonník práce: Komentár* [Commentary on the Labour Code]. 4. preprac. a dopln. vyd. Bratislava: Sprint, 2005, p. 296. ISBN 80-89085-48-2.

⁴⁰ R 10/1971: In the employment contract there may be specified more than one place of employment; however, in respect of the claim for compensation during business trips it is necessary to state as a regular workplace only one place of employment. From IV., p. 397: If the work is to be carried out not in one, but in several places, it is necessary to agree as a place of employment all these places. If, however, the work is to be carried out in different places that in time of conclusion of the employment contract cannot be concretely set, it is necessary to define the place of employment in other form. It can be defined according to the specific conditions under which the work is to be carried out, for example, agreeing a certain part of the territorial district or designating routes of territorial district, or agreeing the whole territorial district.

with the concept of the workplace. The workplace means a limited space or organizational unit in which the employee performs the agreed work, for example a shop floor, an operation, a guild, a warehouse, an office, a department, an accounting department, and so on.⁴¹

A substantial part of contents of the employment contract represents an agreement on *the date of commencement of employment*. Establishment of an employment is subject to the agreed day of commencement of employment, not the date on which the employee actually performed work for the first time. It can be stated based on the above-mentioned that – if on the agreed date of commencement of employment there was no actual performance of work, despite this fact the employment is established. The date of commencement of employment can be defined by specifying the calendar day or by any other way, but it must be certain and not raise doubts.

The right to remuneration for the work performed expresses the property characteristics of employment as the exchange of work for financial payment. It should be noted that the material feature of employment does not constitute the essence of employment, because it is not a simple exchange of goods – work for money. By performing a dependent work a man does not obtain only financial funds, but at the same time he/she develops his/her personality and thereby contributes to the development of society.⁴² The right to remuneration for work performed, sufficient to enable him/her to a decent standard of living, results from the Article 36 of the Constitution of the Slovak Republic. According to the Art. 188 para. 1 of the Labour Code, the employer must provide the employee with a wage for his/her work.

According to the Art. 43 para. 1 let. d) of the Labour Code *the remuneration conditions* are considered as a substantial relevance of the content of the employment contract that an employer must consult with the employee, if they are not agreed in the collective agreement. If the remuneration conditions are agreed in the collective agreement, in the employment contract there is sufficient to indicate the relevant provision of the collective agreement. The concept of remuneration conditions is not defined by the Labour Code. It can be noted that the concept of remuneration conditions is wider than the concept of wages. Under the term of

⁴¹ R 31/1980.

⁴² BARANCOVÁ, H. Realizace některých sociálních práv a svobod v pracovněprávních vztazích. *Právo a zaměstnání*. 1995, roč. 1, č. 9, p. 15. ISSN 1211-1139.

remuneration conditions we can understand the employee's wage as well as various wage benefits, wage compensations, employee benefits, and so on. The Labour Code in the scope of remuneration and in connection with a protective function modifies an absolute minimal level of remuneration in a mandatory way. Remuneration beyond the Labour Code which is more favourable to employees may be provided for in the employment contract or collective agreement.

According to the Art. 119 para. 1 of the Labour Code the wage cannot be lower than the minimum wage determined by a special legislation.⁴³ An employer who has not agreed on the remuneration with the employees in the collective agreement is obliged to provide the employee with a wage at least in the amount of the minimum wage set for the degree of work difficulty for the corresponding work position. The employer is obliged to assign for each position a certain degree of difficulty of work. In practice there is often no distinction between the minimum wage and minimum wage claim. Participants to the employment agree on the amount of wages corresponding to the minimum wage in the employment contract, but there is not reflected the degree of complexity/difficulty of the work and it is lower than the statutory minimum wage claim. This would result in a violation of labour regulations on wages.

