

## Employment Termination from the Point of View of Good Morals<sup>1</sup>

Andrea Olšovská  
Miriam Laclavíková

---

**Abstract:** *The present paper deals with the issue of invalidity of employment termination, where the employment is terminated on the basis of a legal act, and where the non-compliance with good morals applies. Although there are formally met the requirements for valid termination of employment, the circumstances involving the termination of employment are those which are contrary to the basic rules of decency or morality (contra bonos mores). There are cases when the employers in order to “get rid of” an inconvenient employee create fictitious organizational changes and dismiss this employee because of his redundancy, or create a situation of a gross professional misconduct.*

**Key Words:** *Labour Law; Employment Termination; Invalidity of the Legal Act; Good Morals (contra bonos mores); Labour Code; Supreme Court of the Slovak Republic; the Slovak Republic.*

---

### Introduction

It can be generally noted that employment represents for many individuals not only a way to obtain the means of subsistence, but for most of them it is an important way of self-realization. A satisfied employee and decent working conditions should be among the priority tasks of the employers. On the other hand, the employees should perform efficiently and properly their tasks.

In connection with the termination of employment there is often taken into account only the fact that it worsens the position of an (now former) employee. However, there should be noted that any interference within the employment also affects the activity of the employer. We

---

<sup>1</sup> The presented scientific study was carried out within the Project of the Slovak Research and Development Agency: “*The Human Dignity and the Fundamental Human Rights and Freedoms in the Labour Law*”, in the Slovak original “*Dôstojnosť človeka a základné ľudské práva a slobody v pracovnom práve*”, project No. APVV-0068-11, responsible researcher prof. JUDr. Helena Barancová, DrSc.

would normally expect that if parties to the employment relationship find inconvenient the continued existence of the employment, then there will be a “fair” end of their relationship. However, in many cases the termination of employment is accompanied not only with a violation of labour laws, but also with unpleasant and mentally challenging situations, when the contractual parties cannot agree on the terms of employment termination.

*Employee’s protection against incorrect and unjustified termination of the employment relationship is at the national level enshrined primarily in the Article 36 of the Constitution of the Slovak Republic, under which employees are entitled to fair and satisfactory working conditions, and the law should especially provide protection against unilateral dismissal and discrimination at work.* To claim the rights defined in the Article 36 of the Slovak Constitution in conjunction with the Article 51 of the Slovak Constitution is possible only within the limits of laws implementing these provisions. For the purposes of the present paper, within the issue of termination of employment we will focus on the area of the private sector and on the law providing for the termination of employment in this area, which is the Labour Code itself. Employment termination significantly affects the position of the employer and therefore the labour legislation pays an increased attention to this area and regulates it with regard to the protective function of labour law by mandatory terms (the Labour Code establishes what terms and conditions must comply with these legal obligations and for what reasons there may be a termination of employment). *Employment may be terminated only by the methods listed exhaustively in the Section 59 of Act No. 311/2001 Coll. of the Labour Code, as amended (moreover only as “Labour Code”).*<sup>2</sup>

*If one of the parties to the employment considers that employment is to be terminated on the basis of a legal act which is considered invalid, this contractual party may apply to the court an invalid termination of employment in accordance with the Section 77 of the Labour Code.*

The court can deal with the nullity of the termination of employment only on the basis of a proposal under which the examination of the validi-

---

<sup>2</sup> Employment may be terminated by agreement, notice, immediate termination, termination within the probationary period. An employment concluded for a fixed period shall expire at the end of the agreed period. Termination of employment of a foreigner or a stateless person is provided for separately. Employment terminates by death of the employee and under the law pursuant to the Section 58 (7) of the Act No. 311/2001 Coll. Labour Code, as amended.

ty of employment termination becomes a subject of legal proceedings. This proposal, in the case of a relative nullity of legal act by which the employment was terminated, may be applied by the entitled subject, i.e. a contractual party to the employment relationship, against which the employment termination was addressed (with the exception of the agreement on termination of employment when the invalidity of termination of employment may only be applied by the employee).<sup>3</sup>

### Particulars of termination of employment

*Employment is most often terminated either on the basis of a bilateral legal act – the agreement on termination of employment or on the basis of a unilateral legal act – dismissal by the employer. However, in practice when drafting the agreement or notice there are specifically taken into account all the terms and conditions that the Labour Code requires for their validity.*

In the context of labour relations there is applied also the legislation contained in the Civil Code concerning general institutes such as legal capacity, the concept and requirements of legal acts, counting time (provided that if the Labour Code governs these issues separately, then there are applied the provisions of the Labour Code).