Given the necessity to agree on the wage conditions in the contract of employment, in addition to wages the employer must consult with the employee not only the amount of wages, but also the conditions of remuneration for overtime, for work on holidays, standby, night work, and so on. Since wage conditions should be agreed between the employee and the employer, also other remuneration conditions should form part of the contract, unless they are already agreed in collective agreements. In the event that the parties to the employment relationship want to act under the Labour Code, in the employment contract it is necessary to indicate the specific provisions which provide for other remuneration conditions. If the agreement on other remuneration conditions was not included in the employment contract, the procedure of the remuneration would be regulated by the mandatory provisions of the Labour Code.

⁴³ The minimum wage is guaranteed by the *Act No. 663/2007 Coll. on Minimum Wage*. The amount of the minimum wage for the respective calendar year is set by the Government Decree on Minimum Wage, issued every year with effect from January 1st (No. 297/2014 Coll.), from January 1st, 2015: 380 EUR/month; 2.184 EUR/hour.

In addition to the substantive content requirements the employer is obliged to state also other working conditions, including – pay period, working time (according to Article 85 of the Labour Code the working time is a period of time during which the employee is available to the employer, performs work and performs duties in accordance with the employment contract. There must be noted in the employment contract mainly – the agreed weekly working time at the employer, but the employer is later responsible for the concrete organization of working time),⁴⁴ the paid leave,⁴⁵ and the notice period (the Labour Code states the minimum length; there may be agreed a longer notice period, but in practice it is applied quite a few).⁴⁶ The agreement on probationary peri-

⁴⁴ The section 85 of the *Act No. 311/2001 Coll. Labour Code, as amended* limits the maximum weekly working hours as follows: 40 weekly working hours for employees who work in a one-shift schedule; 38.75 weekly working hours for employees who work in a two-shift schedule; 37.5 weekly working hours for employees who work in a three-shift or continuous schedule; 33.5 weekly working hours for employees working with chemical carcinogens or ionizing radiation; 37.5 weekly working hours for a young employee (i.e., employee between 16 and 18 years of age), and 30 weekly working hours for a juvenile employee (younger than 16 years of age); the maximum weekly working time for a juvenile includes working time performed for all of his or her employers. The maximum working time, including overtime work, is an average of 48 working hours per week. The average work time (section 86 and 87) is usually calculated for a four-week period in the case of regularly scheduled work time and, in the case of irregularly scheduled work time, a period of four to 12 months (if the employee representatives agree with such longer period). In accordance with section 97 of the *Act No. 311/2001 Coll. Labour Code, as amended* an employer may require an employee to work up to 150 hours of overtime per year. The maximum extent of overtime work is 400 hours per year (the employee can work additional 250 hours of overtime if it is mutually agreed).

⁴⁵ An employee is entitled to a minimum paid vacation of four weeks if he or she has worked for the employer for the whole calendar year. An employee who reaches at least the 33rd year of age in the respective calendar year is entitled to a minimum five-week paid vacation for the calendar year (section 103 of the *Act No. 311/2001 Coll. Labour Code, as amended*).

⁴⁶ The ordinary notice period is at least one month unless otherwise provided by the Labour Code. The notice period lasts at least for two months if the employment on the date of receiving the notice lasted at least one year. If the notice is given by the employer for organizational (economic) reasons specified under the Labour Code or by reason of the long-term health incapacity of an employee to perform the agreed-upon work, the notice period is at least three months (provided that the employment up to the date of notice lasted at least five years). The notice period commences on the first day of the calendar month following the month of delivery of the notice of termination to the employee and it expires on the last day of the relevant calendar month (section 62 of the *Act No. 311/2001 Coll. Labour Code, as amended*).

od⁴⁷ or the secondment agreement on business trip are frequent content requirements of the employment contract. According to the Art. 43 para. 4 of the Labour Code, the employer may agree with an employee also other conditions in which the participants are interested, particularly employee's material bonuses.

The provisions of the Art. 43 para. 4 of the Labour Code,⁴⁸ under which the conditions in which the parties are interested may be agreed, leave space for other arrangements of participants to the employment contract. Although it would be correct to guide the practice under the principle: "Everything is permitted, which is not prohibited." This means that the coercive provisions of labour laws should be strictly complied with by the parties, and within the dispositive provisions of labour regulations it would be useful to shape the content of the employment contract according to the wishes and needs of the participants themselves. In practice, e.g. it is the use of a company car for private purposes, enshrinement of various forms of financial benefits, or providing a certain service by the employer (e.g. accommodation, language courses, etc.).

The employment contract may be in some aspects different from the "typical" employment contract concluded for an indefinite period and for the statutory weekly working time. The Labour Code recognizes several types of contracts. To determine the type of contract we can be based on several criteria, including the extent of working time, duration of employment, the nature of the employer, or place of employment.⁴⁹ For certain types of employment contract the Labour Code stipulates certain additional specific content or formal requirements (e.g. for home-work, the employment contract with a temporary employment agency).

⁴⁷ Article 45 of the *Act No. 311/2001 Coll. Labour Code, as amended*: (1) In the employment contract there may be specified a probationary period which lasts up to three months, and in the case of the manager in direct managing performance of a statutory body or member of a statutory body which is in direct managing performance of this manager, it lasts up to six months. The probationary period cannot be extended. (2) The probationary period shall be extended by periods of obstacles to work on the part of the employee. (3) The probationary period must be agreed in writing to be valid. (4) The probationary period may not be agreed in the case of re-conclusion of the employment contracts for a fixed period.

⁴⁸ Article 43 para. 4 of the *Act No. 311/2001 Coll. Labour Code, as amended*: In the employment contract there may be specified other terms in which the participants are interested, mainly other material bonuses.

⁴⁹ BĚLINA, M. et al. *Pracovní právo*. 2. dopln. a přeprac. vyd. Praha: C. H. Beck, 2004, p. 125. ISBN 80-7179-853-3.

Conclusion

In the 20th Century on our territory the labour law experienced a dynamic development. The principal ideological twists (liberalism – corporatism and Christian social doctrine – Marxism Leninism) significantly influenced the nature of labour law and of its central institute – the employment contract. The basic framework of the regular essentials of the employment contract (place of work, type of work, and the date of commencement of the employment) has remained unchanged in its essence, there has rather changed the material concept itself – i.e. perception of work and its social impact, with its consequences influencing the institute of the employment contract. Establishing a separate sector – the labour law – is in our territory connected to the socialist period (the Labour Code No. 65/1965 Coll.). However, reflections on the necessity for differentiation of labour regulations from the general private law may be observed sporadically since the early 20th Century.

Within the contractual system of labour law, *the employment contract* dominated in the past and it currently also dominates. It is not a simple contract, but it is the contract, which, by its nature, creates a long-lasting working relationship (employment), within which there is performed the entire complex of the rights and responsibilities related to labour law and creates the basis for further, successive rights and obligations arising from the employment relationship.

The labour law is currently specific in the fact that the content of individual contracts and agreements is significantly determined by mandatory provisions. This aspect is very evident when concluding an employment contract. Contractual parties conclude an employment contract in which they agree their reciprocal rights and obligations, and by the simple act of concluding an employment contract they also undertake the responsibilities and working conditions which result directly from the Labour Code, other labour regulations, internal regulations of the employer, and the collective agreement, even though they did not agree them explicitly in the employment contract.

The debate which once again is being performed about the position and the nature of labour code regulations oscillates within the efforts for further liberalization or etatization of their standards. Also with regard to the mentioned legal-historical context of work and its institutionalization in the contractual relationship of the employment contract it has to and always should reflect and express the value of the human being as

such, based on respect for human dignity in the field of labour law, and this also represents future challenges. The requirement of maintaining employee's dignity currently resonates more, also because there arise cases of circumvention of labour laws resulting in the detriment of the employee, which is a negative phenomenon of the high rate of unemployment and many employees work under such working conditions which should be unacceptable in a modern and advanced society.

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