Application of the Civil Code legislation on the legal act (in general) in the field of labour law derives from the enshrinement of subsidiary competence of the general part of the Civil Code (Act No. 40/1964 Coll., as amended (moreover only as the “Civil Code”)) in relation to the first, general part of the Labour Code (Section 1 (4) of the Labour Code).<sup>4</sup>

*The concept of a legal act is defined in the Section 34 of the Civil Code,<sup>5</sup> under which a legal act is an expression of will directed in particular to*

---

<sup>3</sup> Invalidity of employment termination by notice, immediate termination, and termination within the probationary period or by agreement can be applied by the employee as well as by the employer to the court no later than two months from the date when the employment relationship was terminated.

<sup>4</sup> If this law (i.e. the *Act No. 311/2001 Coll. Labour Code, as amended*) in Part I does not provide otherwise, the general provisions of the *Act No. 40/1964 Coll. Civil Code, as amended*, refer to the legal relations according to the paragraph 1 (i.e. Section 1 (1) of the *Act No. 311/2001 Coll. Labour Code, as amended*).

<sup>5</sup> The legal act is an expression of will directed mainly to the creation, modification, or termination of those rights or obligations that are associated by legislation with such expressions.

the creation, modification, or termination of those rights or obligations that the legislation associates with such expressions.

Only an expression of will that *complies with the requirements of the regulations of the Labour and Civil Codes* can be considered as a *valid legal act according to the Labour Code*. If we want to consider a “legal act to be valid, it must meet the criteria that the law stipulates as conditions of validity, usually assigned as the particulars of legal acts.”<sup>6</sup> The required particulars relate to the various elements of a legal act – the entity, the will, the expression of will, the ratio of expression and will and the subject (i.e. the particulars of a legal act as a whole). The same applies to the legal acts in labour law.

Given the specificity of labour law and its protective function, *the Labour Code stipulates also other particulars for the validity of legal acts*.<sup>7</sup> In addition to the general requirements of the Civil Code and the Section 17 of the Labour Code *the employment legal acts must also meet other particulars – conditions* (substantive conditions) that are enshrined in a specific section of the Labour Code under the provisions of the individual institutes. The Labour Code, for example, provides for the prohibition of dismissal of an employee in the protected period for the employers and it exhaustively determines the reasons for the employment termination, etc.

Subject to the provision of the Civil Code, the legal act to be considered valid as a whole, in addition to the compliance with the formalities required by the law relating to its individual elements, there is required the *possibility of the subject of legal act* (legal possibility or feasibility of proceeding) and its *lawfulness*. Lawfulness of legal act is provided for in Section 39 of the Civil Code and is related to good morals on which we will focus moreover.

---

<sup>6</sup> LAZAR, J., J. CIRÁK, A. DULAK, K. KIRSTOVÁ and J. ŠVIDROŇ. *Základy občianskeho hmotného práva* [Fundamental Civil Substantive Law]. 2. preprac. vyd. Bratislava: Iura Edition, 2004, p. 113. ISBN 80-89047-89-0.

<sup>7</sup> *Section 17 of the Act No. 311/2001 Coll. Labour Code, as amended*: (1) Legal act whereby the employee waives his rights in advance is invalid. (2) Legal act which has not been approved by the relevant authority or legal representative or which has not been approved by employees’ representatives, legal act that has not been previously discussed with the employee representatives, or legal act which is not done in the form prescribed by this Act, is invalid only if expressly provided by this Act or a special regulation. (3) Invalidity of a legal act cannot be to the detriment of the employee if the invalidity was not caused by the employee himself. If there incurs a damage for the employee due to an invalid legal act, the employer is obliged to compensate it.

## Non-compliance with good morals

We encounter the concept of good morals in the context of labour law when examining the validity of a legal act from the point of view of the Section 39 of the Civil Code,<sup>8</sup> when interpreting an expression of will which shall conform to good morals within the meaning of Section 15 of the Labour Code<sup>9</sup> (the bona fide principle in the interpretation of legal act also follows from Section 35 of the Civil Code)<sup>10</sup> as well as with the principle that the exercise of rights and duties must be in accordance with good morals (Section 3 (1) of the Civil Code<sup>11</sup> and Article 2 of the Fundamental Principles of the Labour Code<sup>12</sup> and Section 13 (3) of the Labour Code).<sup>13</sup> Prohibition of abuse of rights, together with the legal order to exercise individual rights in accordance with the principles of decency (i.e. with good morals) constitute a common legal basis, however, the principle of *contra bonos mores* can be seen more objectively. Basically, there is not required that the acting persons be aware that they act contrary to good morals. Within the abuse of rights there is present more the subjective aspect – culpability – compared with the behaviour that is contrary to good morals.<sup>14</sup>

---

<sup>8</sup> Section 39 of the Act No. 40/1964 Coll. Civil Code, as amended: Invalid is a legal act which by its content or purpose is contrary to the law or it circumvents or is contravening good morals.

<sup>9</sup> Section 15 of the Act No. 311/2001 Coll. Labour Code, as amended: Expression of will should be interpreted taking into account the circumstances under which it was made, corresponding to good morals.

<sup>10</sup> Section 35 of the Act No. 40/1964 Coll. Civil Code, as amended: Legal acts expressed otherwise than by words shall be interpreted on the basis of meaning of the way of this expression that it usually has. While taking into account the will of a subject who did this act, the bona fide of the person to whom the legal act was addressed is protected.

<sup>11</sup> Section 3 (1) of the Act No. 40/1964 Coll. Civil Code, as amended: Exercise of rights and obligations arising from civil relations should not unduly interfere with the rights and legitimate interests of others and must not be contrary to good morals.

<sup>12</sup> Article 2 of the Fundamental Principles of the Act No. 311/2001 Coll. Labour Code, as amended: Exercise of rights and obligations arising from employment relations must be in compliance with good morals. No one may abuse these rights and obligations to the detriment of another party to an employment relationship or co-employees.

<sup>13</sup> Section 13 (3) of the Act No. 311/2001 Coll. Labour Code, as amended: Exercise of rights and obligations arising from employment relations must be in compliance with good morals. No one may abuse these rights and obligations to the detriment of another party to an employment relationship or co-employees.

<sup>14</sup> BARANCOVÁ, H. Zneužitie práva v právnej teórii a praxi v oblasti pracovnoprávných vzťahov [Abuse of Rights in Legal Theory and Practice in the Field of Labour Relations]. In: P. BLAHO, J. LAZAR and J. PRUSÁK, eds. *Zákaz zneužitia práva* [Prohibition of Abuse of Rights]. 1. vyd. Bratislava: Iura Edition, 2001, p. 223. ISBN 80-89047-00-9.

A legal act is considered *contrary to good morals* when it is considered undesirable in terms of moral principles upon which is formed the society, although it is not against law nor circumvent it.<sup>15</sup> Such an act is essentially contrary to the rules of behaviour<sup>16</sup> which are not legal standards.<sup>17</sup> The Roman law defined the legal principle that legal acts against good morals are invalid. Fulfilment contrary to good morals was considered impossible to fulfil (Papinianus).

The term “good morals” is not clearly defined in the scientific literature.<sup>18</sup> There can be hardly expected that the jurisprudence should “manage to define the concept so as to seamlessly use it in civil-law practice in dealing with specific cases, so that it could affect any specific situation.”<sup>19</sup> Generally, it is stated that good morals are the rules of moral character and in certain circumstances they can obtain legal standard nature<sup>20</sup> and

<sup>15</sup> LAZAR, J., J. CIRÁK, A. DULAK, K. KIRSTOVÁ and J. ŠVIDROŇ. *Základy občianskeho hmotného práva* [Fundamental Civil Substantive Law]. 2. preprac. vyd. Bratislava: Iura Edition, 2004, p. 118. ISBN 80-89047-89-0.

<sup>16</sup> SALÁČ, J. *Rozpor s dobrými mravy a jeho následky v civilním právu* [Conflict with Good Morals and Its Consequences in the Civil Law]. 2. vyd. Praha: C. H. Beck, 2004, p. 193. ISBN 80-7179-914-9.

<sup>17</sup> Legal provisions governing the behaviour of the entities are not eligible to cover all specific situations. There may be cases that are formally recognized in accordance with the law, but a society that is sensitive to values such as human dignity or decency considers these cases as unfair and looks for the opportunity to correct them. In the course of history there arose and are still developing *criteria* that mitigate the rigor of rights in its implementation and that are having the character of extralegal rules. These rules are good morals, principles of fair dealing, prohibition of abuse of rights, etc. that support the humanization of exercise of rights. LAZAR, J., J. CIRÁK, A. DULAK, K. KIRSTOVÁ and J. ŠVIDROŇ. *Základy občianskeho hmotného práva* [Fundamental Civil Substantive Law]. 2. preprac. vyd. Bratislava: Iura Edition, 2004, pp. 18-20. ISBN 80-89047-89-0.

<sup>18</sup> The older legal literature distinguished between the concept of “good morals” and the concept of “morality”, while the concept of “decency” was seen as substantively identical to the concept of “good morals”. Since the beginning of the 20<sup>th</sup> Century there was gradually promoted the argument that a fundamental purpose of the obligation to behave in accordance with morality is to exclude from the exercise of law any gross violation of morality, to ensure elemental decency in the exercise of individual rights, respectively compliance with certain ethical minimum in the exercise of individual rights. BARANCOVÁ, H. *Zneužitie práva v právnej teórii a praxi v oblasti pracovnoprávných vzťahov* [Abuse of Rights in Legal Theory and Practice in the Field of Labour Relations]. In: P. BLAHO, J. LAZAR and J. PRUSÁK, eds. *Zákaz zneužitia práva* [Prohibition of Abuse of Rights]. 1. vyd. Bratislava: Iura Edition, 2001, p. 224. ISBN 80-89047-00-9.

<sup>19</sup> BRÖSTL, A. *Contra bonos mores*. In: P. BLAHO, J. LAZAR and J. PRUSÁK, eds. *Zákaz zneužitia práva* [Prohibition of Abuse of Rights]. 1. vyd. Bratislava: Iura Edition, 2001, p. 164. ISBN 80-89047-00-9.

<sup>20</sup> The Supreme Court of the Czechoslovak Republic in Decision No. 11044 dated on 1<sup>st</sup> October of 1931 ruled that if the law considers the contracts which are contrary to a statu-

are intertwined with the whole legislation.<sup>21</sup> Good morals are mainly used as an interpretative rule.<sup>22</sup> A reference to good morals is actually a form of applying decency in law.<sup>23</sup>

Based on the conclusions of jurisprudence and court decisions<sup>24</sup> we can generally define *good morals as a summary of ethical and cultural norms of the society, some of which are permanent and unchangeable part of the human society and other together with the society are subject to development.*<sup>25</sup> Good morals are often defined as a set of rules of behaviour embodying a certain standard of decency in human relations (standards established on an individual basis), while defining moral principles of social order (society-wide standards).<sup>26</sup> Good morals thus represent “rules of conduct that are largely accepted in the society and form the basis of a fundamental system of values.”<sup>27</sup> Therefore, if a legal act fails to meet

---

tory prohibition or contrary to good morals as invalid, puts good morals on the same level with a statutory prohibition, as a result, good morals so become part of the law. The role of good morals is to fill any gaps in the positive legal provisions if in a particular case there emerges such a need. ČEČOTOVÁ, V. *Dobré mravy v slovenskom súkromnom práve* [Good Morals in the Slovak Civil Law]. 1. vyd. Bratislava: EPOS, 2005, p. 53. ISBN 80-8057-638-6.

<sup>21</sup> SALAČ, J. *Rozpor s dobrými mravy a jeho následky v civilním právu* [Conflict with Good Morals and Its Consequences in the Civil Law]. 2. vyd. Praha: C. H. Beck, 2004, p. 192. ISBN 80-7179-914-9; and BIČOVSKÝ, J. and M. HOLUB. *Občanský zákoník: Poznámkové vydání s judikaturou* [The Labour Code: Commented Issue with the Case Law]. 3. doplň. a aktualiz. vyd. Praha: Linde, 1995, p. 15. ISBN 80-85647-59-1.

<sup>22</sup> BARANCOVÁ, H. and R. SCHRONK. *Pracovné právo* [The Labour Law]. 3. aktualiz. vyd. Bratislava: Sprint, 2006, p. 75. ISBN 80-89085-52-0.

<sup>23</sup> PRUSÁK, J. *Slušnosť v práve a morálnosť* [Decency in Law and Morality]. In: J. PRUSÁK, E. BAKOŠOVÁ and N. VACULÍKOVÁ, eds. *Slušnosť v práve* [Decency in Law]. 1. vyd. Bratislava: Nadácia Štefana Lubyho; Právnická fakulta Univerzity Komenského v Bratislave; Právnický inštitút Ministerstva spravodlivosti Slovenskej republiky, 1993, p. 52.

<sup>24</sup> SALAČ, J. *Rozpor s dobrými mravy a jeho následky v civilním právu* [Conflict with Good Morals and Its Consequences in the Civil Law]. 2. vyd. Praha: C. H. Beck, 2004, p. 192. ISBN 80-7179-914-9.

<sup>25</sup> Decision 137/1993 [District Court of Brno]. In: J. SALAČ. *Rozpor s dobrými mravy a jeho následky v civilním právu* [Conflict with Good Morals and Its Consequences in the Civil Law]. 2. vyd. Praha: C. H. Beck, 2004, p. 192. ISBN 80-7179-914-9.

<sup>26</sup> SALAČ, J. *Rozpor s dobrými mravy a jeho následky v civilním právu* [Conflict with Good Morals and Its Consequences in the Civil Law]. 2. vyd. Praha: C. H. Beck, 2004, p. 193. ISBN 80-7179-914-9.

<sup>27</sup> Good morals do not include all or a significant portion of generally accepted standards of morality, but apparently only those that represent the fundamental system of values of the society which forms also the basis for the rule of law. LAZAR, J. „Dobré mravy“ v občianskom práve [“Good Morals” in Civil Law]. In: J. PRUSÁK, E. BAKOŠOVÁ and N. VACULÍKOVÁ, eds. *Slušnosť v práve* [Decency in Law]. 1. vyd. Bratislava: Nadácia Štefana Luby-



this criterion, it is contrary to morality.<sup>28</sup> According to the legal opinion of the Supreme Court of the Slovak Republic from August 21<sup>st</sup>, 1997, Ref. No. 3 Cdo 191/96 *good morals (boni mores) belong to the principles of private law; tend to be used as a criterion for restricting individual rights in their content or often limiting the performance of subjective rights. Although good morals are legal concepts and thus have the standard-establishing function, they are not defined by law. Their content lies in the generally applicable standards of morality for which the general interest of their respect is applied. Assessment of a concrete content of the concept of good morals is always a duty of a judge in every case.*

We are inclined to think that *good morals* “do not constitute a normative system, but rather a measure of ethical evaluation of specific situations.”<sup>29</sup> As stated by Bröstl, good morals “are the unwritten social and ethical criteria for the evaluation of certain conduct which – usually in the context of fulfilment of certain rights – refers to the written law (and with the violation of which usually combines the application of sanctions). Finding of acts contrary to morality is the task of law enforcement.”<sup>30</sup>

The fact that the definition of good morals is extremely difficult, confirm judicial decisions which also deal with the issue of their stability.<sup>31</sup> Taking into account the fact that the society is changing, evolving, similarly good morals evolve and change over time.<sup>32</sup> *To assess whether a le-*

---

ho; Právnická fakulta Univerzity Komenského v Bratislave; Právnický inštitút Ministerstva spravodlivosti Slovenskej republiky, 1993, p. 111.

<sup>28</sup> Compare with *Resolution of the Constitutional Court of the Slovak Republic Ref. No. IV. ÚS 55/2011-19* [2011-02-24].

<sup>29</sup> KNAPP, V. *Teorie práva* [Theory of Law]. 1. vyd. Praha: C. H. Beck, 1995, pp. 85-140. ISBN 80-7179-028-1; and BRÖSTL, A. *Contra bonos mores*. In: P. BLAHO, J. LAZAR and J. PRUSÁK, eds. *Zákaz zneužitia práva* [Prohibition of Abuse of Rights]. 1. vyd. Bratislava: Iura Edition, 2001, p. 164. ISBN 80-89047-00-9.

<sup>30</sup> BRÖSTL, A. *Contra bonos mores*. In: P. BLAHO, J. LAZAR and J. PRUSÁK, eds. *Zákaz zneužitia práva* [Prohibition of Abuse of Rights]. 1. vyd. Bratislava: Iura Edition, 2001, p. 166. ISBN 80-89047-00-9.

<sup>31</sup> Compare BUBELOVÁ, K. *Ochrana dobrých mravů optikou času* [Protection of Good Morals from the Chronological Point of View]. In: O. HAMULÁK, ed. *Principy a zásady v právu: Teorie a praxe* [Principles and Fundamentals of Law: Theory and Practice]. 1. vyd. Praha: Leges, 2010, p. 139 and following. ISBN 978-80-87212-59-2.

<sup>32</sup> “We can hardly expect that at the abstract level we will manage to define such a concept of “good morals” which could be used in the civil-law practice in solving any particular case. Therefore, in determining their content, we cannot rely on any clear and universally valid definition, respectively conceptual boundaries and it is, on the one hand, because the rules of good morals themselves are subject to certain developmental changes in re-



*gal act is consistent with good morals is always specific because there must be taken into account the particular space, time, and mutual interaction of the contractual parties.*<sup>33</sup> In this context, there arises a question whether the good morals should constitute a permanent, unchangeable entity, i.e. a certain set of standards of the society which in the historical development are typical especially for a certain degree of their permanence and have the character of fundamental standards. Therefore, there arose the initiative whether the content of good morals is more dependent on democracy and humanity of the society rather than on passing of time.<sup>34</sup> *In efforts to define the contents of good morals there should be highlighted the general and permanent sense of justice.*<sup>35</sup>

Good morals can be considered as a measure of evaluation of specific situations whether these situations conform to generally accepted ethical rules in accordance with the general moral principles of a democratic society. On the basis of the above-mentioned, it is concluded that good morals have especially interpretative function and their use is alternative, i.e. good morals are used only if the validity or invalidity of a legal act cannot be justified on the basis of other provisions of the relevant legal sector (i.e. civil law, labour law, etc.).<sup>36</sup> Assessment of compliance or

---

sponse to changes in society which determine the level of moral and legal perception of the vast majority of the population and, on the other hand, given that in a particular case the circumstances and the environment are always different. Each interpreting subject (it is typically a court) examining the extent to which certain legally relevant conduct of subjects to the civil-law relations corresponds to, or is contrary to good morals, must carefully and thoroughly take into account both of these aspects." LAZAR, J. „Dobré mravy“ v občianskom práve [“Good Morals” in Civil Law]. In: J. PRUSÁK, E. BAKOŠOVÁ and N. VACULÍKOVÁ, eds. *Slušnosť v práve* [Decency in Law]. 1. vyd. Bratislava: Nadácia Štefana Lubyho; Právnická fakulta Univerzity Komenského v Bratislave; Právnický inštitút Ministerstva spravodlivosti Slovenskej republiky, 1993, p. 112.

<sup>33</sup> Compare with *Decision of the Constitutional Court of the Czech Republic Ref. No. II. ÚS 249/1997* [1998-02-26].

<sup>34</sup> BUBELOVÁ, K. Ochrana dobrých mravů optikou času [Protection of Good Morals from the Chronological Point of View]. In: O. HAMULÁK, ed. *Principy a zásady v právu: Teorie a praxe* [Principles and Fundamentals of Law: Theory and Practice]. 1. vyd. Praha: Leges, 2010, p. 139. ISBN 978-80-87212-59-2.

<sup>35</sup> BUBELOVÁ, K. Ochrana dobrých mravů optikou času [Protection of Good Morals from the Chronological Point of View]. In: O. HAMULÁK, ed. *Principy a zásady v právu: Teorie a praxe* [Principles and Fundamentals of Law: Theory and Practice]. 1. vyd. Praha: Leges, 2010, p. 145. ISBN 978-80-87212-59-2.

<sup>36</sup> SALAČ, J. *Rozpor s dobrými mravy a jeho následky v civilním právu* [Conflict with Good Morals and Its Consequences in the Civil Law]. 2. vyd. Praha: C. H. Beck, 2004, p. 192. ISBN 80-7179-914-9; and *Decision of the Supreme Court of the Czech Republic Ref. No. 30 Cdo 664/2002* [2003-11-27].

non-compliance with good morals belongs exclusively to the duties of courts. When examining a legal act contrary to good morals a judge “should not take into account his autonomous moral attitudes, but the moral attitudes of the society. In practice, this means that the solution to this problem must be corrected by answering the question: “What do others think about such a contract, respectively, what does the majority of the society think about it?”<sup>37</sup>

Good morals allow the court to mitigate the rigor of the law and give it room for applying the rules of decency.<sup>38</sup> Good morals can be applied only if the relevant legal provision permits, respectively requires it.<sup>39</sup>

*In practice, the importance of compliance of a legal act with good morals is getting more and more relevance, it is also true in the field of labour law. Where the legislation fails in protecting the weaker party – the employee, the courts have repeatedly applied the prohibition of non-compliance with good morals to ensure fairness.*<sup>40</sup>

The Supreme Court of the Slovak Republic in the grounds of its decision under Ref. No. 5 Cdo 42/2010 expressly stated: “Like any other legal act, the termination [of employment] as a unilateral act is invalid if it does not contain all the elements of a legal act, i.e. it is contrary to law, circumventing the law, or contrary to good morals. [...] Therefore a notice of an employer which is contrary to good morals is also invalid. Non-compliance with morality assumes that the motives of dismissal do not comply with the fundamental principles of law.”

On the basis of the above-mentioned decision it can be concluded that the Supreme Court of the Slovak Republic considers that the Labour Code penalizes the dismissal by invalidity if it is contrary to good morals and it is therefore duty of a court to deal with and examine the reason of dismissal.

---

<sup>37</sup> PROCHÁZKA, R. and M. KÁČER. *Teória práva* [Theory of Law]. 1. vyd. Bratislava: C. H. Beck, 2013, p. 107. ISBN 978-80-89603-14-5.

<sup>38</sup> See *Decision of the Constitutional Court of the Czech Republic Ref. No. I. ÚS 643/2004* [2005-09-06].

<sup>39</sup> Compare BARANCOVÁ, H. and R. SCHRONK. *Pracovné právo* [The Labour Law]. 3. aktualiz. vyd. Bratislava: Sprint, 2006, p. 75. ISBN 80-89085-52-0.

<sup>40</sup> Compare e.g. *Decision of the Supreme Court of the Slovak Republic Ref. No. 4 Cdo 178/2008* [2010-03-31]; and *Decision of the Supreme Court of the Slovak Republic Ref. No. 5 Cdo 42/2010* [2010-06-09].

In the present decision, the Supreme Court addressed that the court should consider all the facts (i.e. not only to examine whether it was accepted and there really occurred organizational change, or whether the employee is redundant and whether there is a causal link between organizational change and employee's redundancy) that preceded the termination of employment for reasons of redundancy and in evaluating these circumstances it *should also take into account the Article 2 of the Labour Code, enshrining a positive fulfilment of rights and obligations arising from the employment relationship which is consistent with good morals.*

If the adoption of an organizational change was fictitious (i.e. whether the real reason of adopting organizational change was the employee's redundancy or just the means of "getting rid of" an employee), there would not be fulfilled one of the prerequisites of a valid redundancy of the employee which *could have an impact on the validity of the notice in terms of respect of the mentioned legal principle of compliance (non-compliance) of an employment act with good morals by the employer.*

In relation to the provision governing the exercise of rights and obligations in accordance with good morals, the Court held that this provision allows a court to review the case in the sense whether the exercise of a subjective right is in accordance with good morals and, if it is not, that the court should deny legal protection of the exercised right. The application of this provision also allows interference with the exercise of the already existing right arising from civil relations, but it cannot lead to the creation, modification, or termination of rights and obligations. The provision of Section 3 (1) of the Civil Code does not have its own direct standard-setting force – it governs only the method of application and interpretation of other provisions.<sup>41</sup>

## Conclusion

Good morals can be considered as a corrective institute of labour relations as well as an interpretative tool that can be used in cases which are not provided directly by legal standards.<sup>42</sup> Since we live in a society that respects democratic principles, human dignity, the attribute of good

---

<sup>41</sup> *Decision of the Supreme Court of the Slovak Republic Ref. No. 3 Cdo 144/2010* [2011-03-30].

<sup>42</sup> Compare HORECKÝ, J. Kategorie dobrých mravů a její dopad na oblast pracovního práva [Categories of Good Morals and Their Impact on the Labour Law]. In: E. ŽATECKÁ, L. KOVÁČOVÁ, J. HORECKÝ and V. VOMÁČKA, eds. *COFOLA 2011* [CD-ROM]. 1. vyd. Brno: Masarykova univerzita v Brně, 2011, p. 66. ISBN 978-80-210-5582-7.

morals should be present not only in the actual lawmaking processes, but also in the behaviour and actions of entities within the legal relations (i.e. all members of our society).

However, the practical application in the courts shows the minimum labour disputes requiring legal classification of the concept of “good morals”, more precisely “acts in conflict with good morals”, but this certainly does not reflect their real incidence in social practice where similar cases are fairly common. The reason for such a situation in the courts is not only the difficulty of proving in court proceedings that the legal act was not taken in compliance with good morals. The real reason is often the opinion that within the court proceedings the lawyers refer to good morals especially in cases when they “are unable to apply any different” argument and the institute of good morals is thus considered as “a kind of first aid.”

As mentioned above, we can find cases of termination of employment by the employer especially if the employer wants to “get rid of” an inconvenient or unlikable employee by a fictitious adoption of a decision on the redundancy of the employee and subsequently dismisses from employment such an employee. There are also frequent the so-called vexatious inspections by managers in order to “find out” that the employee has violated labour discipline and subsequently to be able to terminate the employment.

Thus, issues of appliance and relevance of qualification of the acts *contra bonos mores* often remain open and unresolved for jurisprudence and judicial practice (perhaps also with regard to the high pace and turbulence of life in the current postmodern epoch).

## References

*Act No. 40/1964 Coll. Civil Code, as amended.*

*Act No. 311/2001 Coll. Labour Code, as amended.*

BARANCOVÁ, H. and R. SCHRONK. *Pracovné právo* [The Labour Law]. 3. aktualiz. vyd. Bratislava: Sprint, 2006. 781 p. ISBN 80-89085-52-0.

BARANCOVÁ, H. Zneužitie práva v právnej teórii a praxi v oblasti pracovnoprávných vzťahov [Abuse of Rights in Legal Theory and Practice in the Field of Labour Relations]. In: P. BLAHO, J. LAZAR and J. PRUSÁK, eds. *Zákaz zneužitia práva* [Prohibition of Abuse of Rights]. 1. vyd. Bratislava: Iura Edition, 2001, pp. 215-228. ISBN 80-89047-00-9.

- BIČOVSKÝ, J. and M. HOLUB. *Občanský zákoník: Poznámkové vydání s judikaturou* [The Labour Code: Commented Issue with the Case Law]. 3. dopln. a aktualiz. vyd. Praha: Linde, 1995. 671 p. ISBN 80-85647-59-1.
- BRÖSTL, A. *Contra bonos mores*. In: P. BLAHO, J. LAZAR and J. PRUSÁK, eds. *Zákaz zneužitia práva* [Prohibition of Abuse of Rights]. 1. vyd. Bratislava: Iura Edition, 2001, pp. 163-172. ISBN 80-89047-00-9.
- BUBELOVÁ, K. *Ochrana dobrých mravů optikou času* [Protection of Good Morals from the Chronological Point of View]. In: O. HAMULÁK, ed. *Principy a zásady v právu: Teorie a praxe* [Principles and Fundamentals of Law: Theory and Practice]. 1. vyd. Praha: Leges, 2010, pp. 138-145. ISBN 978-80-87212-59-2.
- ČEČOTOVÁ, V. *Dobré mravy v slovenskom súkromnom práve* [Good Morals in the Slovak Civil Law]. 1. vyd. Bratislava: EPOS, 2005. 223 p. ISBN 80-8057-638-6.
- Decision 137/1993 [District Court of Brno]. In: J. SALAČ. *Rozpor s dobrými mravy a jeho následky v civilním právu* [Conflict with Good Morals and Its Consequences in the Civil Law]. 2. vyd. Praha: C. H. Beck, 2004. 301 p. ISBN 80-7179-914-9.
- Decision of the Constitutional Court of the Czech Republic Ref. No. II. ÚS 249/1997* [1998-02-26].
- Decision of the Constitutional Court of the Czech Republic Ref. No. I. ÚS 643/2004* [2005-09-06].
- Decision of the Supreme Court of the Czech Republic Ref. No. 30 Cdo 664/2002* [2003-11-27].
- Decision of the Supreme Court of the Slovak Republic Ref. No. 3 Cdo 144/2010* [2011-03-30].
- Decision of the Supreme Court of the Slovak Republic Ref. No. 4 Cdo 178/2008* [2010-03-31].
- Decision of the Supreme Court of the Slovak Republic Ref. No. 5 Cdo 42/2010* [2010-06-09].
- HORECKÝ, J. *Kategorie dobrých mravů a její dopad na oblast pracovního práva* [Categories of Good Morals and Their Impact on the Labour Law]. In: E. ŽATECKÁ, L. KOVÁČOVÁ, J. HORECKÝ and V. VOMÁČKA,

- eds. *COFOLA 2011* [CD-ROM]. 1. vyd. Brno: Masarykova univerzita v Brně, 2011, pp. 57-69. ISBN 978-80-210-5582-7.
- KNAPP, V. *Teorie práva* [Theory of Law]. 1. vyd. Praha: C. H. Beck, 1995. 247 p. ISBN 80-7179-028-1.
- LAZAR, J. „Dobré mravy“ v občianskom práve [“Good Morals” in Civil Law]. In: J. PRUSÁK, E. BAKOŠOVÁ and N. VACULÍKOVÁ, eds. *Slušnosť v práve* [Decency in Law]. 1. vyd. Bratislava: Nadácia Štefana Lubyho; Právnická fakulta Univerzity Komenského v Bratislave; Právnický inštitút Ministerstva spravodlivosti Slovenskej republiky, 1993, pp. 110-123.
- LAZAR, J., J. CIRÁK, A. DULAK, K. KIRSTOVÁ and J. ŠVIDROŇ. *Základy občianskeho hmotného práva* [Fundamental Civil Substantive Law]. 2. preprac. vyd. Bratislava: Iura Edition, 2004. 428 and 557 p. ISBN 80-89047-89-0.
- PROCHÁZKA, R. and M. KÁČER. *Teória práva* [Theory of Law]. 1. vyd. Bratislava: C. H. Beck, 2013. 290 p. ISBN 978-80-89603-14-5.
- PRUSÁK, J. *Slušnosť v práve a morálnosť* [Decency in Law and Morality]. In: J. PRUSÁK, E. BAKOŠOVÁ and N. VACULÍKOVÁ, eds. *Slušnosť v práve* [Decency in Law]. 1. vyd. Bratislava: Nadácia Štefana Lubyho; Právnická fakulta Univerzity Komenského v Bratislave; Právnický inštitút Ministerstva spravodlivosti Slovenskej republiky, 1993, pp. 52-64.
- Resolution of the Constitutional Court of the Slovak Republic Ref. No. IV. ÚS 55/2011-19* [2011-02-24].
- SALAČ, J. *Rozpor s dobrými mravy a jeho následky v civilním právu* [Conflict with Good Morals and Its Consequences in the Civil Law]. 2. vyd. Praha: C. H. Beck, 2004. 301 p. ISBN 80-7179-914-9.

Doc. JUDr. Mgr. Andrea Olšovská, PhD.

Faculty of Law  
Trnava University in Trnava  
Kollárova 10  
917 01 Trnava  
Slovak Republic  
[aolsovska@gmail.com](mailto:aolsovska@gmail.com)

Doc. JUDr. Miriam Laclavíková, PhD.

Faculty of Law  
Trnava University in Trnava  
Kollárova 10  
917 01 Trnava  
Slovak Republic  
[miriam.laclavikova@truni.sk](mailto:miriam.laclavikova@truni.sk)